

City of Garden Grove

INTER-DEPARTMENT MEMORANDUM

To: Matthew Fertal
Dept: City Manager
Subject: RECOMMENDATION TO AWARD
CONTRACT FOR ON-CALL
PROFESSIONAL CONSTRUCTION
INSPECTION SERVICES

From: Keith G. Jones
Dept: Public Works
Date: October 28, 2008

OBJECTIVE

To request City Council authorization to award a contract for on-call professional construction inspection services.

BACKGROUND

Engineering Services has two construction inspectors to inspect all of the capital, traffic engineering, public property permit and development projects. Given the large number, variety and location of the projects, it is a challenge at times to meet all of the inspection needs with current staffing. When there are prolonged absences, staff are unable to meet the inspection needs. Currently, one inspector is out indefinitely due to an injury sustained in the performance of his work.

DISCUSSION

In an effort to cover extended absences of either or both of Engineering Services' inspectors, it is prudent to have consultant inspection resources available to meet the inspection needs within the community.

Staff solicited four requests for proposal to construction management firms for on-call construction inspection services. Each of the consultants submitted a proposal. Staff carefully evaluated each of the responses and determined that Vali Cooper & Associates, Inc. is best suited and able to provide on-call construction inspection services.

FINANCIAL IMPACT

The contract is set for the amount of \$150,000. The services will be funded by the various projects requiring inspection services.

RECOMMENDATION TO AWARD CONTRACT FOR ON-CALL PROFESSIONAL
CONSTRUCTION INSPECTION SERVICES

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COMMUNITY VISION IMPLEMENTATION

N/A

RECOMMENDATION

Staff recommends that the City Council:

- Award the contract for professional construction inspection services to Vali Cooper & Associates, Inc.
- Authorize the City Manager and City Clerk to execute the professional service agreement with Vali Cooper & Associates, Inc. in the amount of \$ 150,000.


KEITH G. JONES
Public Works Director


By: Mark Uphus
Senior Civil Engineer

Recommended for Approval


Matthew Fertal
City Manager

Attachment: Consultant Agreement

CONSULTANT AGREEMENT

Vall Cooper & Associates, Inc.

THIS AGREEMENT is made this 28th day of October, 2008 by the CITY OF GARDEN GROVE, a municipal corporation, ("CITY"), and Vall Cooper & Associates, ("CONSULTANT").

RECITALS

The following recitals are a substantive part of this Agreement:

1. This Agreement is entered into pursuant to Garden Grove Council authorization dated October 28, 2008.
2. CITY desires to utilize the services of CONSULTANT to provide on-call construction inspection services.
3. CONSULTANT is qualified by virtue of experience, training, education and expertise to accomplish services.

AGREEMENT

THE PARTIES MUTUALLY AGREE AS FOLLOWS:

1. **Term of Agreement.** This Agreement shall cover services rendered from date of this agreement until (3) three years thereafter unless otherwise terminated.
2. **Services to be Provided.** The services to be performed by CONSULTANT shall consist of the following: to provide construction inspection services on an "as-needed" basis as requested by City for various projects.
3. **Compensation.** CONSULTANT shall be compensated as follows:
 - 3.1 **Amount.** \$150,000.00
 - 3.2 **Not to Exceed.** Compensation under this Agreement shall not exceed \$150,000.00.
 - 3.3 **Payment.** For work under this Agreement, payment shall be made per monthly invoice. For extra work not a part of this Agreement, a written authorization by CITY will be required and payment shall be based on hourly rates as provided in Exhibit A.
 - 3.4 **Records of Expenses.** CONSULTANT shall keep complete and accurate records of payroll costs, travel and incidental expenses. These records will be made available at reasonable times to CITY.

3.5 Termination. CITY and CONSULTANT shall have the right to terminate this Agreement, without cause, by giving thirty (30) days written notice of termination. If the project 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 CONSULTANT 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 For the duration of this Agreement, CONSULTANT and all subcontractors shall maintain Workers Compensation Insurance in the amount and type required by law, if applicable.

4.3 Insurance Amounts CONSULTANT shall maintain the following insurance for the duration of this Agreement:

Insurance Amounts CONSULTANT shall maintain the following insurance for the duration of this Agreement:

- (a) Commercial general liability in the amount of \$1,000,000 per occurrence; (claims made and modified occurrence policies are not acceptable); 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;
- (b) Automobile liability in the amount of \$1,000,000 per occurrence; 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.
- (c) Professional liability in the amount of \$1,000,000 per occurrence; 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.

An Additional Insured Endorsement for the policy under section 4.3 (a) shall designate CITY, its officers, official, employees, agents, and volunteers as additional insureds for liability arising out of work or operations performed by or on behalf of the CONSULTANT. CONSULTANT 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, its officers, officials, employees, agents, and volunteers as additional insureds for automobiles owned, lease, hired, or borrowed by the CONTRACTOR/CONSULTANT. CONTRACTOR CONSULTANT 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, CONSULTANT's insurance coverage shall be primary insurance as respects to CITY, its officers, officials, employees, agents, and volunteers. Any insurance or self-insurance maintained by the CITY, its officers, officials, employees, agents, or volunteers shall be excess of the CONSULTANT's insurance and shall not contribute with it.

