



CITY OF MOORPARK
REQUEST FOR PROPOSAL
FOR
ARTS MASTER PLAN

RFP Submittals Due By:

April 12, 2019

AT 4:00 P.M. (PT)

**Parks Recreation and Community Services Department
799 Moorpark Avenue
Moorpark, California 93021
Attn: Chris Ball, Management Analyst**

OVERVIEW

The City of Moorpark (City) is requesting proposals from qualified firms, consultants or consultant teams (Proposers) with arts master planning experience to evaluate the City's existing public art policies and programs, assess the community's attitudes and interests regarding art, and create the City's first Arts Master Plan (Master Plan). The goal of the Master Plan is to establish a communitywide vision for the City's public art program, update existing policies and identify resources and partnerships to achieve that vision, and set feasible priorities and programs that align with the vision and will serve to guide public and private efforts over the next ten years. The Master Plan, and ancillary deliverables, will also provide direction to City Council, the Arts Commission, and City staff on the planning and processes necessary to effectively administer and maintain the City's public art program.

BACKGROUND

The City of Moorpark was incorporated in 1983, and is located at the intersection of SR 23 and SR 118 in southeastern Ventura County, approximately 50 miles northwest of downtown Los Angeles. The City has a population of approximately 37,000 residents and covers approximately 12.5 square miles. U.S. Census Bureau data suggests the City's racial make-up is approximately 56% White, 32% Hispanic or Latino, and 7% Asian. The City is governed by a Council/City Manager form of government. Moorpark is recognized for having the lowest number of serious crimes committed in Ventura County and is one of the safest cities of its size in the United States.

In recognition of the fact that public art improves the character of the community and enhances the quality of life for individuals living in, working in, and visiting the City, the City Council adopted City Ordinance 321 in 2005, which formally established the Art In Public Places program. This program requires certain residential, commercial and industrial development projects to either install public artwork or pay an in lieu fee. The in lieu fee is established by City Council resolution, and is currently set at one percent of the project valuation (excluding land value and off-site improvement costs). Ordinance 321 also established the Art In Public Places Fund to collect and maintain these in lieu fees for use exclusively for the Art In Public Places Program. Currently the Art In Public Places Fund has a balance of approximately 4.5 million dollars.

In addition to establishing the Art In Public Places program, Ordinance 321 established a Public Art Advisory Committee to review proposed art installations and make recommendations to the City Council. In 2005 the City acquired the High Street Arts Center (HSAC), a 260-seat performing arts venue located at 45 High Street, in order to preserve a venue for live performances in the downtown area. The following year the

Public Art Advisory Committee was dissolved and the Moorpark Arts Commission (Commission) was established, consisting of five members of the community appointed by City Council. The role of the Commission included not only making recommendations regarding proposed Art In Public Places projects, but also acting in an advisory capacity regarding all HSAC operational and programming matters. In 2009 the Moorpark Foundation for the Arts (Foundation) was established as an independent non-profit organization to support and promote HSAC activities, and in 2012 the Foundation assumed full responsibility for operating the facility. Since that time Foundation has expanded the profile and popularity of the venue. The ongoing mission of the Foundation is to provide support for and promote the arts, specifically the HSAC, in the City.

After the Foundation assumed operations of the HSAC, the role of the Commission was refocused on reviewing Art In Public Places projects, with the additional role of considering matters related to the HSAC and other art activities only when requested by the City Council. This remains the role of the Commission today, which meets quarterly to review and recommend both City sponsored art projects, and private art installations required under the Art In Public Places program. Commission recommendations are forwarded to the City Council, who has approval authority for art installations in the City. Examples of art installations in private developments that went through this approval process include the stone sculpture in the Patriot Commerce Center on Miller Parkway and the bronze sculpture in Campus Plaza on Campus Park Drive.

Activities of the Commission fall under the oversight of the City's Parks, Recreation and Community Services Department (PRCS). The PRCS also plans and implements new Art In Public Places projects throughout the City. Since establishing the Art In Public Places Fund, the City has sponsored a modest collection of public art installations throughout the City including Veteran's Memorial Park; an interactive Mammoth Bone Sculpture at Mammoth Highlands Park; the "We Are One Family" sculpture at the Ruben Castro Human Service Center; and the lithomosaic art at Arroyo Vista Community Park. Most recently the City commissioned a sculpture titled "Thin Blue Line" at the Police Services Center. The PRCS, in collaboration with the Arts Commission, continues to actively seek out opportunities to expand the City's public art offerings to the community.

