

City of Garden Grove

INTER-DEPARTMENT MEMORANDUM

To: Scott C. Stiles
Dept: City Manager
Subject: APPROVAL OF AN AGREEMENT WITH COMPASS DEMOGRAPHICS, AND BUDGET APPROPRIATION, FOR DEMOGRAPHIC SERVICES TO DEVELOP A BY-DISTRICT ELECTION SYSTEM FOR THE ELECTION OF CITY COUNCIL MEMBERS

From: Maria Stipe
Dept: City Manager
Date: October 13, 2015

OBJECTIVE

The purpose of this report is for the City Council to approve an agreement and budget appropriation for professional demographic services to develop a by-district election system for the election of City Council Members.

BACKGROUND

At the September 25, 2015, Special Meeting of the City Council, the City Council approved a settlement in a lawsuit brought against the City in July 2015 asserting the City's current "at-large" method of electing City Council members violates the California Voting Rights Act. Pursuant to the settlement, a stipulated judgement will be entered requiring the City to replace the current at-large election process with a by-district election process for all five City Council seats, commencing in 2016. Five, non-overlapping, geographically-defined electoral districts are to be drawn, and the City Council will consist of one member who resides within, and is nominated and elected by voters within, each of those five districts.

DISCUSSION

Among the terms of the settlement, is a provision that the City will retain Compass Demographics, or another demographics firm mutually acceptable to the City and the Plaintiff, to assist the City to develop the Electoral District Map. Staff has received a proposal from Compass Demographics to provide the services specified in the settlement agreement, including development of a by-district system for the election of City Council Members based on a three phase process referred to as Information, Districting, and Adoption. It should be specifically noted that Compass Demographics will work with the City to conduct a series of community engagement sessions and public hearings to obtain community input before finalizing the district maps. See attached agreement for full scope of work. Compass Demographics is highly referred and qualified to provide these services.

APPROVAL OF AN AGREEMENT WITH COMPASS DEMOGRAPHICS, AND BUDGET APPROPRIATION, FOR DEMOGRAPHIC SERVICES TO DEVELOP A BY-DISTRICT ELECTION SYSTEM FOR THE ELECTION OF CITY COUNCIL MEMBERS

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FINANCIAL IMPACT

The fixed cost for Compass Demographics services is \$50,000. \$23,800 was previously budgeted for potential demographic work pending the outcome of the demographic analysis performed by the Dolinka Group. These funds will now be applied toward the services specified in the settlement agreement. An additional General Fund appropriation of \$26,200 is required to cover the full cost.

RECOMMENDATION

It is recommended that the City Council:

- Approve a General Fund appropriation of \$26,200 to complete demographic work to develop a by-district election system for the election of City Council Members as required in the settlement agreement; and
- Direct the City Manager to enter into an agreement with Compass Demographics for the related demographic services.



MARIA STIPE
Deputy City Manager

Attachment: Agreement with Compass Demographics

Recommended for Approval



Scott C. Stiles
City Manager

PROFESSIONAL SERVICES AGREEMENT

THIS AGREEMENT is made this _____ day of _____, 2015, by the **CITY OF GARDEN GROVE**, a municipal corporation, ("CITY") and **Compass Demographics**, herein after referred to as "CONTRACTOR".

RECITALS

The following recitals are a substantive part of this Agreement:

1. This Agreement is entered into pursuant to Garden Grove Council Resolution No. 9212-14 (January 28, 2014).
2. CITY desires to utilize the services of CONTRACTOR to **Provide Demographic Services to assist the City of Garden Grove in drawing districts in connection with the decision of the City Council to Change the City's at-large election system to a by-district election system for five members of the City Council per Attachment A.**
3. CONTRACTOR is qualified by virtue of experience, training, education and expertise to accomplish services.

AGREEMENT

THE PARTIES MUTUALLY AGREE AS FOLLOWS:

1. **Term and Termination.** The term of the agreement shall be until Phase 1 through 3 Demographic Services are complete. This agreement may be terminated by the CITY without cause. In such event, the CITY will compensate CONTRACTOR for work performed to date in accordance with proposal which is attached as Attachment A and is hereby incorporated by reference. Contractor is required to present evidence to support performed work.
2. **Services to be Provided.** The services to be performed by CONTRACTOR shall consist of tasks as set forth in the Proposal. The Proposal is attached as Attachment A, and is incorporated herein by reference. The Proposal and this Agreement do not guarantee any specific amount of work.
3. **Compensation.** CONTRACTOR shall be compensated as follows:
 - 3.1 **AMOUNT.** Total Compensation under this agreement shall not exceed (NTE) amount of Fifty Thousand Dollars (\$50,000.00), payable in arrears and in accordance with proposal in Attachment "A".

- 3.2 Payment. For work under this Agreement, payment shall be made per invoice for work completed. For extra work not a part of this Agreement, a written authorization by CITY will be required, and payment shall be based on schedule included in Proposal (Attachment A).
- 3.3 Records of Expenses. CONTRACTOR shall keep complete and accurate records of all costs and expenses incidental to services covered by this Agreement. These records will be made available at reasonable times to CITY.
- 3.4 Termination. CITY and CONTRACTOR shall have the right to terminate this agreement, without cause, by giving thirty (30) days written notice of termination. If the Agreement is terminated by CITY, then the provisions of paragraph 3 would apply to that portion of the work completed.

