



AGENDA REPORT

Meeting Date: December 5, 2013
Item Number: D-9
To: Honorable Mayor & City Council
From: Charles Ackerman, Project Administrator
Subject: APPROVAL OF AN AGREEMENT BETWEEN THE CITY OF BEVERLY HILLS AND VAN DIJK AND ASSOCIATES INC. FOR ROOFING AND WATERPROOFING CONSULTING SERVICES FOR VARIOUS PARKING STRUCTURES; AND APPROVAL OF PURCHASE ORDERS TO VAN DIJK AND ASSOCIATES INC. FOR THE CONTRACT WORK IN THE TOTAL AMOUNT OF \$171,625

Attachments: 1. Agreement

RECOMMENDATION

Staff recommends that the "City Council move to approve the agreement with Van Dijk and Associates Inc., for Roofing and Waterproofing consulting services for Various City Facilities", in the amount of \$166,625; and approval of a purchase order in the amount of \$171,625.

INTRODUCTION

The proposed agreement includes inspection services of traffic deck coatings, concrete repair, epoxy injection to prevent water infiltration, caulking replacement, expansion joint replacement and roofing of elevator shafts at nine (9) City parking garages at 461 N. Bedford Dr., 440 N. Camden Dr., 345 N. Beverly Dr., 333 N. Crescent Dr., 221 N. Crescent Dr., 450 N. Rexford Dr., 216 S. Beverly Dr., 438 N. Beverly Dr. and 9510 Brighton Way Parking Garages.

DISCUSSION

The City engaged Van Dijk & Associates, to examine the existing conditions and provide a recommendation for the appropriate course of action in City parking garages. Based on this condition assessment a scope of work was developed specifically for each

facility. Van Dijk prepared the bid documents that resulted in the award of contract to Angelus Waterproofing & Restoration Corporation.

The waterproofing upgrades in the parking structures are consistent with the list of Capital upgrade projects investment directed by the City Council during the discussion of the Parking Authority Fund and assets.

This phase of the consultant's scope of services includes full time inspection services for the project, which consists of the traffic deck coating, concrete repair, caulking replacement, epoxy injection, expansion joint replacement and roofing of elevator shafts.

Project Administration, Parking Operations and Real Estate & Property Management staff will coordinate the timing and logistic of the work with tenants and garage stakeholders. The total agreement amount is \$166,625. In addition, a contingency of \$5,000 is recommended for change due to unforeseen conditions to complete the work.

FISCAL IMPACT

Funding for this contract work has been budgeted from the fiscal year 2013-14 Capital Improvement Program budget for Parking Facility Waterproofing, project #0936.

Don Rhoads 

Finance Approval

David E. Lightner 

Approved By

Attachment 1

AGREEMENT BETWEEN THE CITY OF BEVERLY HILLS AND VAN DIJK
& ASSOCIATES INC. FOR ROOFING AND WATERPROOFING
CONSULTING SERVICES FOR VARIOUS PARKING STRUCTURES

NAME OF CONSULTANT: Van Dijk and Associates Inc.

RESPONSIBLE PRINCIPAL OF CONSULTANT: Nils Van Dijk, President

CONSULTANT'S ADDRESS: 28 Hammond, Suite G
Irvine, CA 92618
Attention: Nils Van Dijk, President

CITY'S ADDRESS: City of Beverly Hills
455 N. Rexford Drive
Beverly Hills, CA 90210
Attention: David Lightner, Deputy City
Manager/Director of Capital Assets

COMMENCEMENT DATE: Upon Written Notice To Proceed

TERMINATION DATE: June 30, 2014

CONSIDERATION: Not to exceed \$166,625.00, including all reimbursable
expenses and described in Exhibit B;

Contingency not to exceed \$5,000.00 for
unanticipated work outside the Scope of Work, as
described in Exhibit A;

Total not to exceed \$171,625.00

AGREEMENT BETWEEN THE CITY OF BEVERLY HILLS AND VAN DIJK
& ASSOCIATES INC. FOR ROOFING AND WATERPROOFING
CONSULTING SERVICES FOR VARIOUS PARKING STRUCTURES

THIS AGREEMENT is made by and between the City of Beverly Hills (hereinafter called "CITY"), and Van Dijk & Associates, Inc. (hereinafter called "CONSULTANT").