Additionally, the PRCS organizes and presents a number of annual community events, including the Moorpark Multicultural Arts Festival (Arts Festival). The history of the Arts Festival pre-dates available records, however it is clear that the event was established well before the City's incorporation in 1983. Over the years the event has experienced variable success and been organized by various organizations. In the early 2000's local volunteer organizations coordinated the event. In 2007 the City assumed responsibility

for coordinating and promoting the event. The Arts Festival included art exhibitions, craft fair, interactive art activities, food booths and live performances. The event was discontinued in 2016 for a variety of reasons including declining attendance and difficulties attracting artists to participate. In 2018, at the direction of the City Council, the event was re-envisioned and brought back as a multicultural event with an emphasis on presenting events and activities that showcased various cultural elements of the community.

SCOPE OF WORK

The selected Proposer shall complete execution of the items listed below, and as described throughout this RFP. This effort involves the creation of an Arts Master Plan, the process and product of which is to include, but not be limited to the following:

- Perform an assessment of the City's assets and opportunities for public art, including potential locations. This is to include reviewing and becoming familiar with existing policies, documents and local codes, as well as planned future developments.
- Plan, develop, and lead efforts to evaluate the community's attitudes and interests regarding art. Identify and engage key stakeholders in input sessions to influence the creation of the Master Plan. Develop surveys and other tools to gather data; tools and responses will be provided as an appendix to the final Master Plan document. It is anticipated that an inclusive, multi-lingual (English and Spanish) outreach campaign will be required in order to fully engage the community.
- Facilitate and manage activities and communications with designated City staff including, but not limited to, meeting schedules, agendas and material preparation for planning purposes and progress updates.
- Recommend formal policy guidelines and procedures for the Art In Public Places program based on industry best practices, that incorporate existing policies and any recommended policy updates and cover the following elements:
 - Criteria for the siting of public art projects;
 - Guidelines for inclusion of public art in public and private development projects;
 - A general process by which artists are commissioned and selected;
 - Policies for the management of commissioned art projects including, but not limited to, City/artist/stakeholder roles and responsibilities, contracting requirements, and any applicable regulatory requirements;

- Standards for maintenance funding and managing public art inventory;
 - Policies for acceptance of donated/gifted artwork;
 - Policies and procedures for deaccession of artwork
- Produce a written Arts Master Plan that is a detailed narrative and illustrative document that includes:
 - Vision and mission statements for the City’s public art program;
 - Summary of research, findings and community input results;
 - Discussion of existing programs, policies and resources;
 - Recommended changes to the City’s public art policies and processes, including proposed changes to the Art In Public Places ordinance;
 - Recommended programs and initiatives that align with the established vision for the City’s public art program;
 - Opportunities and strategies for partnering with key community stakeholders to further the vision for the public art program;
 - Analysis of current public art funding sources and recommended additional models and opportunities for arts funding;
 - Recommendations for documenting and archiving existing public art inventory, including private art installations installed under the Art In Public Places program;
 - Strategies for the preservation of accessible space in private and public developments for public art installations;
 - Identification of sites for future permanent and/or temporary public art projects;
 - Strategies for ongoing community engagement and outreach, taking into account the City’s limited resources;
 - Clear and feasible goals and implementation strategies that take into account the City’s available resources, and include short and long-term initiatives, estimated budget and costs, and implementation dates;
 - Provide print and electronic copies of the completed Master Plan, as well as electronic copies of all accompanying supplemental materials in a format to be determined by the City.
 - Present the completed Master Plan to the Arts Commission and the Moorpark City Council, including preparation of presentation materials (PowerPoint presentation, information boards, handouts, etc.).

PROPOSAL CONTENT

Proposals are to include the following elements:

- Introduction:
Present general introductory comments, including a purpose statement describing your understanding of the proposed project and required services.

- Work Plan and Project Schedule:
Provide a detailed description of your approach to designing, managing and coordinating the project including:
 - Project Objectives: Describe your understanding of the project objectives and how these will be achieved.
 - Work Plan: Clearly identify and describe all tasks and subtasks you will undertake to accomplish the requirements set forth in the Scope of Work
 - Schedule: Prepare a project schedule that shows how tasks fit within the project timeline and relate to appropriate milestones and project deliverables.
 - City Resources: Identify the types of information, data and assistance expected from the City.

- Consultant Qualifications and References:
 - Provide a brief profile outlining company/consultant history and philosophy.
 - Team Composition and Experience: List all key personnel who will be assigned to this project, including their roles and responsibilities and relevant experience and qualifications. Include any subconsultants that will work on the project.
 - Provide references for at least three (3) past projects similar in size and scope to this project. The projects should have been completed by substantially the same project team within the last five years. Include project description, project budget, project start and completion dates, description of staffing resources dedicated to the project, and client name and contact information (including email address).