4. Insurance requirements.

- 4.1 COMMENCEMENT OF WORK. CONTRACTOR shall not commence work under this Agreement until all certificates and endorsements have been received and approved by the CITY. All insurance required by this Agreement shall contain a Statement of Obligation on the part of the carrier to notify the CITY of any material change, cancellation, or termination at least thirty (30) days in advance.
- 4.2 WORKERS COMPENSATION INSURANCE. During the duration of this Agreement, CONTRACTOR and all subcontractors shall maintain Workers Compensation Insurance in the amount and type required by law, if applicable.
- 4.3 INSURANCE AMOUNTS. CONTRACTOR shall maintain the following insurance for the duration of this Agreement:
 - (a) Commercial general liability in an amount not less than \$1,000,000.00 per occurrence (**claims made and modified occurrence policies are not acceptable**); Insurance companies must be acceptable to CITY and have a Best's Guide Rating of A-, Class VII or better, as approved by the CITY.
 - (b) Automobile liability in an amount not less than \$1,000,000.00 combined single limit (**claims made and modified occurrence policies are not acceptable**); Insurance companies must be acceptable to CITY and

have a Best's Guide Rating of A-, Class VII or better, as approved by the CITY.

- (c) Professional liability in an amount not less than \$1,000,000. Insurance companies must be admitted and licensed In California and have a Best's Guide Rating of A-, Class VII or better, as approved by the City. If the policy is written on a "claims made" basis, the policy shall be continued in full force and effect at all times during the term of the agreement, and for a period of three (3) years from the date of the completion of services provided. In the event of termination, cancellation, or material change in the policy, professional/consultant shall obtain continuing insurance coverage for the prior acts or omissions of professional/consultant during the course of performing services under the term of the agreement. The coverage shall be evidenced either by a new policy evidencing no gap in coverage, or by obtaining separate extended "tail" coverage with the present or new carrier

An **On-Going and Completed Operations Additional Insured Endorsement** for the policy under section 4.3 (a) shall designate CITY, it's officers, officials, employees, agents, and volunteers as additional insureds for liability arising out of work or operations performed by or on behalf of the CONTRACTOR. CONTRACTOR shall provide to CITY proof of insurance and endorsement forms that conform to CITY's requirements, as approved by the CITY.

An Additional Insured Endorsement for the policy under section 4.3 (b) shall designate CITY, it's officers, officials, employees, agents, and volunteers as additional insureds for automobiles, owned, leased, hired, or borrowed by the CONTRACTOR. CONTRACTOR shall provide to CITY proof of insurance and endorsement forms that conform to CITY's requirements, as approved by the CITY.

For any claims related to this Agreement, CONTRACTOR's insurance coverage shall be primary insurance as respects CITY, it's officers, officials, employees, agents, and volunteers. Any insurance or self-insurance maintained by the CITY, it's officers, officials, employees, agents, and volunteers shall be excess of the CONTRACTOR's insurance and shall not contribute with it.

If CONTRACTOR maintains higher insurance limits than the minimums shown above, CONTRACTOR shall provide coverage for the higher insurance limits otherwise maintained by the CONTRACTOR.

5. **Non-Liability of Officials and Employees of the CITY.** No official or employee of CITY shall be personally liable to CONTRACTOR in the event of any default or breach by CITY, or for any amount which may become due to CONTRACTOR.

6. **Non-Discrimination.** CONTRACTOR covenants there shall be no discrimination against any person or group due to race, color, creed, religion, sex, marital status, age, handicap, national origin, or ancestry, in any activity pursuant to this Agreement.

7. **Independent Contractor.** It is agreed to that CONTRACTOR shall act and be an independent contractor and not an agent or employee of the CITY, and shall obtain no rights to any benefits which accrue to CITY'S employees.

8. **Compliance with Law.** CONTRACTOR shall comply with all applicable laws, ordinances, codes, and regulations of the federal, state, and local government. CONTRACTOR shall comply with, and shall be responsible for causing all contractors and subcontractors performing any of the work pursuant to this Agreement to comply with, all applicable federal and state labor standards, including, to the extent applicable, the prevailing wage requirements promulgated by the Director of Industrial Relations of the State of California Department of Labor. The City makes no warranty or representation concerning whether any of the work performed pursuant to this Agreement constitutes public works subject to the prevailing wage requirements.

9. **Notices.** All notices shall be personally delivered or mailed to the below listed address, or to such other addresses as may be designated by written notice. These addresses shall be used for delivery of service of process.
 - a. (Contractor)
Compass Demographics
Attention: David Ely, President
6575 N. Vista St.
San Gabriel, CA 91775

 - b. (Address of CITY) (with a copy to):
City of Garden Grove Garden Grove City Attorney
11222 Acacia Parkway 11222 Acacia Parkway
Garden Grove, CA 92840 Garden Grove, CA 92840

10. **CONTRACTOR'S PROPOSAL.** This Agreement shall include CONTRACTOR'S proposal or bid which shall be incorporated herein by reference. In the event of any inconsistency between the terms of the proposal and this Agreement, this Agreement shall govern.

