

City of Garden Grove

INTER-DEPARTMENT MEMORANDUM

To: Matthew J. Fertal
Dept: City Manager
Subject: AGREEMENT WITH SHIELDS, HARPER & CO. FOR THE PURCHASE AND INSTALLATION OF A NEW FUEL MANAGEMENT SYSTEM

From: William E. Murray
Dept: Public Works
Date: May 8, 2012

OBJECTIVE

To receive City Council approval of an agreement with Shields, Harper, & Co. for the purchase and installation of a new fuel management system at Public Works and Public Safety fueling locations.

BACKGROUND

The Public Works Department Vehicle Maintenance Division is responsible for the maintenance of the City's vehicle-fueling sites. Over the past few months the fuel management system that controls these sites has become unreliable. The most recent failures caused the loss of accounting data as well as causing several pumps to shut down. In an effort to repair the system, staff learned that repair parts and software support are no longer available, making the system obsolete. Further system failures will hinder the Police, Fire and Public Works Departments' ability to fuel vehicles and equipment, resulting in a reduction of vital services provided to our residents.

DISCUSSION

Staff obtained three bids pursuant to Garden Grove Municipal Code 2.50.110 to replace the failing system. The bids received are listed below:

Shields, Harper & Co. Orange, CA	\$39,334.42
Fleming Environmental Fullerton, CA	\$41,335.00
Orange Coast Petroleum Equipment, Inc. Orange, CA	\$43,344.93

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FINANCIAL IMPACT

The financial impact is \$39,334.42 to the Fleet Maintenance Operating Budget.
There is no impact to the General Fund.

RECOMMENDATION

It is recommended that the City Council:

- Approve the agreement with Shields, Harper & Co. for the purchase and installation of a new fuel management system at Public Works and Public Safety fueling locations in the amount of \$39,334.42.
- Authorize the City Manager to execute the agreement on behalf of the City and make minor modifications as appropriate.



WILLIAM E. MURRAY, P.E.
Public Works Director/City Engineer



By: Phillip Carter
Equipment Supervisor

Attachment: Agreement

Recommended for Approval



Matthew Fertal
City Manager

PROFESSIONAL SERVICES AGREEMENT

THIS AGREEMENT is made this _____ day of _____, 2012, by the **CITY OF GARDEN GROVE**, a municipal corporation, ("CITY") and **Shields, Harper & Co.**, 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 AUTHORIZATION, DATED _____.
2. CITY desires to utilize the services of CONTRACTOR to Furnish all training, materials, equipment, and labor for the installation of a Gasboy Islander Fuel Management Systems the following locations in Garden Grove, CA.
 - a. Municipal Service Center Island #1
 - b. Municipal Service Center Island #2
 - c. Fire and Police Headquarters
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 for period of one hundred twenty days (120) days from full execution of the agreement. 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 Thirty Nine Thousand Seven Hundred Eleven Dollars and 15/100 (\$39,711.15), 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 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 insurance 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 and provide Waivers of Subrogation in favor of the City.
- 4.2 WORKERS COMPENSATION INSURANCE. During the duration of this Agreement, CONTRACTOR and all subcontractors shall maintain Workers Compensation Insurance and provide Employers Liability in an amount not less than \$1,000,000.
- 4.3 INSURANCE AMOUNTS. CONTRACTOR shall maintain the following insurance for the duration of this Agreement and shall require and verify that all sub-contractors maintain insurance meeting the requirements herein. City reserves the right to modify these requirements, including but not limited to, limits based on the nature of the work, prior experience, insurer, coverage or other special circumstances.
 - 4.16.4 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 per occurrence, including products liability; (**claims made and modified occurrence policies are not acceptable**); 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.

- (b) Automobile liability for all autos in an amount not less than \$1,000,000 combined single limit; (**claims made and modified occurrence policies are not acceptable**); 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.
- (c) Excess liability coverage shall be provided for any underlying policy that does not meet the insurance requirements set forth herein (**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.
- (d) 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.
- (e) Property Insurance Installation Floater for all materials, equipment and material in the care, custody and control until equipment is successfully installed and tested. Contractor shall provide a safe and secure site for all materials, products and equipment until it is needed.
- (f) Transit Insurance from point to origin to delivery at City's designated site for the full value of the materials, products and/or equipment.

Contractor shall provide or arrange for transit insurance for physical damage of any nature whatsoever for material, products, equipment from point to origin to delivery to City's designated site. Title shall not pass to the City until products,

material and/or equipment is received, inspected, and successfully installed and tested.

An Additional Insured Endorsement, **ongoing and completed operations, including products liability**, for the policy under section 4.16.6(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 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 4.16.6 (b) shall designate CITY, its 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.