- Cost Proposal:
The cost proposal should include the following:
 - A detailed itemization of project costs. At a minimum the costs for each task and subtask identified in the work plan should be included, as well as any other costs to be charged by the Proposer to complete the Scope of Work.
 - A total not-to-exceed price for the project.
 - A listing of Proposer's hourly rates by classification as well as other cost factors which would be needed to price extra work.

- Additional Information:
Include any other essential information that may assist in the evaluation of the proposal.
- Signature(s): Proposals must be signed by an individual or individuals authorized to bind the firm, consultant or consultant team. Unsigned proposals may be rejected.

PROPOSAL EVALUATION AND SELECTION

The City will develop and oversee the process for the evaluation of the proposals received. It is anticipated that evaluation of proposals will be conducted by a panel consisting of City staff and Commission members.

All proposals properly received before the submission deadline will be evaluated based on the criteria below, listed in relative order of importance:

1. Qualifications and experience of the Proposer
2. Thoroughness of response, approach to providing sound services, and ability to provide services to meet objectives
3. Strength of examples of previous projects (with emphasis on projects of similar scope and scale to Moorpark)
4. Cost to the City

The City may elect to conduct interviews of the top rated Proposers. The Proposer whose overall proposal is rated the highest will be invited for an interview to negotiate a final contract. If an agreement is not reached, negotiations may be terminated and commenced with the next highest rated Proposer.

The award of the contract will be based on a combination of all of the above factors. The City is not bound to select any of the Proposers submitting proposals, may waive any irregularities in proposals and their submittal which may be advantageous to the City, and is not liable for any costs of preparation and submittal of proposals, including any presentations made to the City.

SUBMITTAL INFORMATION

Proposers interested in submitting a proposal for this project should register by e-mailing Kimberly Sexton, Administrative Assistant, at ksexton@moorparkca.gov.

Proposals must be received at the address below no later than 4 p.m. (PT), Friday, April 12, 2019. Any proposals received after this date and time may be considered non-responsive, in which case the City will return the proposal, unopened. Proposals must

be in writing and may be delivered by hand, mail or courier. Oral, telephonic, facsimile, telegraphic, or electronically transmitted proposals will not be considered or accepted.

One (1) original and three (3) printed copies, plus a digital version (thumb drive) of the proposal must be submitted.

Direct proposals to:

City of Moorpark
Parks, Recreation and Community Services Department
799 Moorpark Avenue
Moorpark, CA 93021
Attn: Chris Ball, Management Analyst

Please clearly mark the envelope with the following: **RFP – Arts Master Plan**

Submitted proposals may be withdrawn at any time prior to the submission deadline specified in the RFP, provided notification is received in writing before the submittal deadline. Proposals cannot be changed or withdrawn after the submittal deadline.

INQUIRIES / ADDENDA

If a Proposer has any questions about this RFP or the proposed scope of work, or if a Proposer finds any error, inconsistency or ambiguity in the RFP, the Proposer must submit a request for clarification or correction by email to the City's project manager, Chris Ball at cball@moorparkca.gov. Requests for clarification or correction must be received no later than April 5, 2019 at 5 p.m. (PT).

Interpretation or correction of the RFP will be made by addendum posted on the City bid webpage (available at <http://www.moorparkca.gov/bids.aspx>), and any addendum will be considered a part of the RFP and will be incorporated therein. It is incumbent on the Proposer to review and address any addenda posted on the City bid webpage prior to submission of the final proposal. Registration for bid notifications on the City webpage does not relieve the Proposer of the responsibility for ensuring that posted addenda have been received and addressed. Telephone communication with City staff is not encouraged, and the City is not bound by any clarifications, interpretations, corrections or changes to the RFP that are made verbally or in any manner other than by written addendum.

CONTRACT REQUIREMENT

Before any services can commence, the selected Proposer will be required to sign and deliver the City's General Services Agreement (Agreement), a sample of which is attached to this RFP. To ensure the smooth and timely implementation of this project, Proposers responding to this RFP should review all the terms and conditions of the Agreement, including, but not limited to, provisions relating to insurance and indemnity. The City will require certificates of insurance and additional insured endorsements, as specified in Exhibit A of the Agreement, when the Proposer submits the signed Agreement.

