

FORM APPROVED COUNTY COUNSEL
7/17/13
DATE
REVIEWED BY CIP BY: MARSHAL VICTOR
Departmental Concurrence
Christopher Hans
John R. Hawkins, Fire Chief
Riverside County Fire Department

**SUBMITTAL TO THE BOARD OF SUPERVISORS
COUNTY OF RIVERSIDE, STATE OF CALIFORNIA**

363



SUBMITTAL DATE:
July 18, 2013

FROM: Economic Development Agency

SUBJECT: Glen Oaks Fire Station - Project Closeout

RECOMMENDED MOTION: That the Board of Supervisors:

1. Receive and file the voluntary Notice of Default and Assignment letter from Federal Insurance Company, (Federal) surety for ASR Constructors, Inc. (ASR) and declare ASR in default;
2. Authorize the Economic Development Agency (EDA) to issue notice to the Escrow Agent, Citibank, that a default has occurred and requesting monies be forwarded to EDA pursuant to the terms of the escrow agreement;

(Continued)

FISCAL PROCEDURES APPROVED
PAUL ANGULO, CPA, AUDITOR-CONTROLLER
BY: Lisette Rose 7/18/13

Robert Field

Robert Field
Assistant County Executive Officer/EDA

FINANCIAL DATA	Current F.Y. Total Cost:	\$ 8,750	In Current Year Budget:	Yes
	Current F.Y. Net County Cost:	\$ 0	Budget Adjustment:	No
	Annual Net County Cost:	\$ 0	For Fiscal Year:	2013/14

COMPANION ITEM ON BOARD AGENDA: No

SOURCE OF FUNDS: Developer Impact Fees

Positions To Be Deleted Per A-30	<input type="checkbox"/>
Requires 4/5 Vote	<input type="checkbox"/>

C.E.O. RECOMMENDATION: APPROVE

County Executive Office Signature BY: Jennifer L. Sargent

Prev. Agn. Ref.: 3.31 of 2/28/12; 3.30 of 11/30/10

District: 3/3

Agenda Number:

3-23

ATTACHMENTS FILED
WITH THE CLERK OF THE BOARD

RECOMMENDED MOTION: (Continued)

3. Ratify Amendment No. 3 to the architectural services agreement between the County of Riverside and Nicoloff & Associates of San Diego, California in the amount of \$8,750 and authorize the Chairman of the Board to execute the agreement on behalf of the county;
4. Authorize the Assistant County Executive Officer/EDA to administer Amendment No. 3 for Nicoloff and Associates, Inc. in accordance with applicable Board policies; and
5. Authorize EDA to issue payment to Federal pursuant to the Notice of Default and Assignment and the contract terms, and work with ASR and Federal to finalize and close out the project, including submittal of all project as-builts and warranty documentation, and clearing up any and all remaining stop notices and outstanding punch list items.

BACKGROUND:

On April 20, 2010, the Board of Supervisors approved the plans and specifications for the Glen Oaks Fire Station project and authorized the Clerk of the Board to advertise for bids. On November 20, 2010, the project was awarded to ASR Constructors Inc. for \$3,546,000. The project consisted of constructing a new 13,000 square foot fire station to replace a temporary station in the wine country region.

ASR has experienced financial difficulties and assigned their rights to their surety, Federal Insurance Company, on March 14, 2013. Federal, pursuant to their obligations under the bonds, has been arranging for resolution of outstanding stop notices and completion of project performance items. The EDA project team has been working with ASR, Federal, and the surety's agent, Sage Associates, to bring the project to completion.

Federal's counsel has endeavored to work with Citibank to modify the escrow agreement to authorize payment directly in the name of Federal pursuant to the Notice of Default and Assignment; however Citibank is apparently refusing contact. Under the escrow agreement, the county may make claim against the funds upon a default of the contractor. EDA therefore proposes to issue such a declaration to Citibank based upon the Notice of Default and Assignment issued to the county from ASR and Federal.

It is recommended that the Board of Supervisors approve the motions authorizing EDA to work with Federal to clear up all outstanding issues on the project, including any stop notices and performance items, and make payment to Federal for work completed in accordance with the contract.

On December 18, 2007, the Board of Supervisors approved an architectural services agreement between the County of Riverside and Nicoloff and Associates, Inc., in the amount of \$261,280, for design services of the Glen Oaks Fire Station. On February 28, 2012, the Board of Supervisors approved Amendment No. 2 to the architectural services agreement in the amount of \$33,580 for tasks related to the project which were not included in the original scope.

(Continued)

BACKGROUND: (Continued)

The architect was needed on site longer due to the length of time the contractor took to complete the project. Additionally, due to an error in a survey used as a basis for design, modifications were needed in grading and paving plans by the civil engineer. As a result of these additional services, Amendment No. 3 will compensate Nicoloff and Associates, Inc., in the amount not-to-exceed \$8,750.

All costs associated with this agreement will be funded using previously approved project contingency (Developer Impact Fees), thus no net county costs will be incurred.

