



## AGENDA REPORT

**Meeting Date:** September 10, 2013  
**Item Number:** F-18  
**To:** Honorable Mayor & City Council  
**From:** Donielle Kahikina, Project Manager  
**Subject:** APPROVAL OF AMENDMENT NO. 2 TO THE AGREEMENT BETWEEN THE CITY OF BEVERLY HILLS AND MATT CONSTRUCTION CORPORATION FOR CONSTRUCTION MANAGEMENT SERVICES RELATED TO THE BEVERLY GARDENS PARK; AND  
  
EXECUTION OF A CHANGE PURCHASE ORDER IN THE AMOUNT OF \$254,501 TO MATT CONSTRUCTION CORPORATION FOR THE SERVICES; AND  
  
APPROPRIATION OF \$100,000 FROM THE GENERAL FUND BALANCE FOR CONSTRUCTION OF THE BEVERLY GARDENS PARK LILY POND PROJECT

**Attachments:** 1. Agreement

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### **RECOMMENDATION**

Staff recommends that the "City Council move to approve Amendment No. 2 to the Agreement between the City of Beverly Hills and Matt Construction Corporation for Construction Management Services Related to the Beverly Gardens Park project", and to execute a Change Purchase Order in the amount of \$254,501 for construction management services. The total amount of the agreement and the amendments is \$304,235. Staff further recommends that the City Council appropriate \$100,000 from the General Fund 01 fund balance, to supplement the cost of completion of Beverly Gardens Park Phase 1.

### **INTRODUCTION**

At the August 20, 2013 meeting, City Council approved the award of contracts to various contractors for construction of the Beverly Gardens Park project, and Amendment No. 1

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to Matt Construction for construction management services related to the project, contingent upon a future appropriation of \$100,000 from the General Fund ending balance surplus to support the construction of Phase 1 of this project.

**DISCUSSION**

On August 20, 2013 a supplemental staff report was provided to City Council as an update on the status of charitable donations on deposit to support the construction of Phase 1 of the project. The total funds available were approximately \$100,000 short of the total project funds necessary to complete the construction of Phase 1, as detailed in the August 20, 2013 agenda report for award of contracts. The shortage of funding in the amount of \$100,000 took into consideration a reduction to the construction manager contract of \$37,000 through further refinement of the project schedule and construction management services with Matt Construction, resulting in Amendment No. 2 with Matt Construction in the amount of \$254,501. This Amendment No. 2 reduces the previously contract amount by that \$37,000.

**FISCAL IMPACT**

The fiscal impact will be \$100,000 to the General Fund ending balance.

David Lightner  
Approved By



# **Attachment 1**

AMENDMENT NO. 2 TO THE AGREEMENT BETWEEN THE CITY OF BEVERLY HILLS AND MATT CONSTRUCTION CORPORATION FOR CONSTRUCTION MANAGEMENT SERVICES RELATED TO THE BEVERLY GARDENS PARK

NAME OF CONSULTANT: Matt Construction Corporation

RESPONSIBLE PRINCIPAL OF CONSULTANT: James Muenzer, Senior Vice President

CONSULTANT'S ADDRESS: 9414 Norwalk Boulevard, Suite 100  
Santa Fe Springs, CA 90670  
Attention: James Muenzer, Senior Vice President

CITY'S ADDRESS: City of Beverly Hills  
455 N. Rexford Drive  
Beverly Hills, CA 90210  
Attention: Alan Schneider, Director of Project Administration

COMMENCEMENT DATE: Upon Written Notice to Proceed

TERMINATION DATE: June 30, 2014

CONSIDERATION: Pre-Construction Services (Per Original Agreement)  
Total not to exceed \$49,734.00 (including all reimbursable expenses and described in Exhibit B);

Construction and Post-Construction Phases (Per this Amendment No. 2)

Fees and all reimbursable expenses shall not exceed \$229,501 as described in Exhibit B;

Contingency shall not exceed \$25,000 as described in Exhibit B;

Total not to exceed \$254,501

Total Consideration for Pre-Construction Services (per Original Agreement) and Post-Construction Phases (per this Amendment No. 2)  
Total not to exceed \$304,235

