

MEETING DATE: March 7, 2011

AGENDA ITEM: Approval of Contract Award with the Nickerson Company for Construction Management Services on the Sepulveda Blvd MTA Grant Project

ATTACHMENTS

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Attachment 1

Summary of Construction Management Proposals Received

Firm	Location	Hourly Rate
The Nickerson Company*	Los Angeles, CA	\$105.00
AAE	Orange, CA	\$90.00
GKA	Diamond Bar, CA	\$95.00
CivilSource	Irvine, CA	\$110.00
ADP	Irvine, CA	\$135.00

*Staff's recommendation based on prior experience working in the City, familiarity with City requirements and procedures, firm's proximity to Culver City, and competitive hourly rate.

CULVER CITY REDEVELOPMENT AGENCY

STANDARD FORM CONTRACT

WITH: The Nickerson Company

FOR: Construction Administration and Management of Sepulveda Blvd. MTA
Grant Project

THIS AGREEMENT is made and entered into by and between THE CULVER CITY REDEVELOPMENT AGENCY, a public body, corporate and politic, hereinafter referred to as "AGENCY" and The Nickerson Company, a California corporation, hereinafter referred to as "Consultant."

1. CONSULTANT'S SERVICES. Consultant agrees to perform, during the term of this Agreement, the tasks, obligations, and services set forth in the "Scope of Service" attached to and incorporated into this Agreement as Exhibit "A."
2. TERM OF AGREEMENT. The term of this Agreement shall be from the effective date pursuant to Paragraph 27 of this Agreement and shall end upon completion of the scope of services.
3. PAYMENT FOR SERVICES. Agency shall pay for the services performed by Consultant pursuant to the terms of this Agreement, the compensation set forth in the "Schedule of Compensation" attached to and incorporated into this Agreement as Exhibit "B." The compensation shall be paid at the time and manner set forth in said Exhibit "B."
4. TIME FOR PERFORMANCE. Consultant shall not perform any work under this Agreement until (a) Consultant furnishes proof of insurance as required under Paragraph 7 of this Agreement; and, (b) Agency gives Consultant a written and signed Notice to Proceed.
5. DESIGNATED REPRESENTATIVE(S). Vernon Nickerson shall be the designated Consultant Representative, and shall be responsible for job performance, negotiations, contractual matters, and coordination with the Agency. Consultant Representative shall actually perform, or provide immediate supervision of Consultant's performance of, the Scope of Service.
6. HOLD HARMLESS. To the fullest extent permitted by law, Consultant shall indemnify, defend (at Consultant's sole expense, with legal counsel approved by Agency) and hold harmless the Culver City Redevelopment

Agency, members of its Agency Board, its boards and commissions, officers, agents, and employees (hereinafter, "Indemnitees"), from and against all loss, damage, cost, expense, liability, claims, demands, suits, attorneys' fees and judgments arising from or in any manner connected to Consultant's or its employees or agent's wrongful or negligent acts, errors or omissions related to this Agreement. This indemnification includes, but is not limited to, tort liability to a third person for bodily injury and property damage.

Consultant agrees that this obligation to indemnify, defend and hold harmless extends to liability and/or claims arising from Indemnitees' active or passive negligence.

Notwithstanding the foregoing, nothing herein shall be construed to require Consultant to indemnify an Indemnitee from any claim arising from the sole negligence or willful misconduct of that Indemnitee.

The duty to defend referenced herein is wholly independent from the duty to indemnify, arises upon written notice by Agency to Consultant of a claim within the potential scope of this indemnification provision, and exists regardless of any determination of the ultimate liability of Consultant, Agency or any Indemnitee.

7. INSURANCE. Without limiting its obligations pursuant to Section 6 of this Agreement, the Consultant shall procure and maintain, at Consultant's own cost and expense and for the duration of this Agreement, insurance coverage as set forth in "Insurance Requirements" attached to and incorporated into this Agreement as Exhibit "C."
8. INDEPENDENT CONSULTANT STATUS. Agency and Consultant agree that Consultant, in performing the services herein specified, shall act as an independent Consultant and shall have control of all work and the manner in which it is performed. Consultant shall be free to contract for similar service to be performed for other employers while under contract with Agency. Consultant is not an agent or employee of Agency, and is not entitled to participate in any pension plan, insurance, bonus, worker's compensation or similar benefits Agency provides for its employees. Consultant shall be responsible to pay and hold Agency harmless from any and all payroll and other taxes and interest thereon and penalties therefor which may become due as a result of services performed hereunder.
9. NON-APPROPRIATION OF FUNDS. Payment due and payable to Consultant for current services is within the current budget and within an available, unexhausted and unencumbered appropriation of Agency. In the event Agency has not appropriated sufficient funds for payment of

Consultant services beyond the current fiscal year, this Agreement shall cover only those costs incurred up to the conclusion of the current fiscal year.

