

City of Garden Grove

INTER-DEPARTMENT MEMORANDUM

To:	Matthew J. Fertal	From:	William E. Murray
Dept.:	City Manager	Dept.:	Public Works
Subject:	AWARD OF CONTRACTS FOR ON-CALL PROFESSIONAL CONSTRUCTION INSPECTION SERVICES TO 1.) KOA CORPORATION, AND 2.) VALI COOPER & ASSOCIATES		
		Date:	June 28, 2011

OBJECTIVE

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

BACKGROUND

Engineering Services has two construction inspector positions that have been temporarily vacated, due to indefinite medical leave and early retirement incentives. Without construction inspection, quality control and quality assurance would be lost, thus jeopardizing the quality and longevity of many capital projects constructed each year.

DISCUSSION

As the City will not be filling position vacancies in the near term, it is prudent to have construction inspection resources available to meet the inspection needs within the community. Because Water Services is also in need of inspection services, the Public Works Department recommends retaining two firms.

Staff solicited proposals from four construction management firms for on-call construction inspection services. Three of the consultants submitted a proposal. A panel consisting of three staff members rated the proposals on the basis of qualifications, work plan and references. Based on the evaluation results, Vali Cooper & Associates, Inc. and KOA Corporation rated the highest. The following is a summary of the ratings:

	KOA	GRW & SON	VALI COOPER
Rater A	167	165.5	167.5
Rater B	165	139.5	155
Rater C	156.25	162.5	166.5
Totals	488.25	467.5	489

RECOMMENDATION TO AWARD TWO CONTRACTS FOR ON-CALL PROFESSIONAL
CONSTRUCTION INSPECTION SERVICES

June 28, 2011

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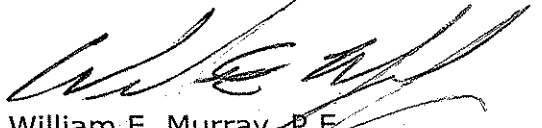
FINANCIAL IMPACT


The two contracts are in the amounts of \$250,000 each. The services will be funded by the various projects requiring inspection services. There will be no impact to the General Fund.

RECOMMENDATION

It is recommended that the City Council:

- Award contracts for professional construction inspection to 1.) Vali Cooper & Associates, Inc., and 2.) KOA Corporation.
- Authorize the City Manager to execute the contracts, in the amount of \$250,000.00 per contract, on behalf of the City.


William E. Murray, P.E.
Public Works Director/City Engineer

 For D.C.
By: Dan Candelaria, P.E., T.E.
City Traffic Engineer

Attachment – Consultant Agreements (2)

Recommended for Approval


Matthew Fertal
City Manager

CONSULTANT AGREEMENT

KOA CORPORATION

THIS AGREEMENT is made this 12TH day of July 2011, by the CITY OF GARDEN GROVE, a municipal corporation, ("CITY"), and KOA CORPORATION, a California Corporation ("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 July 12, 2011.
2. CITY desires to utilize the services of CONSULTANT to provide on-call 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 terminated
2. **Services to be Provided.** The services to be performed by CONSULTANT shall consist of construction inspection services on an "as needed" basis as requested by City for various projects, as further specified in CONSULTANT's Proposal attached hereto at Exhibit "A" and incorporated herein by reference. CONSULTANT warrants that all services will be performed in a competent, professional and satisfactory manner in accordance with the standards prevalent in the industry for such services. The Proposal and this Agreement do not guarantee any specific amount of work.
3. **Compensation.** CONSULTANT shall be compensated as follows:
 - 3.1 **Amount.** CONSULTANT shall be compensated in accordance with the rate schedule set forth in Exhibit "A".
 - 3.2 **Not to Exceed.** Compensation under this Agreement shall not exceed \$250,000.00 (two hundred and fifty thousand dollars)..
 - 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. The insurer shall waive its rights of subrogation against the CITY, its officers, officials, agents, employees, and volunteers.
- 4.3 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; (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.
 - (c) Professional liability in the amount of \$1,000,000 per occurrence; Insurance companies must be acceptable to CITY and have an AM 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 by either a new policy evidencing no gap in coverage, or by obtaining separate extended "tail" coverage with the present or new carrier.