AMENDMENT NO. 2 TO THE AGREEMENT BETWEEN THE CITY OF BEVERLY HILLS AND MATT CONSTRUCTION CORPORATION FOR CONSTRUCTION MANAGEMENT SERVICES RELATED TO THE BEVERLY GARDENS PARK

THIS AMENDMENT NO. 2 is to the Agreement between the City of Beverly Hills (hereinafter called "CITY"), and Matt Construction Corporation (hereinafter called "CONSULTANT") dated May 2, 2013, and identified as Contract No. 123-13 9 ("Original Agreement"), as amended by Amendment No. 1, dated August 20, 2013 and identified as Contract No. 328-13 ("Amendment No. 1").

RECITALS

A. CITY entered into the Original Agreement with CONSULTANT for preconstruction services related to the Beverly Gardens Park Project, Block #14 (Lily Pond) and Block #21 (Electric Fountain) to be located along North Santa Monica Boulevard between Beverly Drive and Canon Drive, and between Carmelita Avenue and Walden Drive, respectively, in Beverly Hills, California 90210.

B. Pursuant to Amendment No. 1, CITY amended the Original Agreement to increase the scope of services to include the construction and post-construction phases for the Lily Pond, increase the Compensation for these services, and amend the Indemnification. CONSULTANT represents that it is qualified and able to perform the amended Scope of Work.

C. CITY desires to amend the Original Agreement and Amendment No. 1 to adjust the dates in the Progress Schedule located in Exhibit A – Scope of Work and to decrease the amount of consideration paid to CONSULTANT by \$37,000.

NOW, THEREFORE, the parties agree as follows:

Section 1. The Consideration shall be amended as set forth on the cover page hereto.

Section 2. Exhibit A "Scope of Work" shall be amended and restated as attached hereto and incorporated herein.

Section 4. Exhibit B "Schedule of Payment and Rates" shall be amended and restated as attached hereto and incorporated herein.

Section 5. Except as specifically amended by this Amendment No. 2, the Original Agreement and Amendment No. 1 shall remain in full force and effect.

IN WITNESS WHEREOF, the parties hereto have executed this Amendment No. 2 on the \_\_\_\_\_ day of September, 2013, at Beverly Hills, California.

CITY OF BEVERLY HILLS  
A Municipal Corporation

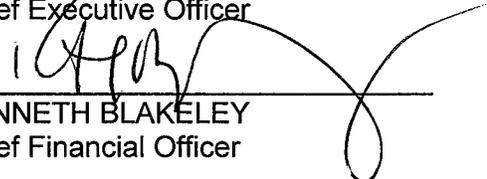
\_\_\_\_\_  
JOHN A. MIRISCH  
Mayor of the City of  
Beverly Hills, California

ATTEST:

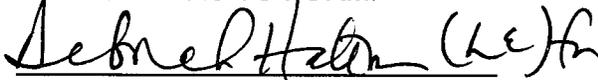
\_\_\_\_\_(SEAL)  
BYRON POPE  
City Clerk

CONSULTANT: MATT CONSTRUCTION  
CORPORATION

  
\_\_\_\_\_  
STEVEN MATT  
Chief Executive Officer

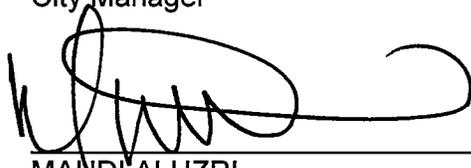
  
\_\_\_\_\_  
KENNETH BLAKELEY  
Chief Financial Officer

APPROVED AS TO FORM:

  
\_\_\_\_\_  
LAURENCE S. WIENER  
City Attorney

APPROVED AS TO CONTENT:

\_\_\_\_\_  
JEFFREY C. KOLIN   
City Manager

  
\_\_\_\_\_  
MANDI ALUZRI  
Assistant City Manager/Acting Director of  
Public Works & Transportation

  
\_\_\_\_\_  
KARL KIRKMAN  
Risk Manager

EXHIBIT A

SCOPE OF WORK

**PRE-CONSTRUCTION SERVICES (Per Original Agreement)**

CONSULTANT, under the direction of the CITY'S Project Manager, shall provide preconstruction services in connection with the CITY's Beverly Gardens Park project, specifically the Lily Pond Block #14 and Electric Fountain Block #21, located along Santa Monica Boulevard between Beverly Drive and Canon Drive, and between Carmelita Avenue and Walden Drive respectively in Beverly Hills, California, 90201.