An Additional Insured Endorsement for the policy under section 4.16.6 (c) shall designate CITY, its officers, officials, employees, agents, and volunteers as additional insureds under the excess liability policy. CONTRACTOR shall provide to CITY proof of insurance stating the excess liability policy follows form, additional insured endorsement forms, and the schedule of underlying policies with policy numbers, that conform to CITY's requirements, as approved by the CITY. Information for the excess policy only needs to be provided if the underlying policies do not meet the policy limits set forth herein.

For any claims related to this Agreement, CONTRACTOR's insurance coverage shall be primary insurance as respects 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 by excess of the CONTRACTOR'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 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.
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)
Shields, Harper & Co.
Attention: James Christopher
731 West Angus Avenue
Orange, CA 92868
 - 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.~~ *JAF*
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. If additional work is required the CITY shall be responsible. *JAF*
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.** CONTRACTOR 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 damage to property, or interference with use of property, arising out of, or in any way connected with performance of the Agreement by CONTRACTOR, CONTRACTOR'S agents, officers, employees, subcontractors, or independent contractors hired by CONTRACTOR. The only exception to CONTRACTOR'S responsibility to protect, defend, and hold harmless CITY, is due to the sole negligence 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: 5-2-17

"CITY"
CITY OF GARDEN GROVE

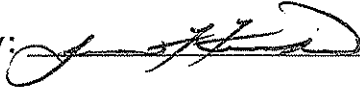
By: 
City Manager

ATTESTED:

City Clerk

Date: _____

"CONTRACTOR"
Shields, Harper & Co.

By: 

Name: James F. Fuchs

Title: Vice President, Finance

Date: 4/25/12

Tax ID No. 94-1751530

Contractor's License: 803011

Expiration Date: 1/31/14

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

4/30/12
Date

Attachment "A"

Shields, Harper & Co. AN EMPLOYEE OWNED COMPANY

Page 1
Quote# 48-849306

TO City of Garden Grove

DATE April 19, 2012

DUE DATE April 12, 2012

ADDRESS 13802 Newhope Street Attn: Phil Vehicle Maintenance
Garden Grove, CA 92843

ATTN Phil Carter

PHONE # (714) 741-5556

JOB Gasboy Islander + REV

FAX # (714) 638-4637

ITEM	QUANTITY	WE ARE PLEASED TO QUOTE ON THE FOLLOWING SUBJECT TO CONDITIONS PRINTED BELOW	UNIT PRICE	DISCOUNT	TOTAL
		"Legal Notice: This quotation is confidential property of Shields, Harper & Co. It is for the personal use of City of Garden Grove only." =====			
		<u>Gasboy Islander Plus Self Contained Fuel Terminal (FOR CITY YARD - ISLAND 1 & 2)</u>			
1	2	GASBOY PA039400401 Islander PLUS for use with mechanical 4 hoses Illuminated Graphic LCD Screen, Contactless Tag Reader, Rugged PiezoElectric 16 Key keypad, TCP/IP Communication, Magnetic Card Reader , Built in Web Server for remote Maint., Self Contained with Pedestal, Controls 2 mechanical hose outlets *** Expandable to 8 Mech. hose outlets FOR CITY YARD FUELING SITE - 1 TERMINAL PER ISLAND	7252.20	Net	14504.40
		<u>Gasboy Islander Plus Self Contained Fuel Terminal (FOR POLICE / FIRE YARD)</u>			
2	1	GASBOY PA039400401 Islander PLUS for use with mechanical 8 hoses Illuminated Graphic LCD Screen, Contactless Tag Reader, Rugged PiezoElectric 16 Key keypad, TCP/IP Communication, Magnetic Card Reader , Built in Web Server for remote Maint., Self Contained with Pedestal, Controls 8 mechanical hose outlets *** Expandable with additional pump control unit FOR POLICE VEHICLE FUELING SITE	7950.00	Net	7950.00
3	3	GASBOY 099039 Annual Software Support for Islander Plus. Provides access to software updates from Gasboy as they are issued.	436.50	Net	1309.50
		Subtotal			23763.90
4	1	<u>Gasboy Head Office Fleet management software</u> GASBOY KS612K002 Fleet Head Office Software (2-5 sites) * Real Time web enabled, Remote web Monitoring, Reporting & Maintenance, Centralized Management of all transactions, vehicles and equipment. * Authorization of vehicles and equipment * Custom designed limits and restrictions * Interface with Fleet Management Software and other 3rd party systems.	2754.00	Net	2754.00