11. **Licenses, Permits, and Fees.** At its sole expense, CONTRACTOR shall obtain a Garden Grove Business License, all permits, and licenses as may be required by this Agreement.
12. **Familiarity with Work.** By executing this Agreement, CONTRACTOR warrants that: (1) it has investigated the work to be performed; (2) it has investigated the site of the work and is aware of all conditions there; and (3) it understands the facilities, difficulties, and restrictions of the work under this Agreement. Should Contractor discover any latent or unknown conditions materially differing from those inherent in the work or as represented by CITY, it shall immediately inform CITY of this and shall not proceed, except at CONTRACTOR'S risk, until written instructions are received from CITY.
13. **Time of Essence.** Time is of the essence in the performance of this Agreement.
14. **Limitations Upon Subcontracting and Assignment.** The experience, knowledge, capability, and reputation of CONTRACTOR, its principals and employees were a substantial inducement for CITY to enter into this Agreement. CONTRACTOR shall not contract with any other entity to perform the services required without written approval of the CITY. This Agreement may not be assigned voluntarily or by operation of law, without the prior written approval of CITY. If CONTRACTOR is permitted to subcontract any part of this Agreement, CONTRACTOR shall be responsible to CITY for the acts and omissions of its subcontractor as it is for persons directly employed. Nothing contained in this Agreement shall create any contractual relationship between any subcontractor and CITY. All persons engaged in the work will be considered employees of CONTRACTOR. CITY will deal directly with and will make all payments to CONTRACTOR.
15. **Authority to Execute.** The persons executing this Agreement on behalf of the parties warrant that they are duly authorized to execute this Agreement and that by executing this Agreement, the parties are formally bound.
16. **Indemnification.** To the fullest extent permitted by law, CONTRACTOR shall defend, and hold harmless CITY and its elective or appointive boards, officers, agents, and employees from any and all claims, liabilities, expenses, or damages of any nature, including attorneys' fees, for injury or death of any person, or damages of any nature, including interference with use of property, arising out of, or in any way connected with the negligence, recklessness and/or intentional wrongful conduct of CONTRACTOR, CONTRACTOR'S agents, officers, employees, subcontractors, or independent contractors hired by CONTRACTOR in the performance of the Agreement. The only exception to CONTRACTOR'S responsibility to protect, defend, and hold harmless CITY, is due to the sole negligence, recklessness and/or wrongful conduct of CITY, or any of its elective or appointive boards, officers, agents, or employees.

This hold harmless agreement shall apply to all liability regardless of whether any insurance policies are applicable. The policy limits do not act as a limitation upon the amount of indemnification to be provided by CONTRACTOR.

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(Agreement Signature Block On Next Page)

IN WITNESS THEREOF, these parties have executed this Agreement on the day and year shown below.

Date: _____

"CITY"
CITY OF GARDEN GROVE

By: _____
City Manager

ATTESTED:

City Clerk

Date: _____

"CONTRACTOR"
Compass Demographics

By: _____

Name: _____

Title: _____

Date: _____


Tax ID No. _____

Contractor's License: _____

Expiration Date: _____

If CONTRACTOR is a corporation, a Corporate Resolution and/or Corporate Seal is required. If a partnership, Statement of Partnership must be submitted to CITY.

APPROVED AS TO FORM:



Garden Grove City Attorney

Date

9/25/2015

Dear Ms. Stipe

Thank you for the opportunity to provide you with information regarding the development of a single member district system for the election of City Council Members. This is based on a three phase process, with phases that I refer to as Information, Districting, and Adoption.

The Information phase involves meeting with City Representatives to collect information, plan process, and receive instructions; compiling Census and other data including geographic data; developing preliminary district options through meetings with interested individuals; and presenting this information to the public and the Council.

The Districting phase involves the development of one or more districting options, the presentation of these options to the public and to the Council, and the refinement of options to develop a final recommendation.

The Adoption phase includes the presentation of a final recommendation to the Council and the public, undertaking the steps necessary for the Council to adopt an ordinance defining districts and district election schedule, and the communication of the district boundaries to the County Registrar for implementation.

The following table provides a brief listing of the tasks described above.

Phase	Task
Information	Planning with City Representatives Database Building Individual Meetings Preliminary District Options Public Meeting and Hearing(s) Initial Report
Districting	District Options Development Individual Meetings District Options Public Presentation Public Hearing(s)
Adoption	Public Hearing(s) Ordinance Communicate to County Registrar

This process involves significant interaction with the public. The planning and execution of this interaction will require the participation of City Staff or a public relations consultant for outreach and the preparation of public materials. The process could take between 3 and 6 months depending on the scheduling of public meetings and Hearings required for adoption of election districts. The cost for Compass Demographics services in this process would be approximately \$40,000 to \$60,000 and can be contracted as a fixed fee or based on hourly billing with a "not to exceed" cost.

Thank you.

David Ely



Compass Demographics