**Scope of Services**

With regard to the above project, CONSULTANT shall work in support of the CITY's designated project manager. The scope of CONSULTANT's services to be provided includes the following tasks:

*Develop Pre-Qualification Criteria*

- Create pre-qualification criteria for each Prime Contractor scope of work for the project
- Identify and cultivate appropriate Prime Contractor interest for each Bid Package

*Pre-Qualification Process*

- Assist the City during the Pre-Qualification process
- Provide analysis of Pre-qualification results

*Develop Bid Packages*

- Develop Bid Packages based on Construction Drawings
- Include schedule, scope of work, bid form, and other City requirement documents in the Bid Packages

*Bidding Process*

- Assist the City during the Bidding Process
- Lead pre-bid job walk

*Analysis & Negotiation*

- Prepare bid analysis documentation
- Prepare required Prime Contract exhibits with project
- Oversee Prime Contract awards in conjunction with City procedures
- Ensure Prime Contracts are executed

**Project Schedule & Fee Breakdown**

	<u>April</u>	<u>May</u>	<u>June</u>	<u>July</u>
<u>Activities</u>				
Develop pre-qualification criteria	XX			
Pre-qualification process	X	X		
Develop bid packages		XX		
Bidding process		X	XX	
Analysis & recommendation			X	X

<u>Staffing</u>	<u>Total Hours</u>	<u>Hourly Rate</u>	<u>Total</u>
Project Executive	14	\$212	\$ 2,968
Senior Project Manager	108	122	13,176
Project Manager	400	80	32,000
Admin Support	30	53	1,590
			<u>\$49,734</u>

**CONSTRUCTION & POST CONSTRUCTION PHASES (per Amendment No. 2)**

**Project Description**

CONSULTANT shall provide construction management services in connection with the CITY's Beverly Gardens Park project, specifically the Lily Pond Block #14 ("Project"), located along Santa Monica Boulevard between Beverly Drive and Canon Drive in Beverly Hills, California, 90201. The scope of work generally includes restoration of Lily Pond and Circular Fountain; retain photo opportunity area (for Beverly Hills sign); new plantings at water features; new bollard lighting at pathways and accent uplights at specimen trees.

At the sole discretion of CITY, CITY may include an alternate bid option for the Electric Fountain Block #21 at Beverly Gardens Park fronting Santa Monica Boulevard between Walden Drive and Carmelita Drive. The scope of work generally includes restoration of the Electric Fountain for mechanical and electrical equipment; restoration of historic tiles and pavers; new bollard lighting at pathways and accent uplights at specimen trees.

Project design is based on the Construction Documents (CD) Plan Check set, dated May 17, 2013 prepared by Mia Lehrer & Associates for Block #14 at Santa Monica Boulevard between Canon Drive and Beverly Drive, Beverly Hills, CA 90210.

**Scope**

CONSULTANT, in cooperation with the Project Architect, shall administer the contracts for the Project construction under the direction of CITY's Project Manager. CONSULTANT shall also provide the following additional services:

**General**

1. Provide construction management and related administrative services as required to coordinate work of the Prime Contractors with each other and with the activities and responsibilities of CONSULTANT, the Project Manager and Architect, to complete the Project in accordance with the CITY objectives for cost, time, and quality.
2. Assist the Project Manager in selecting the professional services of surveyors, special consultant(s), and materials testing laboratories, and coordinate their services as necessary during construction.
3. Assist with the monitoring of prevailing wages for all applicable Prime Contractor work, and obtain written detailed reports from the Prime Contractor as requested by the Project Manager.