10. ASSIGNMENT. This Agreement is for the specific services with Consultant as set forth herein. Any attempt by Consultant to assign the benefits or burdens of this Agreement without written approval of Agency shall be prohibited and shall be null and void; except that Consultant may assign payments due under this Agreement to a financial institution.
11. RECORDS AND INSPECTIONS. Consultant shall maintain full and accurate records with respect to all services and matters covered under this Agreement. Agency shall have free access at all reasonable times to such records, and the right to examine and audit the same and to make transcripts therefrom, and to inspect all program data, documents, proceedings and activities. Consultant shall maintain an up-to-date list of key personnel and telephone numbers for emergency contact after normal business hours.
12. OWNERSHIP OF CONSULTANT'S WORK PRODUCT. Agency shall be the owner of any and all computations, plans, correspondence and/or other pertinent data, information, documents and computer media, including disks and other materials gathered or prepared by Consultant in performance of this Agreement, or at any earlier or later time when the same may be requested by Agency. Such work product shall be transmitted to Agency within ten (10) days after a written request therefor. Consultant may retain copies of such products. All written documents shall be provided to Agency in digital and in hard copy form.
13. NOTICES. All notices given or required to be given pursuant to this Agreement shall be in writing and may be given by personal delivery or by mail. Notice sent by mail shall be addressed as follows:

To Agency: Culver City Redevelopment Agency
Sol Blumenfeld, Community Development Director
9770 Culver Boulevard
Culver City, CA 90232-0507

To Consultant: The Nickerson Company
Attention: Vernon Nickerson
8703 La Tijera Boulevard, Suite 209
Los Angeles, CA 90045
14. TAXPAYER IDENTIFICATION NUMBER. Consultant shall provide Agency with a complete Request for Taxpayer Identification Number

("TIN") and Certification, Form W-9, as issued by the Internal Revenue Service.

15. PERMITS AND LICENSES. Consultant, at its sole expense, shall obtain and maintain during the term of this Agreement, all appropriate permits, licenses, and certificates that may be required in connection with the performance of services under this Agreement including, but not limited to, a Culver City business tax certificate.
16. APPLICABLE LAWS, CODES AND REGULATIONS. Consultant shall perform all work in accordance with all applicable laws, codes and regulations required by all authorities having jurisdiction over such work. Consultant agrees to comply with prevailing wage requirements as specified in the California Labor Code, Sections 1770, et seq.
17. PURCHASES OF SUPPLIES AND MATERIALS WITHIN CULVER CITY. For work performed, Consultant agrees to seek bids for supplies and materials from businesses located within the City of Culver City, with the intent to make purchases from these businesses if such purchases can be made at competitive prices.
18. RIGHT TO UTILIZE OTHERS. Agency reserves the right to utilize others to perform work similar to the services provided hereunder.
19. MODIFICATION OF AGREEMENT. This Agreement may not be modified, nor may any of the terms, provisions or conditions be modified or waived or otherwise affected, except by a written amendment signed by all parties hereto.
20. WAIVER. If at any time one party shall waive any term, provision or condition of this Agreement, either before or after any breach thereof, no party shall thereafter be deemed to have consented to any future failure of full performance hereunder.
21. COVENANTS AND CONDITIONS. Each term and each provision of this Agreement to be performed by Consultant shall be construed to be both a covenant and a condition.
22. RIGHT TO TERMINATE. Agency may terminate this Agreement at any time, with or without cause, in its sole discretion, with thirty-days' (30-days') written notice.
23. EFFECT OF TERMINATION. Upon termination as stated in Paragraph 22 of this Agreement, Agency shall be liable to Consultant only for work satisfactorily performed by Consultant up to and including the date of termination of this Agreement, unless the termination is for cause, in which

event Consultant need be compensated only to the extent required by law. Consultant shall be entitled to payment for work satisfactorily completed to date, based on a proration of the monthly fees set forth in Exhibit "B" attached hereto. Such payment will be subject to Agency's receipt of a close-out billing.

24. GOVERNING LAW. The terms of this Agreement shall be interpreted according to the laws of the State of California. If litigation arises out of this Agreement, then venue shall be in the Superior Court of Los Angeles County.
25. LITIGATION FEES. If litigation arises out of this Agreement for the performance thereof, then the court shall award costs and expenses, including attorney's fees, to the prevailing party. In awarding attorney's fees, the court shall not be bound by any court fee schedule but shall award the full amount of costs, expenses and attorney's fees paid or incurred in good faith.
26. INTEGRATED AGREEMENT. This Agreement represents the entire Agreement between Agency and Consultant regarding the subject matter hereof, and all preliminary negotiations and agreements are deemed a part of this Agreement. No verbal agreement or implied covenant shall be held to vary the provisions of this Agreement. This Agreement shall bind and inure to the benefit of the parties to this Agreement, and any subsequent successors and assigns.
27. EFFECTIVE DATE. The effective date of this Agreement is the date it is signed on behalf of Agency, and shall remain in full force and effect until amended or terminated; provided, that the indemnification and hold harmless provisions shall survive the termination.