RECITALS

A. CITY desires to have certain services and/or goods provided as set forth in Exhibit A (the "Scope of Work"), attached hereto and incorporated herein.

B. CONSULTANT represents that it is qualified and able to perform the Scope of Works.

NOW, THEREFORE, the parties agree as follows:

Section 1. CONSULTANT's Scope of Work. CONSULTANT shall perform the Scope of Work described in Exhibit A in a manner satisfactory to CITY and consistent with that level of care and skill ordinarily exercised by members of the profession currently practicing in the same locality under similar conditions. CITY shall have the right to order, in writing, changes in the Scope of Work. Any changes in the Scope of Work by CONSULTANT must be made in writing and approved by both parties. The cost of any change in the Scope of Work must be agreed to by both parties in writing.

Section 2. Time of Performance.

(a) CONSULTANT shall commence its services under this Agreement upon receipt of a written notice to proceed from CITY. CONSULTANT shall complete the performance of services by the Termination Date set forth above and/or in conformance with the project timeline established by the City Manager or his designee.

(b) The City Manager or his designee may extend the time of performance in writing for two additional one-year terms or such other term not to exceed two years from the date of termination pursuant to the same terms and conditions of this Agreement.

Section 3. Compensation.

(a) Compensation. CITY agrees to compensate CONSULTANT for the services and/or goods provides under this Agreement, and CONSULTANT agrees to accept in full satisfaction for such services, a sum not to exceed the Consideration set forth above and more particularly described in Exhibit B, attached hereto and incorporated herein.

(b) Expenses. The amount set forth in paragraph (a) shall include reimbursement for all actual and necessary expenditures reasonably incurred in the performance of this Agreement (including, but not limited to, all labor, materials, delivery, tax, assembly, and installation, as applicable). There shall be no claims for additional compensation for reimbursable expenses.

(c) **Additional Services.** CITY may from time to time require CONSULTANT to perform additional services not included in the Scope of Services. Such requests for additional services shall be made by CITY in writing and agreed upon by both parties in writing.

Section 4. Method of Payment. Unless otherwise provided for herein, CONSULTANT shall submit to CITY a detailed invoice, on a monthly basis or less frequently, for the services performed pursuant to this Agreement. Each invoice shall itemize the services rendered during the billing period and the amount due. Within 30 days of receipt of each invoice, CITY shall pay all undisputed amounts included on the invoice. CITY shall pay CONSULTANT said Consideration in accordance with the schedule of payment set forth in Exhibit B.

Section 5. Independent Contractor. CONSULTANT is and shall at all times remain, as to CITY, a wholly independent contractor. Neither CITY nor any of its agents shall have control over the conduct of CONSULTANT or any of CONSULTANT's employees, except as herein set forth. CONSULTANT shall not, at any time, or in any manner, represent that it or any of its agents or employees are in any manner agents or employees of CITY.

Section 6. Assignment. This Agreement shall not be assigned in whole or in part, by CONSULTANT without the prior written approval of CITY. Any attempt by CONSULTANT to so assign this Agreement or any rights, duties or obligations arising hereunder shall be void and of no effect.

Section 7. Responsible Principal(s).

(a) CONSULTANT's Responsible Principal set forth above shall be principally responsible for CONSULTANT's obligations under this Agreement and shall serve as principal liaison between CITY and CONSULTANT. Designation of another Responsible Principal by CONSULTANT shall not be made without prior written consent of CITY.

(b) CITY's Responsible Principal shall be the City Manager or his designee set forth above who shall administer the terms of the Agreement on behalf of CITY.

Section 8. Personnel. CONSULTANT represents that it has, or shall secure at its own expense, all personnel required to perform CONSULTANT's Scope of Work under this Agreement. All personnel engaged in the work shall be qualified to perform such Scope of Work.

Section 9. Permits and Licenses. CONSULTANT shall obtain and maintain during the Agreement term all necessary licenses, permits and certificates required by law for the provision of services under this Agreement, including a business license.