4. Require and receive certificates of insurance from the Prime Contractors combined with advice as to the sufficiency of coverage.
5. Perform other customary and necessary duties for the construction of the project utilizing the construction management multi-prime delivery method.
6. With the Project Manager's approval, CITY shall authorize CONSULTANT to act on its behalf to provide directions to CITY's Prime Contractors for coordination of work activities, compliance with work quality, and adherence to the construction schedule. CITY shall incorporate language in its contracts with its Prime Contractors requiring its Prime Contractors to adhere to directions provided by CONSULTANT.

### **Coordination**

1. Provide orchestration of Prime Contractor field activity; construction observation; arrangement, coordination, and supervision of material testing and special inspection services, and project close-out services.
2. Schedule and conduct construction and progress meetings on weekly basis to discuss such matters as procedures, progress, issues, problems, and scheduling. Prepare and promptly distribute meeting agenda and minutes.
3. Provide construction oversight to monitor Prime Contractors' implementation of the correct Project construction means, methods, techniques, sequences, and procedures. Implement a process to achieve satisfactory performance from each of the prime contractors. Recommend courses of action to the Project Manager when requirements of the construction contract are not being fulfilled, and the non-performing party will not take corrective action.
4. Establish and implement procedures for submittals ("Submittals"), change orders, and other such procedures and maintain logs, files, and other necessary documentation relating thereto. CONSULTANT shall review all shop drawings, product data, samples, and other submittals and provide advice thereon. CONSULTANT shall coordinate Submittals with information contained in related documents and shall transmit Submittals, together with CONSULTANT's review comments, to the Architect for review. In collaboration with the Architect, CONSULTANT shall establish and implement procedures for expediting the processing and the approval of shop drawings, product data, samples, and other submittals. CONSULTANT shall maintain logs, files, and other necessary records and documentation for City.
5. Consult with and advise the Architect and the Project Manager if any prime contractor requests interpretation of the meaning and intent of the drawings and/or specifications for the Project, and shall assist in the resolution of questions which may arise.
6. Observe and require that all inspections and tests required by the Department of Building and Safety and by the consulting testing and inspection firms, be performed. In the event of non-compliance with inspections or failure of tests, provide the necessary steps and recommendation(s) to the Project Manager to obtain compliance.

7. Assure that all closeout duties are performed by the Prime Contractors, including but not limited to, training; provision of technical, maintenance, and operational manuals; warranties, as required by the project specifications, and determine the start of the warranty period.
8. Obtain the Certificate of Occupancy and establish the date of Substantial Completion in accordance with specifications.

#### **Budget / Costs**

1. Maintain cost accounting records on authorized work performed under unit pricing costs, additional work performed on the basis of actual cost of labor and materials, or other work requiring accounting records.
2. Thoroughly review, analyze and investigate each Prime Contractor's change order request, and provide the Project Manager a written recommendation of the merits of the request.
3. Recommend necessary or desirable changes to the Architect and the Project Manager and provide advice regarding such changes, implement change order procedures, review requests for changes, assist in negotiating Prime Contractor proposals, submit recommendations to the Architect and the Project Manager, and if they are accepted, prepare change orders for the Architect's and Prime Contractors signatures and Project Managers authorization.
4. Analyze claims for extension of time; prepare estimates based upon alleged cause of claim. CONSULTANT shall prepare and distribute change order reports on a monthly basis throughout the construction phase. Such reports will provide information pertaining to proposed and executed change orders and their effect on the Construction Costs and Master Project Schedule.
5. Develop and implement procedures for the review and processing of applications for payment by Prime Contractors for progress and final payments. Make recommendations and provide advice to the Architect for certification to the Project Manager for payment.
6. Recommend the release of retention for Prime Contractors, as warranted.

#### **Schedule**

1. Provide preparation for construction sequencing and evaluation to produce the Master Project Schedule.
2. Update the Master Project Schedule incorporating the activities of the trade contractors, including activity sequence and duration, processing of shop drawings, product data and samples, and delivery of products requiring long lead time procurement.
3. Maintain the Master Schedule (actual vs baseline).

**Reporting**

1. Observe and record the progress of the Project, and submit written progress reports to the Project Manager and to the Architect on a monthly basis. Include information on each Prime Contractor's performance working during the period, as well as the entire project.
2. Provide budget updates indicating percentages of completion and the dollar amounts of change orders.
3. Provide progress photos.
4. Use reasonable diligence to discover work performance by Prime Contractor(s) that is not in compliance with the contract documents.