THE NICKERSON COMPANY

Dated:_____

By_____
Vernon Nickerson, President

CULVER CITY REDEVELOPMENT AGENCY

Dated:_____

By_____
John Nachbar
Executive Director

(Signatures continued on Page 6)

(Signatures continued from Page 5)

APPROVED AS TO CONTENT:

APPROVED AS TO FORM:

Sol Blumenfeld
Assistant Executive Director

Murray Kane
Agency General Counsel

APPROVED AS TO FINANCING:

APPROVED AS TO BUSINESS
TAX CERTIFICATE:

Jeff Muir
Chief Financial Officer

Treasury Division

Acct. No. _____

EXHIBIT A

CULVER CITY REDEVELOPMENT AGENCY

WITH: The Nickerson Company

FOR: Construction Administration and Management of Sepulveda Blvd. MTA
Grant Project

SCOPE OF SERVICE

Consultant shall provide the following construction administration and management services for Sepulveda Blvd. MTA Grant Project construction of pedestrian improvements between Culver Blvd. and the City limit line south of Franklin Ave. on Sepulveda Blvd.

1. Pre-construction Meeting: Conduct the Pre-Construction Meeting including notification to contractor, utility agencies, and the City's Redevelopment and Public Works staff.
2. Construction Inspection and Reporting: Conduct a daily site visits as needed and be available daily by phone or e-mail during the week to answer any project construction questions that arise and compile weekly construction status reports and communicate same with appropriate parties.
3. Submittal Processing: Track and coordinate with appropriate parties all correspondence and submittals including, but not limited to: addenda, change orders, shop drawings, traffic control, materials list, record drawing, controller charts, operation and maintenance manuals, certified payrolls, soil samples and tree and plant material photographs and respond as necessary.
4. Labor Compliance: Conduct labor compliance/EEO Employee interviews, and ensure general contractor's compliance with Federal Labor Standards and Provisions, including the Davis-Bacon and Related Acts.
5. RFI's: Log, distribute and respond to each Request for Information (RFI) to appropriate parties as required and identify potential impacts to cost or time that may result due to issues identified in RFIs, with recommended alternatives or solutions to mitigate potential impacts.
6. ADA Requirements: Provide coordination as necessary with appropriate parties to assure that ADA requirements are satisfied during the construction process and upon completion.

7. Traffic Control: Review potential accessibility issues and ensure installation of traffic control devices per MUTCD and as directed by City officials.
8. Weekly Statement of Working Days: Prepare a weekly progress report to the City.
9. Digital Photographs: Document work progress on a regular basis by means of digital photographs properly labeled and dated.
10. Communicate with City Staff: Identify conflicts, construction problems and coordination issues, and obtain the needed action and response to submittals and RFIs per Section 13 of contract.
11. Schedule Control: Compare the contractor's monthly schedule updates to the baseline schedule and any approved time extensions; note any shortcoming to keep the Project Schedule on track.
12. Maintenance of Records: Maintain records and copies of all items as required by Federally funded projects including, but not limited to: plans, specifications, and contract documents with all changes and modifications; permits, addenda, change orders, shop drawings, product data, submittals, samples, progress payments, inventories, applicable codes, contractor's reports, correspondence, certified payrolls and accident reports.
13. Pre-Final Inspection: Perform the final job walk and prepare the punch list (deficiency list), coordinate and observe completion of required corrections, estimate the value of the incomplete items and recommend specific retention in accordance with the contract.
14. Final Inspection: All corrections must be made before The Nickerson Company recommends processing of the "Notice of Completion." Upon completion of the punch list and final sign off by all project stakeholders, The Nickerson Company will make a recommendation to the City regarding the construction contractor's final progress payment request.
15. Close Out: Coordinate any additional close-out activities as required by the City.

Agency Initials

Consultant Initials

EXHIBIT B

CULVER CITY REDEVELOPMENT AGENCY

WITH: The Nickerson Company

FOR: Construction Administration and Management of Sepulveda Blvd. MTA
Grant Project

SCHEDULE OF COMPENSATION
(TIME AND MATERIALS BASIS)

- A. METHOD OF PAYMENT. Payment for all work performed by CONSULTANT pursuant to the terms of this Agreement, including CONSULTANT'S meeting with Agency staff, shall be made on the basis of the hourly rates set forth below, plus actual out-of-pocket costs incurred in performing the work:

<u>PERSONNEL</u>	<u>RATE PER HOUR</u>
Vernon Nickerson	\$105.00
Mordecai Nickerson	\$90.00

Consultant agrees to discount the amount owed by 2% if payment by Agency is made within ten days after receipt of the invoice.