Section 10. Interests of CONSULTANT. CONSULTANT affirms that it presently has no interest and shall not have any interest, direct or indirect, which would conflict in any manner with the performance of the Scope of Work contemplated by this Agreement. No person having any such interest shall be employed by or be associated with CONSULTANT.

Section 11. Insurance.

(a) CONSULTANT shall at all times during the term of this Agreement carry, maintain, and keep in full force and effect, insurance as follows:

(1) A policy or policies of Comprehensive General Liability Insurance, with minimum limits of Two Million Dollars (\$2,000,000) for each occurrence, combined single limit, against any personal injury, death, loss or damage resulting from the wrongful or negligent acts by CONSULTANT.

(2) A policy or policies of Comprehensive Vehicle Liability Insurance covering personal injury and property damage, with minimum limits of One Million Dollars (\$1,000,000) per occurrence combined single limit, covering any vehicle utilized by CONSULTANT in performing the Scope of Work required by this Agreement.

(3) Workers' compensation insurance as required by the State of California.

(4) Professional Liability Insurance. A policy or policies of Professional Liability Insurance (errors and omissions) with minimum limits of One Million Dollars (\$1,000,000) per claim and in the aggregate. Any deductibles or self-insured retentions attached to such policy or policies must be declared to and be approved by CITY. Further, CONSULTANT agrees to maintain in full force and effect such insurance for one year after performance of work under this Agreement is completed.

(b) CONSULTANT shall require each of its sub-contractors to maintain insurance coverage which meets all of the requirements of this Agreement.

(c) The policy or policies required by this Agreement shall be issued by an insurer admitted in the State of California and with a rating of at least a B+;VII in the latest edition of Best's Insurance Guide.

(d) CONSULTANT agrees that if it does not keep the aforesaid insurance in full force and effect CITY may either immediately terminate this Agreement or, if insurance is available at a reasonable cost, CITY may take out the necessary insurance and pay, at CONSULTANT's expense, the premium thereon.

(e) At all times during the term of this Agreement, CONSULTANT shall maintain on file with the City Clerk a certificate or certificates of insurance on the form set forth in Exhibit C, attached hereto and incorporated herein, showing that the aforesaid policies are in effect in the required amounts. CONSULTANT shall, prior to commencement of work under this Agreement, file with the City Clerk such certificate or certificates. The general liability insurance shall contain an endorsement naming the CITY as an additional insured. All of the policies required under this Agreement shall contain an endorsement providing that the policies cannot be canceled or reduced except on thirty (30) days prior written notice to CITY, and specifically stating that the coverage contained in the policies affords insurance pursuant to the terms and conditions as set forth in this Agreement.

(f) The insurance provided by CONSULTANT shall be primary to any coverage available to CITY. The policies of insurance required by this Agreement shall include provisions for waiver of subrogation.

(g) Any deductibles or self-insured retentions must be declared to and approved by CITY. At the option of CITY, CONSULTANT shall either reduce or eliminate the deductibles or self-insured retentions with respect to CITY, or CONSULTANT shall procure a bond guaranteeing payment of losses and expenses.

Section 12. Indemnification. CONSULTANT agrees to indemnify, hold harmless and defend CITY, City Council and each member thereof, and every officer, employee and agent of CITY, from any claim, liability or financial loss (including, without limitation, attorneys fees and costs) arising from any intentional, reckless, negligent, or otherwise wrongful acts, errors or omissions of CONSULTANT or any person employed by CONSULTANT in the performance of this Agreement.

Section 13. Termination.

(a) CITY shall have the right to terminate this Agreement for any reason or for no reason upon five calendar days' written notice to CONSULTANT. CONSULTANT agrees to cease all work under this Agreement on or before the effective date of such notice.

(b) In the event of termination or cancellation of this Agreement by CITY, due to no fault or failure of performance by CONSULTANT, CONSULTANT shall be paid based on the percentage of work satisfactorily performed at the time of termination. In no event shall CONSULTANT be entitled to receive more than the amount that would be paid to CONSULTANT for the full performance of the services required by this Agreement. CONSULTANT shall have no other claim against CITY by reason of such termination, including any claim for compensation.

Section 14. CITY's Responsibility. CITY shall provide CONSULTANT with all pertinent data, documents, and other requested information as is available for the proper performance of CONSULTANT's Scope of Work.