The City's policy is that the Agreement be accepted as is. By submitting a proposal to the City in response to this RFP, each Proposer is deemed to have provided its approval of the Agreement and assurance that it is able to meet the insurance requirements contained therein. If a Proposer seeks limited modification of any aspect of the Agreement, then the Proposer must identify the proposed changes in the proposal. However, changes or qualifications to the Agreement may be weighed in the evaluation of the proposal and, at the City's discretion, may cause rejection of the proposal as non-responsive.

This RFP, or any part of it, and the Proposer's responses, will be incorporated into and made a part of the Agreement. The City reserves the right to further negotiate and/or modify the terms and conditions of the Agreement. The Proposer whom the City Council selects must cooperate with the City in good faith to negotiate, sign, and deliver the final Agreement.

OTHER CONSIDERATIONS / RESERVATION OF RIGHTS

- This RFP does not commit the City to award a contract, to defray any costs incurred in the preparation of a proposal pursuant to this RFP, or to procure or contract for work. No payment of any kind will be provided to a consultant for responding to this RFP, or parties they represent, for obtaining any of the information requested.
- The City reserves the right to reject any and all proposals, and to reissue the RFP.
- The City reserves the right to cancel or modify, for any or no reason, in part or in its entirety, this RFP including, but not limited to, selection schedule, submittal date, and submittal requirements, without prior notice. Notification of revisions to the RFP will be made by addendum posted on the bid webpage.

- The City reserves the right to verify the information received in the proposal. If a Proposer knowingly and willfully submits false information or data, the City reserves the right to reject that proposal. If it is determined that a contract was awarded as a result of false statements or other data submitted in response to this RFP, the City reserves the right to terminate the contract.
- The City reserves the right to request additional information at any time from any and all Proposers which the City deems necessary to evaluate Proposer qualifications.
- Proposers are responsible for making all necessary investigations and examination of records related to this RFP. Failure to do so will not act to relieve any condition of a potential general services agreement or the requirements set out in this RFP. It is mutually understood and agreed that the submission of a proposal shall be considered evidence that the Proposer has made such examinations and investigations. No request for modification of proposal shall be considered after its submission on the grounds that the Proposer was not fully informed as to any fact or condition.
- All documentation and materials submitted in response to this RFP will remain the property of the City and will become a public record subject to the requirements of the California Public Records Act.
- The selected Proposer will maintain any required professional licenses and registrations during the life of the contract with the City.
- The selected Proposer shall obtain a City of Moorpark Business Registration prior to commencing any work.

ANTICIPATED SCHEDULE OF RFP ACTIVITIES

1. Issuance of RFP:	March 8, 2019
2. Deadline for RFP submittal:	April 12, 2019 (4 p.m. PT)
3. Application Review / Interviews:	April 15 - 26, 2019
4. City Council Approval:	May, 2019
5. Award of Agreement & Notice to Proceed:	June, 2019

ATTACHMENTS

Attachment 1 – Sample Contract with Insurance Requirements

Attachment 1

AGREEMENT BETWEEN THE CITY OF MOORPARK AND _____, FOR _____

THIS AGREEMENT, made and effective as of this _____ day of _____, 2019, between the City of Moorpark, a municipal corporation ("City") and _____, a _____ ("Consultant"). In consideration of the mutual covenants and conditions set forth herein, the parties agree as follows:

WHEREAS, City has the need for arts master plan consultant services; and

WHEREAS, Consultant specializes in providing such services and has the proper work experience, certifications, and background to carry out the duties involved; and

WHEREAS, Consultant has submitted to City a Proposal dated _____, which is attached hereto as Exhibit _____.

NOW, THEREFORE, in consideration of the mutual covenants, benefits, and premises herein stated, the parties hereto agree as follows:

1. TERM

The term of this Agreement shall be from the date of execution to completion of the work identified in the Scope of Services and in conformance with Exhibit ____, unless this Agreement is terminated or suspended pursuant to this Agreement.

2. SCOPE OF SERVICES

City does hereby retain Consultant, as an independent contractor, in a contractual capacity to provide _____ services, as set forth in Exhibit ____. In the event there is a conflict between the provisions of Exhibit ____ and this Agreement, the language contained in this Agreement shall take precedence.

Consultant shall perform the tasks described and set forth in Exhibit _____. Consultant shall complete the tasks according to the schedule of performance, which is also set forth in _____.

Compensation for the services to be performed by Consultant shall be in accordance with _____. Compensation shall not exceed the rates or total contract value of _____ dollars (\$_____.) as stated in _____, without a written amendment to the Agreement executed by both parties. Payment by City to Consultant shall be in accordance with the provisions of this Agreement.