- B. BILLING. At the end of each calendar month in which services are performed or expenses are incurred under this Agreement, and prior to the 10th day of the following month, CONSULTANT shall submit an invoice to the Agency at the following address:

Culver City Redevelopment Agency
Attn: Todd Tipton, Redevelopment Administrator
9770 Culver Boulevard, 3rd Floor
Culver City, CA 90232

The invoice submitted pursuant to this paragraph shall show the Agency Agreement Number, hours worked by each person who performed services during the billing period, the hourly rate of pay for each person who performed services, the dates on which the services were performed, a description of the services performed, actual out-of-pocket expenses incurred in the performance of the services, and such other information as Agency may reasonably require.

- C. TIME OF PAYMENT. Payment to CONSULTANT shall be made within THIRTY (30) days after submittal of CONSULTANT'S invoice and approval by Agency.
- D. MAXIMUM COMPENSATION. Notwithstanding the foregoing, CONSULTANT shall complete all the work and tasks described in Exhibit A for a total amount of compensation that does not exceed TWENTY FIVE THOUSAND TWO HUNDRED DOLLARS (\$25,200), which amount includes all out-of-pocket expenses.

Agency Initials

Consultant Initials

EXHIBIT C

CULVER CITY REDEVELOPMENT AGENCY

WITH: The Nickerson Company

FOR: Construction Administration and Management of Sepulveda Blvd. MTA
Grant Project

INSURANCE REQUIREMENTS

A. **Policy Requirements.**

Consultant shall submit duly executed certificates of insurance for the following:

1. An occurrence based Comprehensive General Liability ("CGL") policy, at least as broad as ISO Form CG 0001, in the minimum amount of One Million Dollars (\$1,000,000) each occurrence, with not less than Two Million Dollars (\$2,000,000) in annual aggregate coverage.

The CGL Policy shall have the following requirements:

- a. The policy shall provide coverage for personal injury, bodily injury, death, accident and property damage and advertising injury, as those terms are understood in the context of a CGL policy. The coverage shall not be excess or contributing with respect to City's self-insurance or any pooled risk arrangements;
- b. The policy shall provide \$1,000,000 combined single limit coverage for owned, hired and non-owned automobile liability;
- c. The policy shall include coverage for liability undertaken by contract covering, to the maximum extent permitted by law. Consultant's obligation to indemnify the Indemnitees as required under Paragraph 6 of this agreement;
- d. The Policy shall not exclude coverage for Completed Operations Hazards or Athletic or Sports Participants; and
- e. **The Culver City Redevelopment Agency, the City of Culver City, and their respective members of their City Council, their boards and commissions, officers, agents, and employees will be named as an additional insured** in an endorsement to the policy, which shall be provided to the City and approved by the City Attorney.

2. Business Automobile Liability Insurance coverage in the amount of One Million Dollars (\$1,000,000), providing coverage for use of mobile equipment (i.e. heavy mobile equipment or vehicles primarily for use in an off-road environment), to the extent that (1) such mobile equipment will be used within the City limits or on City business, and (2) coverage for mobile equipment is not otherwise covered by the CGL policy listed in subparagraph (a), above.

3. Professional/Negligent Acts, Errors and Omissions Insurance in the minimum amount of One Million Dollars (\$1,000,000) per claim, and shall include coverage for separate "personal injury" alleged to have been committed in the course of rendering professional services, unless such coverage is provided by the CGL policy listed in subparagraph (a), above.

4. Workers' Compensation limits as required by the Labor Code of the State of California with Employers' Liability limits of One Million Dollars (\$1,000,000.00) per accident, if the Agreement will have Contractor employees working within the City limits.

B. Waiver by Agency and City.

Agency and City may waive one or more of the coverages listed in Section A, above. This waiver must be express and in writing, and will only be made upon a showing by the Consultant that its operations in and with respect to Agency and City are not such as to impose liability within the scope of that particular coverage.

C. Additional Insurance Requirements.

1. All insurance listed in Paragraph A shall be issued by companies licensed to do business in the State of California, with a claims paying ability rating of "BBB" or better by S&P (and the equivalent by any other Rating Agency) and a rating of A:VII or better in the current Best's Insurance Reports;

2. Consultant shall provide Agency and City with at least thirty (30) days prior written notice of any modification, reduction or cancellation of any of the Policies required in Paragraph A, or a minimum of ten (10) days notice for cancellation due to non-payment.

3. Agency and City may increase the scope or dollar amount of coverage required under any of the policies described above, or may require different or additional coverages, upon prior written notice to Consultant.