Attachments:

Amendment No. 3
Notice of Default and Assignment

1 **THIRD AMENDMENT TO AGREEMENT FOR ARCHITECTURAL SERVICES BY**
2 **AND BETWEEN THE COUNTY OF RIVERSIDE AND NICOLOFF AND**
3 **ASSOCIATES INC. FOR THE GLEN OAKS FIRE STATION**

4 THIS THIRD AMENDMENT TO THE AGREEMENT FOR ARCHITECTURAL
5 SERVICES for the Glen Oaks Fire Station ("Third Amendment") is made and entered
6 into by and between the COUNTY OF RIVERSIDE, ("COUNTY"), and Nicoloff and
7 Associates, herein referred to as "ARCHITECT".

8 **RECITALS**

9 **WHEREAS**, the COUNTY entered into the Original Agreement with
10 CONSULTANT on December 18, 2007, Agenda Item 3.25 ("Original Agreement");

11 **WHEREAS**, the COUNTY entered into a First Amendment to the Agreement on
12 August 16, 2011;

13 **WHEREAS**, the COUNTY entered into a Second Amendment to the Agreement
14 on February 28, 2012;

15 **WHEREAS**, the COUNTY has determined that additional services are needed
16 and ARCHITECT has agreed to provide such additional services to COUNTY;

17 **WHEREAS**, the ARCHITECT has agreed to provide such additional services to
18 COUNTY for the sum of \$8,750;

19 **NOW, THEREFORE**, in consideration of the mutual covenants contained herein
20 and providing that all other sections not amended remain in full force and effect, the
21 parties hereto agree as follows, effective as of July 30, 2013:

22 I. Section II of the Original Agreement is hereby amended to add the following
23 sentence:

24 SCOPE OF WORK. ARCHITECT shall provide the additional professional
25 services, as outlined and specified in Exhibit "A-3"; consisting of one (1) page,
 attached hereto and incorporated herein by this reference.

II. Section III of the Original Agreement is hereby amended by modifying the introductory sentence:

ARCHITECT shall render the following services and related services as listed in Exhibit "A", Exhibit "A-1", Exhibit "A-2", and Exhibit "A-3" attached hereto and incorporated by this reference.

III. Section IV subparagraph A.1 of the Original Agreement is modified to read as follows:

A. DETERMINATION OF AMOUNT. For the services hereinabove required the COUNTY shall pay to ARCHITECT in the manner hereafter provided, a fee of Three Hundred Twenty Seven Thousand, Three Hundred Sixty (\$327,360), and shall be paid as provide in paragraph IV,C, Payment.

IN WITNESS HEREOF, the parties hereto have caused their duly authorized representatives to execute this Third Amendment on _____
(To be filed in by Clerk of the Board)

COUNTY OF RIVERSIDE

Nicoloff and Associates Inc.

John J. Benoit
Chairman, Board of Supervisors

James M. Nicoloff
3405 Kenyon Street,
Suite 511
San Diego, CA 92110

ATTEST:
Kecia Harper-Ihem
Clerk of Board

By _____
Deputy
(Seal)

2 of 2

FORM APPROVED COUNTY COUNSEL
BY 48 Victor 7/12/13
MARSHAL VICTOR DATE

Third Amendment with Nicoloff and Associates
Glen Oaks Fire Station

James M. Nicoloff, Architect

November 14, 2012

County of Riverside EDA
Project Management Office
3403 10th St., Suite 500
Riverside, CA 92501

Attn: Natalia Brown, Senior Development Specialist

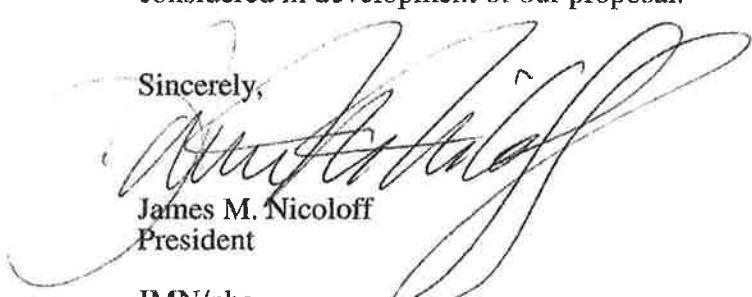
Re: Additional Services for Professional Services & Reimbursable Expenses during
Construction of Glen Oaks Fire Station

Dear Ms. Brown:

This project has gone approximately six months beyond the originally anticipated construction completion date. This has resulted in unanticipated additional time spent on our part as well as additional travel costs. Additionally, because of an error in the survey provided by the County, we have had to modify the grading and paving plan in order to meet actual conditions found in the site by the Contractor. We are therefore requesting the following additional professional service and reimbursable fees be provided by the County of Riverside.

We estimate that an additional Eight thousand seven hundred fifty dollar (\$8,7500.00) amount will cover the cost of our additional time and reimbursable expenses necessary to support the remaining architectural and engineering services, as well as the additional time spent by my Civil Engineering consultant in modifying the grading and paving plan. Should the above amount not appear acceptable as an equitable fee, we are prepared to present and discuss the factors considered in development of our proposal.

Sincerely,



James M. Nicoloff
President

JMN/nbs
encl.