3. PERFORMANCE

Consultant shall at all times faithfully, competently and to the best of their ability, experience, standard of care, and talent, perform all tasks described herein. Consultant shall employ, at a minimum, generally accepted standards and practices utilized by persons engaged in providing similar services as are required of Consultant hereunder in meeting its obligations under this Agreement.

4. MANAGEMENT

The individual directly responsible for Consultant's overall performance of the Agreement provisions herein above set forth and to serve as principal liaison between City and Consultant shall be _____, and no other individual may be substituted without the prior written approval of the City Manager.

The City's contact person in charge of administration of this Agreement, and to serve as principal liaison between Consultant and City, shall be the City Manager or the City Manager's designee.

5. PAYMENT

Taxpayer ID or Social Security numbers must be provided, on an IRS W-9 form, before payments may be made to vendors.

The City agrees to pay Consultant monthly, in accordance with the payment rates and terms and the schedule of payment as set forth in _____, based upon actual time spent on the above tasks. This amount shall not exceed _____ dollars (\$_____.__) for the total term of the Agreement unless additional payment is approved as provided in this Agreement.

Consultant shall not be compensated for additional services rendered in connection with its performance of this Agreement, unless such additional services and compensation are authorized, in advance, in a written amendment to the Agreement executed by both parties. The City Manager, if authorized by City Council, may approve additional work not to exceed ten percent (10%) of the amount of the Agreement.

Consultant shall submit invoices monthly for actual services performed. Invoices shall be submitted on or about the first business day of each month, or as soon thereafter as practical, for services provided in the previous month. Payment shall be made within thirty (30) days of receipt of each invoice as to all non-disputed fees. Any expense or reimbursable cost appearing on any invoice shall be accompanied by a receipt or other documentation subject to approval of the City Manager. If the City disputes any of Consultant's fees or expenses it shall give written notice to Consultant within thirty (30) days of receipt of any disputed fees set forth on the invoice.

6. TERMINATION OR SUSPENSION WITHOUT CAUSE

The City may at any time, for any reason, with or without cause, suspend or terminate this Agreement, or any portion hereof, by serving upon the Consultant at least ten (10) days prior written notice. Upon receipt of said notice, the Consultant shall immediately cease all work under this Agreement, unless the notice provides otherwise. If the City suspends or terminates a portion of this Agreement such suspension or termination shall not make void or invalidate the remainder of this Agreement.

The Consultant may terminate this Agreement only by providing City with written notice no less than thirty (30) days in advance of such termination.

In the event this Agreement is terminated or suspended pursuant to this Section, the City shall pay to Consultant the actual value of the work performed up to the time of termination or suspension, provided that the work performed is of value to the City. Upon termination or suspension of the Agreement pursuant to this Section, the Consultant will submit an invoice to the City pursuant to this Agreement.

7. DEFAULT OF CONSULTANT

The Consultant's failure to comply with the provisions of this Agreement shall constitute a default. In the event that Consultant is in default for cause under the terms of this Agreement, City shall have no obligation or duty to continue compensating Consultant for any work performed after the date of default and can terminate or suspend this Agreement immediately by written notice to the Consultant. If such failure by the Consultant to make progress in the performance of work hereunder arises out of causes beyond the Consultant's control, and without fault or negligence of the Consultant, it shall not be considered a default.

If the City Manager or the City Manager's designee determines that the Consultant is in default in the performance of any of the terms or conditions of this Agreement, designee shall cause to be served upon the Consultant a written notice of the default. The Consultant shall have ten (10) days after service upon it of said notice in which to cure the default by rendering a satisfactory performance. In the event that the Consultant fails to cure its default within such period of time, the City shall have the right, notwithstanding any other provision of this Agreement, to terminate this Agreement without further notice and without prejudice to any other remedy to which it may be entitled at law, in equity or under this Agreement.

8. LIQUIDATED DAMAGES

If the Consultant fails to complete the work, or any portion thereof, within the time period required by this Agreement, or as duly extended in writing by the City Manager, Consultant shall forfeit and pay to the City, as liquidated damages, the sum of twenty-five dollars (\$25) per day for each calendar day the work, or portion thereof, remains uncompleted after the above specified completion date. Liquidated damages shall be deducted from any payments due or to become due to the Consultant under the terms

of this Agreement. Progress payments made by the City after the above specified completion date shall not constitute a waiver of liquidated damages by the City.