Section 15. Information and Documents. All data, information, documents and drawings prepared for CITY and required to be furnished to CITY in connection with this Agreement shall become the property of CITY, and CITY may use all or any portion of the work submitted by CONSULTANT and compensated by CITY pursuant to this Agreement as CITY deems appropriate.

Section 16. Records and Inspections. CONSULTANT shall maintain full and accurate records with respect to all matters covered under this Agreement for a period of 5 years. CITY shall have access, without charge, during normal business hours to such records, and the right to examine and audit the same and to make copies and transcripts therefrom, and to inspect all program data, documents, proceedings and activities.

Section 17. Changes in the Scope of Work. The CITY shall have the right to order, in writing, changes in the scope of work or the services to be performed. Any changes in the scope of work requested by CONSULTANT must be made in writing and approved by both parties.

Section 18. Notice. Any notices, bills, invoices, etc. required by this Agreement shall be deemed received on (a) the day of delivery if delivered by hand during the receiving party's regular business hours or by facsimile before or during the receiving party's regular business hours; or (b) on the second business day following deposit in the United States mail, postage prepaid to the addresses set forth above, or to such other addresses as the parties may, from time to time, designate in writing pursuant to this section.

Section 19. Attorney's Fees. In the event that either party commences any legal action or proceeding to enforce or interpret the provisions of this Agreement, the prevailing

party in such action shall be entitled to reasonable attorney's fees, costs and necessary disbursements, in addition to such other relief as may be sought and awarded.

Section 20. Entire Agreement. This Agreement represents the entire integrated agreement between CITY and CONSULTANT, and supersedes all prior negotiations, representations or agreements, either written or oral. This Agreement may be amended only by a written instrument signed by both CITY and CONSULTANT.

Section 21. Exhibits; Precedence. All documents referenced as exhibits in this Agreement are hereby incorporated in this Agreement. In the event of any material discrepancy between the express provisions of this Agreement and the provisions of any document incorporated herein by reference, the provisions of this Agreement shall prevail.

Section 22. Governing Law. The interpretation and implementation of this Agreement shall be governed by the domestic law of the State of California.

Section 23. CITY Not Obligated to Third Parties. CITY shall not be obligated or liable under this Agreement to any party other than CONSULTANT.

Section 24. Severability. Invalidation of any provision contained herein or the application thereof to any person or entity by judgment or court order shall in no way affect any of the other covenants, conditions, restrictions, or provisions hereof, or the application thereof to any other person or entity, and the same shall remain in full force and effect.

EXECUTED the _____ day of _____ 201_, at Beverly Hills, California.

CITY OF BEVERLY HILLS
A Municipal Corporation

JOHN A. MIRISCH
Mayor of the City of Beverly Hills, California

ATTEST:

BYRON POPE
City Clerk

CONSULTANT: VAN DIJK ASSOCIATES,
INC.

NILS VAN DIJK
President

PETER VAN DIJK
Secretary

APPROVED AS TO FORM



LAURENCE S. WIENER
City Attorney

APPROVED AS TO CONTENT

JEFFREY C. KOLIN
City Manager



DAVID LIGHTNER
Deputy City Manager/Director of Capital
Assets



KARL KIRKMAN
Risk Manager

EXHIBIT A

SCOPE OF WORK

CONSULTANT shall perform the following services:

1. Prior to the commencement of roofing/waterproofing systems construction, CONSULTANT shall meet with the contractor(s) and all trades involved in the roofing/waterproofing systems at CITY parking structures located at:

461 N Bedford Dr.
440 N. Camden Dr.
345 N. Beverly Dr.
333 N. Crescent Dr.
221 N. Crescent Dr.
450 N. Rexford Dr.
216 S. Beverly Dr.
438 N. Beverly Dr. and
9510 Brighton Way

CONSULTANT shall clarify details and specification items and shall answer questions pertaining to the roofing and/or waterproofing work. CONSULTANT shall provide to CITY and the parties at each meeting a written list of items discussed during the pre-construction meeting.

Cost: \$875 per meeting x 9 = \$7,875.00

2. CONSULTANT shall provide full-time inspection of the roofing and waterproofing performed by the contractors and trades hired by CITY to do the work. CONTRACTOR shall evaluate and progressively report in writing to CITY the quality of the work.

