

**City of Garden Grove**

**INTER-DEPARTMENT MEMORANDUM**

To:	Matthew Fertal	From:	Keith G. Jones
Dept:	City Manager	Dept:	Public Works
Subject:	AWARD CONTRACT FOR CONSTRUCTION MANAGEMENT SERVICES - PROJECT NO. 7420	Date:	March 24, 2009

**OBJECTIVE**

To award a contract for construction management services for the Newland/Yockey Storm Drain, Water and Sewer Improvements (#7420).

**BACKGROUND**

In 1991 Thielmann Engineers prepared the City's Master Plan of Drainage and identified deficiencies. In study area B, one of the 21 storm drains identified for future construction was Line B5. The area is not located within a flood zone and therefore cannot qualify for National Flood Insurance Program (NFIP) funds. The Phase I of the Yockey/Newland Storm Drain is a small segment of an 11,700-foot long storm drain, which covers approximately four (4) square miles of the City.

This region of the City has the greatest storm drain deficiencies. Line B5 is one of the two most significant lines identified as a high priority drain line in the City approved Master Plan of Drainage.

**DISCUSSION**

Due to the large scope, scale and critical nature of the work on this project, staff will be best augmented with construction management services. These services include overseeing daily construction operations, conducting meetings, monitoring schedule and budget, responding to contractor issues and inquiries, providing quality control and maintaining contract compliance.

Staff carefully reviewed and evaluated proposals from four firms that responded to the City's request for proposal for construction management services. As a result of the evaluation, Vali Cooper & Associate, Inc. was selected to provide construction management services for this project. This contract is in compliance with Garden Grove Purchasing guidelines.

### FINANCIAL IMPACT

There is no financial impact to the general fund for the intersection improvement. The project construction management cost of \$ 446,064.00 will be funded through Federal Environmental Protection Agency, CDBG, Drainage Fees and Gas Tax funds.


### COMMUNITY VISION IMPLEMENTATION

This project is consistent with the community vision for maintaining and enhancing the city's infrastructure assets to maximize their value, longevity and usefulness for the community.

### RECOMMENDATION

Staff recommends that the City Council:

- Award the contract for construction management services to Vali Cooper & Associate, Inc. for the Newland/Yockey Storm Drain, Water and Sewer Improvements (#7420).
- Authorize the City Manager and City Clerk to execute the agreement on behalf of the City.

  
KEITH G. JONES  
Public Works Director

  
By: Kamyar Dibaj  
Assistant Engineer

**Recommended for Approval**

  
Matthew Fertal  
City Manager

Attachment 1: Agreement  
Attachment 2: Rate Schedule

## CONSULTANT AGREEMENT

### Vali Cooper & Associates, Inc.

THIS AGREEMENT is made this 24<sup>th</sup> day of March, 2009 by the CITY OF GARDEN GROVE, a municipal corporation, ("CITY"), and Vali 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 March 24, 2009.
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.** \$446,064.00
  - 3.2 **Not to Exceed.** Compensation under this Agreement shall not exceed \$446,064.00.
  - 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:

Doug Franco, PE	All invoicing & payment information
Senior Vice President	
Vali Cooper & Associates	Vali Cooper & Associates
3900 Market Street, Suite 250	41 Washington Avenue
Riverside, CA 92501	Point Richmond, CA 94801
	(510) 215-0264

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

Mark Uphus, PE	City Attorney
Engineering	City of Garden Grove
City of Garden Grove	P.O. Box 3070
P.O. Box 3070	Garden Grove, CA 92840
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: \_\_\_\_\_, 2009

By: \_\_\_\_\_  
City Manager

**ATTEST**

**"CONSULTANT"**  
**VALI COOPER & ASSOCIATES,**  
**INC.**

\_\_\_\_\_  
City Clerk

By: *Donna E. [Signature]*  
Title: EXEC VP/COO

Dated: \_\_\_\_\_, 2009

Dated: 03/10, 2009

**APPROVED AS TO FORM:**

*Omar Landawal, for*  
Garden Grove City Attorney

Dated: 3-5, 2009



**Cost Proposal For  
Construction Management Services  
for Newland / Yockey Storm Drain, Water and Sewer Improvement Projects  
City of Garden Grove  
February 17, 2009**

		2009												2010						
PHASE	ROLE	May	June	July	Aug	Sept	Oct	Nov	Dec	Jan	Feb	Mar	Apr	May	June	Total Hours	Hourly Rate	Cost		
1 - Pre-Construction Services																				
Doug Franco, P.E.	Construction Manager	8															8	\$160	\$1,280	
Iran Patel, P.E.	Resident Engineer	8															8	\$145	\$1,160	
Wayne Brown	Construction Inspector	8															8	\$103	\$824	
2 - Construction Services																				
Doug Franco, P.E.	Construction Manager		8	8	8	8	8	8	8	8	8	8	8	8			96	\$160	\$15,360	
Iran Patel, P.E.	Resident Engineer		130	130	130	130	130	130	130	130	130	130	130	130			1560	\$145	\$226,200	
Wayne Brown	Construction Inspector		160	160	160	160	160	160	160	160	160	160	160	160			1920	\$103	\$197,760	
3 - Post-Construction Services																				
Iran Patel, P.E.	Resident Engineer														24		24	\$145	\$3,480	

**Assumptions Used:**

1. Assume construction duration is 240 working days and starts June 22, 2009 and is completed in May 2010.
2. Assume 160 working hours a month.
3. VC&A is willing to work with the City of Garden Grove regarding level of staffing to meet budget and project requirements.

**Notes:**

1. All rates include base pay, fringe benefits, overhead, fee and basic field equipment including vehicles, laptops, cell phones, safety gear and hand tools.
2. All hours are billed in conformance to the California Labor Code and prevailing wage requirements.
3. Client will be billed only for hours worked.
4. Contract time may be extended by weather or unforeseen delays that arise during construction. Cost proposal may need to be re-visited should this occur.
5. Overtime hours and rates are not shown.
6. Costs do not include office space or job site trailer.