9. OWNERSHIP OF DOCUMENTS

Consultant shall maintain complete and accurate records with respect to sales, costs, expenses, receipts, and other such information required by City that relate to the performance of services under this Agreement. Consultant shall maintain adequate records of services provided in sufficient detail to permit an evaluation of services. All such records shall be maintained in accordance with generally accepted accounting principles and shall be clearly identified and readily accessible. Consultant shall provide free access to the representatives of City or the City's designees at reasonable times to such books and records; shall give the City the right to examine and audit said books and records; shall permit City to make transcripts therefrom as necessary; and shall allow inspection of all work, data, documents, proceedings, and activities related to this Agreement. Notification of audit shall be provided at least thirty (30) days before any such audit is conducted. Such records, together with supporting documents, shall be maintained for a period of ten (10) years after receipt of final payment.

Upon completion of, or in the event of termination or suspension without cause of this Agreement, all original documents, designs, drawings, maps, models, computer files, surveys, notes, and other documents prepared in the course of providing the services to be performed pursuant to this Agreement shall become the sole property of the City and may be used, reused, or otherwise disposed of by the City without the permission of the Consultant. With respect to computer files, Consultant shall make available to the City, at the Consultant's office and upon reasonable written request by the City, the necessary computer software and hardware for purposes of accessing, compiling, transferring, and printing computer files.

10. INDEMNIFICATION AND HOLD HARMLESS

Consultant shall indemnify, defend and hold harmless City, and any and all of its officers, employees, and agents ("City Indemnitees") from and against any and all causes of action, claims, liabilities, obligations, judgments, or damages, including reasonable legal counsels' fees and costs of litigation ("claims"), arising out of the Consultant's performance of its obligations under this Agreement or out of the operations conducted by Consultant, including the City's active or passive negligence, except for such loss or damage arising from the sole negligence or willful misconduct of the City. In the event the City Indemnitees are made a party to any action, lawsuit, or other adversarial proceeding arising from Consultant's performance of this Agreement, the Consultant shall provide a defense to the City Indemnitees or at the City's option reimburse the City Indemnitees their costs of defense, including reasonable legal counsels' fees incurred in defense of such claims.

Consultant agrees to obtain executed indemnity agreements with provisions identical to those set forth in this Section from each and every subcontractor, or any other person or entity involved by, for, with, or on behalf of Consultant in the performance of this Agreement. In the event Consultant fails to obtain such indemnity

obligations from others as required here, Consultant agrees to be fully responsible according to the terms of this Section. Failure of City to monitor compliance with these requirements imposes no additional obligations on City and will in no way act as a waiver of any rights hereunder. This obligation to indemnify and defend City as set forth here is binding on the successors, assigns, or heirs of Consultant and shall survive the termination of this Agreement or this Section.

City does not and shall not waive any rights that it may have against Consultant by reason of this Section, because of the acceptance by City, or the deposit with City, of any insurance policy or certificate required pursuant to this Agreement. The hold harmless and indemnification provisions shall apply regardless of whether or not said insurance policies are determined to be applicable to any losses, liabilities, damages, costs, and expenses described in this Section.

11. INSURANCE

Consultant shall maintain prior to the beginning of and for the duration of this Agreement insurance coverage as specified in Exhibit A attached hereto and incorporated herein by this reference as though set forth in full.

12. INDEPENDENT CONSULTANT

Consultant is and shall at all times remain as to the City a wholly independent Contractor. The personnel performing the services under this Agreement on behalf of Consultant shall at all times be under Consultant's exclusive direction and control. Neither City nor any of its officers, employees, or agents shall have control over the conduct of Consultant or any of Consultant's officers, employees, or agents, except as set forth in this Agreement. Consultant shall not at any time or in any manner represent that it or any of its officers, employees, or agents are in any manner officers, employees, or agents of the City. Consultant shall not incur or have the power to incur any debt, obligation, or liability against City, or bind City in any manner.

No employee benefits shall be available to Consultant in connection with the performance of this Agreement. Except for the fees paid to Consultant as provided in the Agreement, City shall not pay salaries, wages, or other compensation to Consultant for performing services hereunder for City. City shall not be liable for compensation or indemnification to Consultant for injury or sickness arising out of performing services hereunder.

13. LEGAL RESPONSIBILITIES

The Consultant shall keep itself informed of local, state and federal laws and regulations which in any manner affect those employed by it or in any way affect the performance of its service pursuant to this Agreement. The Consultant shall at all times observe and comply with all such laws and regulations, including but not limited to the Americans with Disabilities Act and Occupational Safety and Health Administration laws and regulations. The City, and its officers and employees, shall not be liable at law or in equity occasioned by failure of the Consultant to comply with this Section.

