

City of Garden Grove

INTER-DEPARTMENT MEMORANDUM

To: Matthew J. Fertal From: William E. Murray
 Dept.: City Manager Dept.: Public Works
 Subject: AWARD A DESIGN SERVICES CONTRACT TO HARRIS & ASSOCIATES FOR NINE ARTERIAL HIGHWAY REHABILITATION PROJECTS Date: August 9, 2011

OBJECTIVE

To recommend that the City Council award a contract to Harris & Associates, Inc., for design services associated with nine (9) new arterial rehabilitation projects.

BACKGROUND

The Engineering Division is anticipating receiving grant funding from the Orange County Transportation Authority (OCTA) in the future and wants to have 'shovel ready' projects in the event grant funding becomes available.

Staff proposes to hire a professional consultant to work on preparing street rehabilitation design, contract documents and references. The street segments are as follows:

Chapman Avenue	<i>Nelson Street to Euclid Street</i>
Chapman Avenue	<i>9th Street to West Street</i>
Brookhurst Street	<i>Hazard Avenue to Westminster Avenue</i>
Brookhurst Street	<i>Trask Avenue to Garden Grove Boulevard</i>
Brookhurst Street	<i>Chapman Avenue to Orangewood Avenue</i>
Euclid Street	<i>Hazard Avenue to Westminster Avenue</i>
Westminster Avenue	<i>Bushard Street to Brookhurst Street</i>
Westminster Avenue	<i>Brookhurst Street to Bowen Street</i>

Each of these projects is approximately a half-mile long and generally entails resurfacing of the asphalt travel way. However, past projects included such work items as roadway reconstruction; surface grinding; asphalt concrete overlay; concrete bus pads; removal and replacement of concrete curb, gutter, sidewalk, ADA access ramps, drive approaches and grooved cross gutters; replacement of detector loops; installation of new traffic striping and signing.

DISCUSSION

Staff requested proposals from five (5) firms to provide professional design services. Out of those five (5), three (3) consultants responded. Three staff members rated the submitted proposals on the basis of consultant qualifications. Based on evaluation results, Harris & Associates rated highest in qualifications and

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its ability to provide professional engineering services for this project. The following is a summary of the ratings with the highest total being the most qualified:

	Harris & Associates Irvine, CA	Joseph C. Truxaw and Associates, Inc. Santa Ana, CA	Rick Engineering Lake Forest, CA
Rater A	179.75	166	169.75
Rater B	178	167	165.5
Rater C	185	180.5	181
Totals	542.75	513.5	516.25

Upon identification of the most qualified firm, staff has negotiated a proposed agreement with Harris & Associates for its services.

FINANCIAL IMPACT

There will be no impact to the General Fund. The design will be financed with Gas Tax funds in the amount of \$366,120.

RECOMMENDATION

It is recommended that the City Council:

- Award a professional services agreement to Harris & Associates for engineering design services for the Nine Arterial Highway Rehabilitation Projects, and
- Authorize the City Manager to execute the professional services agreement with Harris & Associates in the amount of \$366,120, on behalf of the City.


WILLIAM E. MURRAY, P.E.

Public Works Director/City Engineer


By: Kamyar Dibaj
Assistant Engineer

Attachment: Professional Services Agreement

Recommended for Approval


Matthew Fertal
City Manager

CONSULTANT AGREEMENT

Harris & Associates

THIS AGREEMENT is made this 9th day of August, by the CITY OF GARDEN GROVE, a municipal corporation, ("CITY"), and Harris & 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 August 9, 2011.
2. CITY desires to utilize the services of CONSULTANT to provide design services associated with nine new arterial rehabilitation projects.
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 to provide design services associated with nine new arterial rehabilitation projects.
3. **Compensation.** CONSULTANT shall be compensated as follows:
 - 3.1 **Amount.** Not to exceed \$366,120.00. 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 **\$366,120.00**. The services to be performed by CONSULTANT shall consist of design services associated with nine new arterial rehabilitation 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.

- 3.3 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 each 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:

Harris & Associates
34 Executive Park, Suite 150
Irvine, CA 92614-4705
 - (b) Address of CITY is as follows (with a copy to):

Engineering	Attorney
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.

(Signature block on next 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"
Harris & Associates

City Clerk

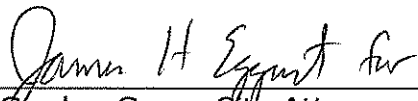
By: _____
Title: _____

Dated: _____, 2011

Dated: _____, 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: 8-4-2011, 2011