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5	1	* ABILITY TO NETWORK MULTIPLE FUEL LOCATIONS GASBOY 099046 Annual Software support for 5 sites Fuel Head Office S/W	405.00	Net	405.00
		Subtotal			3159.00
6	1	<u>Labor to install and Start up all equipment shown</u> <u>Includes additional cost of insurances requested</u> <u>by the City of Garden Grove</u> SPECIAL EQUIPMENT LABOR Installation and Start up by Gasboy Factory Trained Contractor/Installer. Includes all labor and contractor supplied equipment per scope of work as presented in contractor's installation proposal to City of Garden Grove. (attached) Includes training of on site personnel as provisioned in Contractors proposal to City of Garden Grove. **** Includes adder for additional Insurance required for this project ***** NOTE: IN ORDER FOR THIS SYSTEM TO COMMUNICATE WITH THE FLEET SOFTWARE EACH ISLAND MUST HAVE A DEDICATED ETHERNET PORT AVAILABLE EITHER ON THE ISLAND OR NEARBY. AN EXAMPLE OF A "NEARBY" PORT WOULD BE ONE THAT IS LOCATED IN A BUILDING THAT WAS LESS THAN 300 FEET FROM THE ISLAND. THE OTHER REQUIREMENT WOULD BE THAT THERE WAS AN AVAILABLE CONDUIT RUNNING FROM THE ISLAND BACK TO THE BUILDING WHERE THE ETHERNET PORT WAS LOCATED. AN EXAMPLE OF THIS WOULD BE A CONDUIT THAT CONTAINED A TELEPHONE LINE THAT WAS CONNECTED TO THE EXISTING GASBOY 1000 UNIT. IN THIS CASE WE COULD REMOVE THE PHONE LINE AND REPLACE IT WITH A CAT-5 CABLE THEREFORE SATISFYING THIS EHTERNET REQUIREMENT. **** R.Y. RODRIGUEZ - CERTIFIED GASBOY INSTALLER	10325.00	Net	10325.00
		Subtotal			10325.00
		===== Sub Total: 37,247.90 Estimated Freight in: 350.00 Sales Tax: 7.75% 2,113.65 Quote Total: 39,711.55 =====			

Shields, Harper & Co.
AN EMPLOYEE OWNED COMPANY

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JOB Gasboy Islander + REV

FAX # (714) 638-4637

ITEM	QUANTITY	WE ARE PLEASED TO QUOTE ON THE FOLLOWING SUBJECT TO CONDITIONS PRINTED BELOW	UNIT PRICE	DISCOUNT	TOTAL
		<p>Financing/Lease Terms: 100% financing of your purchase may (upon credit approval) be made through Ascentium Capital, a PEI member. Terms from 24 to 84 months are available, and they will also pay the required advance deposit for you. To learn more, please contact CJ Lynden at (510) 758-6800, cj@elynden.com or Len Baccaro Exec VP at 800-785-3060 ext 1931, lenbaccaro@ascentiumcapital.com. Be sure to ask if you qualify to have a portion of the installation cost financed also.</p>			

Shields, Harper & Co.

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FAX # (714) 638-4637

TERMS & CONDITIONS

This proposal/quotation is subject to the specific terms and conditions contained in the Seller's credit application form (Incorporated herein by reference). When accepted, this proposal constitutes a contract subject to those terms and conditions and to the approval of Seller's credit department. Full or partial payment may be required before delivery. Prices shown do not include taxes. This proposal/quotation and the terms and conditions contained in the Purchaser's credit application is the entire undertaking of the parties for the subject matter hereof. There are no promises, agreements, or understandings, oral or written, not specified herein. Actual quantities needed to complete a project are the responsibility of the Buyer and may vary from those shown in this quotation.

F.O.B.

Factory

APPROXIMATE DELIVERY

3 - 4 weeks

PROPOSAL ACCEPTED BY X _____

www.shieldsharper.com

DATE: _____

TERMS: Net 30 Days, On Approved Credit

BY _____

James Christopher

4591 PACHECO BLVD.,
MARTINEZ, CA 94553
(510) 653-9119 (800) 772-2300
FAX (510) 658-8448
martinez@shieldsharper.com

2698 DEL MONTE
WEST SACRAMENTO, CA 95691
(916) 372-0440 (800) 952-5340
FAX (916) 372-8894
sacramento@shieldsharper.com

2567 SOUTH SARAH AVE.
FRESNO, CA 93706
(559) 266-8101 (800) 742-1872
FAX (559) 266-5371
fresno@shieldsharper.com

731 WEST ANGUS AVE.
ORANGE, CA 92868
(714) 288-2029 (800) 203-0567
FAX (714) 288-0263
orange@shieldsharper.com

280 GREG STREET, UNIT 11
RENO, NV 89502
(775) 329-7867
FAX (775) 329-0895
reno@shieldsharper.com

3602 E. SOUTHERN AVE, SUITE #3
PHOENIX, AZ 85040
(602) 438-6580 (800) 335-5020
FAX (602) 438-6594
phoenix@shieldsharper.com

9182 CHESAPEAKE DRIVE
SAN DIEGO, CA 92123-1003
(858) 277-9093
FAX (858) 277-9095
sandiego@shieldsharper.com

6283 DEAN MARTIN DRIVE, SUITE G/H
LAS VEGAS, NV 89118
(702) 413-1014 (866) 809-7781
FAX (702) 413-1058
lasvegas@shieldsharper.com

www.shieldsharper.com

QUOTATION