14. ANTI DISCRIMINATION

Neither the Consultant, nor any subconsultant under the Consultant, shall discriminate in employment of persons upon the work because of race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, genetic information, marital status, sex, gender, gender identity, gender expression, age, sexual orientation, or military and veteran status of such person; or any other basis protected by applicable federal, state, or local law, except as provided in Section 12940 of the Government Code. The Consultant shall have responsibility for compliance with this Section, if applicable [Labor Code Sec. 1735].

15. UNDUE INFLUENCE

Consultant declares and warrants that no undue influence or pressure is used against or in concert with any officer or employee of the City in connection with the award, terms or implementation of this Agreement, including any method of coercion, confidential financial arrangement, or financial inducement. No officer or employee of the City will receive compensation, directly or indirectly from Consultant, or any officer, employee or agent of Consultant, in connection with the award of this Agreement or any work to be conducted as a result of this Agreement. Violation of this Section shall be a material breach of this Agreement entitling the City to any and all remedies at law or in equity.

16. NO BENEFIT TO ARISE TO LOCAL EMPLOYEES

No member, officer, or employee of the City, or their designees or agents, and no public official who exercises authority over or responsibilities with respect to the Services during his/her tenure or for one (1) year thereafter, shall have any interest, direct or indirect, in any agreement or sub-agreement, or the proceeds thereof, for work to be performed in connection with the Services performed under this Agreement.

17. CONFLICT OF INTEREST

Consultant covenants that neither they nor any officer or principal of their firm have any interests, nor shall they acquire any interest, directly or indirectly, which will conflict in any manner or degree with the performance of their services hereunder. Consultant further covenants that in the performance of this Agreement, they shall employ no person having such interest as an officer, employee, agent, or subconsultant. Consultant further covenants that Consultant has not contracted with nor is performing any services directly or indirectly, with the developer(s) and/or property owner(s) and/or firm(s) and/or partnership(s) and/or public agency(ies) owning property and/or processing an entitlement application for property in the City or its Area of Interest, now or within the past one (1) year, and further covenants and agrees that Consultant and/or its subconsultants shall provide no service or enter into any contract with any developer(s) and/or property owner(s) and/or firm(s) and/or partnership(s) and/or public agency(ies) owning property and/or processing an entitlement application for property in

the City or its Area of Interest, while under contract with the City and for a one (1) year time period following termination of this Agreement.

18. NOTICE

Any notice to be given pursuant to this Agreement shall be in writing, and all such notices and any other document to be delivered shall be delivered by personal service or by deposit in the United States mail, certified or registered, return receipt requested, with postage prepaid, and addressed to the party for whom intended as follows:

To: City Manager
City of Moorpark
799 Moorpark Ave.
Moorpark, CA 93021

To: _____

Either party may, from time to time, by written notice to the other, designate a different address or contact person, which shall be substituted for the one above specified. Notices, payments and other documents shall be deemed delivered upon receipt by personal service or as of the third (3rd) day after deposit in the United States mail.

19. CHANGE IN NAME

Should a change be contemplated in the name or nature of the Consultant's legal entity, the Consultant shall first notify the City in order that proper steps may be taken to have the change reflected in the Agreement documents.

20. ASSIGNMENT

Consultant shall not assign this Agreement or any of the rights, duties or obligations hereunder. It is understood and acknowledged by the parties that Consultant is uniquely qualified to perform the services provided for in this Agreement.

21. LICENSES

At all times during the term of this Agreement, Consultant shall have in full force and effect, all licenses required of it by law for the performance of the services in this Agreement.

22. VENUE AND GOVERNING LAW

This Agreement is made, entered into, and executed in Ventura County, California, and any action filed in any court or for arbitration for the interpretation,

enforcement or other action of the terms, conditions, or covenants referred to herein shall be filed in the applicable court in Ventura County, California. The City and Consultant understand and agree that the laws of the State of California shall govern the rights, obligations, duties, and liabilities of the parties to this Agreement and also govern the interpretation of this Agreement.

23. COST RECOVERY

In the event any action, suit or proceeding is brought for the enforcement of, or the declaration of any right or obligation pursuant to this Agreement or as a result of any alleged breach of any provision of this Agreement, the prevailing party shall be entitled to recover its costs and expenses from the losing party, and any judgment or decree rendered in such a proceeding shall include an award thereof.

24. ARBITRATION

Cases involving a dispute between City and Consultant may be decided by an arbitrator if both sides agree in writing, with costs proportional to the judgment of the arbitrator.