**Safety**

1. Verify that safety programs are developed by each of the Prime Contractors as required by the contract documents.
2. CONSULTANT shall take necessary precautions for the safety of its employees, all construction Prime Contractor and others on the Project site and comply with the applicable safety laws and building codes to prevent accidents or injuries to person on, about, or adjacent to the project site.
3. With the Project Manager's approval, CITY shall authorize CONSULTANT to act on its behalf to direct its Prime Contractors to comply with safety rules and regulations, and provide safety work as necessary to ensure a safe work site. CITY will, in its contracts with the Prime Contractors, require the Prime Contractors to comply with all safety directions given by CONSULTANT.

**PROGRESS SCHEDULE**

The construction schedule shall not exceed 22 weeks from commencement of construction to substantial completion unless, in the opinion of the CITY's Project Manager, there are verifiable unforeseen conditions or changes in scope.

Schedule is based on award of prime contracts on August 20, 2013, as reflected in CONSULTANT's Preliminary Schedule, dated May 31, 2013.

**CONSTRUCTION MANAGER'S KEY PERSONNEL**

<b><u>Project Staff</u></b>	<b><u>Title</u></b>
Jim Muenzer	Project Executive
Drew Wesling	Senior Project Manager
Nolan Caldwell	Project Engineer
To be determined	Project Superintendent

Construction Manager's key personnel listed above shall not be changed without the prior written approval of CITY.

EXHIBIT B

SCHEDULE OF PAYMENT AND RATES

**PRE-CONSTRUCTION SERVICES (PER THE ORIGINAL AGREEMENT)**

CITY shall compensate CONSULTANT for the satisfactory performance of services, including expenses, an amount not to exceed Forty Nine Thousand Seven Hundred Thirty-four Dollars (**\$49,734**) at the rates set forth in Exhibit A for Pre-Construction Services.

CONSULTANT shall submit an itemized statement to CITY on a CITY approved form for its services performed, which shall include documentation setting forth in detail a description of the services rendered, and the hours of service, if appropriate. CITY shall pay CONSULTANT the amount of such billing within thirty (30) days of receipt of same.

**CONSTRUCTION AND POST-CONSTRUCTION SERVICES (PER AMENDMENT NO. 2)**

CITY shall compensate CONSULTANT for the satisfactory performance of services described in Exhibit A, including expenses, an amount not to exceed Two Hundred Twenty Nine Thousand Five Hundred One Dollars (\$229,501) at the rates set forth below for the Construction and Post-Construction Phases.

CONSULTANT shall submit an itemized monthly statement to CITY on a CITY approved form for its services performed, which shall include documentation setting forth in detail a description of the services rendered, and the hours of service. Said billing shall be on a time and materials basis utilizing the hourly rates set forth below. The estimated amount for general conditions is \$31,953 per month. CITY shall pay CONSULTANT the amount of such billing within thirty (30) days of receipt of same.

CONSULTANT shall not charge a fee for Change Orders.

If CITY authorizes scope changes during construction that are not included in the scope of services described herein, CONSULTANT shall submit the total not-to-exceed cost in writing and in advance, and if approved by the CITY's Project Manager, bill CITY on a time and materials basis at the rates set forth below. Payment for these services shall be from the Contingency. No billings may be made utilizing Contingency funds without the prior written authorization of the City's Project Manager. Contingency for services outside the scope set forth in Exhibit A shall not exceed \$25,000.

The total fees, expenses and Contingency, if authorized under this Amendment No. 2, shall not exceed Two Hundred Fifty Four Thousand Five Hundred One Dollars (**\$254,501**).

**TOTAL CONSIDERATION**

Total of pre-construction services per the Original Agreement in the amount of \$49,734 and construction and post-construction services, per this Amendment No. 2, in the amount of \$254,501, shall not exceed Three Hundred and Four Thousand Two Hundred Thirty Five Dollars (**\$304,235**).

**Hourly Rates**

Project Executive	\$212
Senior Project Manager	\$108
Project Manager	\$ 80