Cost: \$750 per day x estimated 200 inspection days = \$150,000

3. Additional consulting: CONTRACTOR estimates an additional 50 hours of consulting services for this project at the hourly rate set forth in Exhibit B.

EXHIBIT B

COMPENSATION/ PAYMENT

CONSULTANT shall be paid for the satisfactory performance of services under this Agreement, an amount not to exceed One Hundred Sixty-Six Thousand Six Hundred Twenty Five Dollars (\$166,625.00) at the rates described in Exhibit A and B, based on the services described in Exhibit A.

The Contingency in an amount not to exceed Five Thousand Dollars (\$5,000) is for additional, unforeseen and unanticipated work outside the scope of services described in Exhibit A, and shall not be undertaken without the express direction by the CITY in writing. Compensation for said additional work shall be mutually agreed upon by the parties in writing.

In no event shall the Fee and the Contingency exceed One Hundred Seventy One Thousand Six Hundred Twenty Five Dollars (\$171,625).

HOURLY RATE FOR ADDITIONAL CONSULTING AND CONTINGENCY SERVICES

Compensation for additional services satisfactorily performed shall be by a lump sum established by mutual written agreement, or by utilizing the following hourly rate:

Principals \$175.00 per hour

SCHEDULE OF PAYMENT

CITY shall pay CONSULTANT in accordance with the payment schedule set forth in this Exhibit. CONSULTANT shall submit an itemized statement to CITY for its services performed, which shall include documentation setting forth in detail a description of the services rendered.

CITY shall pay CONSULTANT the amount of such undisputed billing within thirty (30) days of receipt of same.

EXHIBIT C

CERTIFICATE OF INSURANCE

This is to certify that the following endorsement is part of the policy(ies) described below :

NAMED INSURED

COMPANIES AFFORDING COVERAGE

ADDRESS

- A.
- B.
- C.

COMPANY (A.B.C.)	COVERAGE	POLICY NUMBER	EXPIRATION DATE	B.I.	LIMITS P.D.	AGGREGATE
	<input type="checkbox"/> AUTOMOBILE LIABILITY <input type="checkbox"/> GENERAL LIABILITY <input type="checkbox"/> PRODUCTS/COMPLETED OPERATIONS <input type="checkbox"/> BLANKET CONTRACTUAL <input type="checkbox"/> Consultant's PROTECTIVE <input type="checkbox"/> PERSONAL INJURY <input type="checkbox"/> EXCESS LIABILITY <input type="checkbox"/> WORKER'S COMPENSATION					

It is hereby understood and agreed that the City of Beverly Hills, its City Council and each member thereof and every officer and employee of the City shall be named as joint and several assureds with respect to claims arising out of the following project or agreement:

It is further agreed that the following indemnity agreement between the City of Beverly Hills and the named insured is covered under the policy: Contractor agrees to indemnify, hold harmless and defend City, its City Council and each member thereof and every officer and employee of City from any and all liability or financial loss resulting from any suits, claims, losses or actions brought against and from all costs and expenses of litigation brought against City, its City Council and each member thereof and any officer or employee of City which results directly or indirectly from the wrongful or negligent actions of contractor's officers, employees, agents or others employed by Contractor while engaged by Contractor in the (performance of this agreement) construction of this project.

It is further agreed that the inclusion of more than one assured shall not operate to increase the limit of the company's liability and that insurer waives any right of contribution with insurance which may be available to the City of Beverly Hills.

In the event of cancellation or material change in the above coverage, the company will give 30 days' written notice of cancellation or material change to the certificate holder.

Except to certify that the policy(ies) described above have the above endorsement attached, this certificate or verification of insurance is not an insurance policy and does not amend, extend or alter the coverage afforded by the policies listed herein. Notwithstanding any requirement, term, or condition of any contract or other document with respect to which this certificate or verification of insurance may be issued or may pertain, the insurance afforded by the policies described herein is subject to all the terms, exclusions and conditions of such policies.

DATE : _____ BY : _____

 Authorized Insurance Representative

AGENCY : _____ TITLE : _____
 _____ Address : _____