5. **Non-Liability of Officials and Employees of the CITY.** No official or employee of CITY shall be personally liable to CONSULTANT in the event of any default or breach by CITY, or for any amount, which may become due to CONSULTANT.
6. **Non-Discrimination.** CONSULTANT 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 CONSULTANT shall act and be an independent contractor and not an agent or employee of CITY, and shall obtain no rights to any benefits which accrue to CITY'S employees.
8. **Compliance With Law.** CONSULTANT shall comply with all applicable laws, ordinances, codes and regulations of the federal, state and local government.
9. **Disclosure of Documents.** All documents or other information developed or received by CONSULTANT are confidential and shall not be disclosed without authorization by CITY, unless disclosure is required by law.
10. **Ownership of Work Product.** All documents or other information developed or received by CONSULTANT shall be the property of CITY. CONSULTANT shall provide CITY with copies of these items upon demand or upon termination of this Agreement.
11. **Conflict of Interest and Reporting.** CONSULTANT shall at all times avoid conflict of interest or appearance of conflict of interest in performance of this Agreement.

12. **Notices.** All notices shall be personally delivered or mailed to the below listed addresses, or to such other addresses as may be designated by written notice. These addresses shall be used for delivery of service of process.

(a) Address of CONSULTANT is as follows:

Agnes Weber, PE
Principal In Charge
Vali Cooper & Associates
3900 Market Street, Suite 250
Riverside, CA 92501

(b) Address of CITY is as follows (with a copy to):

Mark Uphus, PE
Engineering
City of Garden Grove
P.O. Box 3070
Garden Grove, CA 92840

City Attorney
City of Garden Grove
P.O. Box 3070
Garden Grove, CA 92840

13. **CONSULTANT'S Proposal.** This Agreement shall include CONSULTANT'S proposal or bid which shall be incorporated herein. In the event of any inconsistency between the terms of the proposal and this Agreement, this Agreement shall govern.
14. **Licenses, Permits and Fees.** At its sole expense, CONSULTANT shall obtain a **Garden Grove Business License**, all permits and licenses as may be required by this Agreement.
15. **Familiarity With Work.** By executing this Agreement, CONSULTANT 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 CONSULTANT 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 CONSULTANT'S risk, until written instructions are received from CITY.
16. **Time of Essence.** Time is of the essence in the performance of this Agreement.
17. **Limitations Upon Subcontracting and Assignment.** The experience, knowledge, capability and reputation of CONSULTANT, its principals and employees were a substantial inducement for CITY to enter into this Agreement. CONSULTANT 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 CONSULTANT is permitted to subcontract any part of this Agreement, CONSULTANT 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 CONSULTANT. CITY will deal directly with and will make all payments to CONSULTANT.

18. **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.
19. **Indemnification.** To the fullest extent permitted by law, CONSULTANT agrees to protect, 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 CONSULTANT, CONSULTANT'S agents, officers, employees, subcontractors, or independent contractors hired by CONSULTANT in the performance of the Agreement. The only exception to CONSULTANT'S responsibility to protect, defend, and hold harmless CITY, is due to the 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 CONSULTANT.

It is understood that neither the professional activities of CONSULTANT, nor the presence of CONSULTANT'S employees or sub-consultants at the construction/project site(s), shall relieve the General Contractor(s) of their obligations, duties and responsibilities including, but not limited to, construction means, methods, sequence, techniques or procedures necessary for performing, superintending and coordinating the construction work being inspected by CONSULTANT in accordance with the contract documents for such construction work and any health or safety precautions required by any regulatory agencies.

20. **Modification.** This Agreement constitutes the entire agreement between the parties and supersedes any previous agreements, oral or written. This Agreement may be modified only by subsequent mutual written agreement executed by CITY and CONSULTANT.
21. **Waiver.** All waivers of the provisions of this Agreement must be in writing by the appropriate authorities of the CITY and CONSULTANT.

22. **California Law.** This Agreement shall be construed in accordance with the laws of the State of California. Any action commenced about this Agreement shall be filed in the central branch of the Orange County Superior Court.
23. **Interpretation.** This Agreement shall be interpreted as though prepared by both parties.
24. **Preservation of Agreement.** Should any provision of this Agreement be found invalid or unenforceable, the decision shall affect only the provision interpreted, and all remaining provisions shall remain enforceable.

IN WITNESS THEREOF, these parties hereto have caused this Agreement to be executed as of the date set forth opposite the respective signatures.

"CITY"
CITY OF GARDEN GROVE

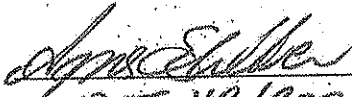
Dated: _____, 2008

By: _____
 City Manager.

ATTEST

"CONSULTANT"
VALI COOPER & ASSOCIATES,
INC.

 City Clerk

By: 
 Title: Exec. VP / COO

Dated: _____, 2008

Dated: Oct. 21, 2008

APPROVED AS TO FORM:



 Garden Grove City Attorney

Dated: 10/20, 2008