An Additional Insured Endorsement, **ongoing and completed operations**, for the policy under section 4.3 (a) shall designate CITY, its officers, officials, 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 CONSULTANT. 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:
- KOA Corporation
Chuck Stephan, P.E.
1411 W. 190th St., Suite 525
Garden, CA 90248
- (b) Address of CITY is as follows (with a copy to):
- | | |
|----------------------------|------------------------|
| Engineering: | City Attorney |
| Dan Candelaria, P.E., T.E. | 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.
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.

[SIGNATURES ON FOLLOWING PAGE]

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: _____, 2011

By: _____
City Manager

ATTEST

"CONSULTANT"
KOA CORPORATION

City Clerk

By: Joel Falter
Title: Chief Operating Officer

Dated: _____, 2011

Dated: June 6, 2011, 2011

APPROVED AS TO FORM:

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

James H. Eggert for
Garden Grove City Attorney

Dated: 6/2, 2011

CONSULTANT AGREEMENT

VALI COOPER & ASSOCIATES, INC.

THIS AGREEMENT is made this 12TH day of July 2011, by the CITY OF GARDEN GROVE, a municipal corporation, ("CITY"), and VALI COOPER & ASSOCIATES, INC., a California Corporation ("CONSULTANT").

RECITALS

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- (a) Address of CONSULTANT is as follows:
- Vali Cooper & Associates, Inc.
Agnes Weber, P.E.
1955 Chicago Avenue, Suite 210
Riverside, CA 92507
- (b) Address of CITY is as follows (with a copy to):
- | | |
|----------------------------|------------------------|
| Engineering: | City Attorney |
| Dan Candelaria, P.E., T.E. | City of Garden Grove |
| City of Garden Grove | P.O. Box 3070 |
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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.

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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.

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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.

[SIGNATURES ON FOLLOWING PAGE]

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: _____, 2011

By: _____
City Manager

ATTEST

"CONSULTANT"
VALI COOPER & ASSOCIATES,
INC.

City Clerk

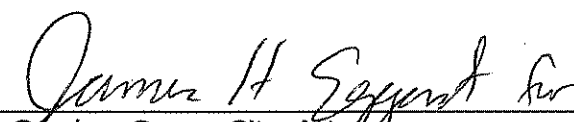
By: 
Title: PRESIDENT

Dated: _____, 2011

Dated: JUNE 22, 2011

APPROVED AS TO FORM:

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


Garden Grove City Attorney

Dated: 6/23, 2011

7. FEE SCHEDULE

<u>Classification</u>	<u>Hourly Billing Rate</u>
<i>Principal</i>	\$200 - \$246
<i>Project Manager</i>	\$160 - \$220
<i>Resident Engineer/Construction Manager</i>	\$150 - \$205
<i>Assistant Resident Engineer</i>	\$110 - \$165
<i>Project Controls/Scheduler</i>	\$110 - \$180
<i>Office Engineer</i>	\$110 - \$180
<i>Construction Inspector</i>	\$96 - \$150
<i>Administrative</i>	\$55 - \$96
<i>Technician</i>	\$55 - \$96

Explanation of Rates

1. Rates are valid through 2011. All rates are subject to negotiation based on the nature of a specific assignment. Rates beyond 2011 will be calculated using an annual escalation of 5%.
2. Annual merit increases for individuals may be requested on assignments lasting more than one year.
3. Rates within the ranges are based on level of experience and responsibility of the assignment.
4. Resident engineers may or may not be licensed engineers in the State of California, as required by the project.
5. Our employees are compensated in conformance with prevailing wage requirements and the California Labor Code. We bill for our services in the same manner. Overtime rates are not shown.
6. Hourly rates include mobile phones, employee safety equipment, and small field tools such as hand levels and tape measures. Hourly rates also include direct labor, benefits, and general and administrative overhead costs. Our accounting is set up in accordance with GAAP and FAR and our overhead recently passed audits by Caltrans.
7. Hourly rates do not include other items such as vehicles with safety equipment, computers, field office facilities and equipment.
8. Indirect Expenses:

VC&A Field Vehicle (includes insurance and fuel)	\$1,400/month
Mileage for Non-VC&A Vehicles	\$0.51/mile
Other direct costs and subcontractors	cost plus 5%