25. ENTIRE AGREEMENT

This Agreement and the Exhibits attached hereto contain the entire understanding between the parties relating to the obligations of the parties described in this Agreement. All prior or contemporaneous agreements, understandings, representations, and statements, oral or written, are merged into this Agreement and shall be of no further force or effect. Each party is entering into this Agreement based solely upon the representations set forth herein and upon each party's own independent investigation of any and all facts such party deems material.

26. CAPTIONS OR HEADINGS

The captions and headings of the various Articles, Paragraphs, and Exhibits of this Agreement are for convenience and identification only and shall not be deemed to limit or define the content of the respective Articles, Paragraphs, and Exhibits hereof.

27. AMENDMENTS

Any amendment, modification, or variation from the terms of this Agreement shall be in writing and shall be effective only upon approval by both parties to this Agreement.

28. PRECEDENCE

In the event of conflict, the requirements of the City's Request for Proposal, if any, and this Agreement shall take precedence over those contained in the Consultant's Proposal.

29. INTERPRETATION OF AGREEMENT

Should interpretation of this Agreement, or any portion thereof, be necessary, it is deemed that this Agreement was prepared by the parties jointly and equally, and shall not be interpreted against either party on the ground that the party prepared the Agreement or caused it to be prepared.

30. WAIVER

No waiver of any provision of this Agreement shall be deemed, or shall constitute, a waiver of any other provision, whether or not similar, nor shall any such waiver constitute a continuing or subsequent waiver of the same provision. No waiver shall be binding unless executed in writing by the party making the waiver.

31. AUTHORITY TO EXECUTE

The person or persons executing this Agreement on behalf of the Consultant warrants and represents that he/she has the authority to execute this Agreement on behalf of the Consultant and has the authority to bind Consultant to the performance of obligations hereunder.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed the day and year first above written.

CITY OF MOORPARK

CONSULTANT

Troy Brown, City Manager

_____(Name)_____(Title)_

Attest:

Maureen Benson, City Clerk

Exhibit A

INSURANCE REQUIREMENTS

Prior to the beginning of and throughout the duration of Work, Consultant will maintain insurance in conformance with the requirements set forth below. Consultant will use existing coverage to comply with these requirements. If that existing coverage does not meet requirements set forth here, Consultant agrees to amend, supplement or endorse the existing coverage to do so. Consultant acknowledges that the insurance coverage and policy limits set forth in this section constitute the minimum amount of coverage required. Any insurance proceeds available to the City in excess of the limits and coverage required in this Agreement and which is applicable to a given loss, will be available to the City.

Consultant shall provide the following types and amounts of insurance:

Commercial General Liability Insurance using Insurance Services Office (ISO) "Commercial General Liability" policy form CG 00 01 or the exact equivalent. Defense costs must be paid in addition to limits. There shall be no cross liability exclusion for claims or suits by one insured against another. Limits are subject to review but in no event less than \$1,000,000 per occurrence for all covered losses and no less than \$2,000,000 general aggregate.

Business Auto Coverage on ISO Business Auto Coverage form CA 00 01 including symbol 1 (Any Auto) or the exact equivalent. Limits are subject to review, but in no event to be less than \$1,000,000 per accident. If Consultant owns no vehicles, this requirement may be satisfied by a non-owned auto endorsement to the general liability policy described above. If Consultant or Consultant's employees will use personal autos in any way on this project, Consultant shall provide evidence of personal auto liability for each such person.

Workers' Compensation on a state-approved policy form providing statutory benefits as required by law with employer's liability limits no less than \$1,000,000 per accident or disease.

Excess or Umbrella Liability Insurance (Over Primary) if used to meet limit requirements, shall provide coverage at least as broad as specified for the underlying coverages. Coverage shall be provided on a "pay on behalf" basis, with defense costs payable in addition to policy limits. Policy shall contain a provision obligating insurer at the time insured's liability is determined, not requiring actual payment by the insured first. There shall be no cross liability exclusion precluding coverage for claims or suits by one insured against another. Coverage shall be applicable to the City for injury to employees of Consultant, subconsultants or others involved in the Work. The scope of coverage provided is subject to approval by the City following receipt of proof of insurance as required herein. Limits are subject to review.

Insurance procured pursuant to these requirements shall be written by insurers that are admitted carriers in the State of California and with an A.M. Bests rating of A- or better and a minimum financial size of VII.

General conditions pertaining to provision of insurance coverage by Consultant. Consultant and the City agree to the following with respect to insurance provided by Consultant:

1. Consultant agrees to have its insurer endorse the third party general liability coverage required herein to include as additional insureds the City, its officials, employees, and agents, using standard ISO endorsement CG 2010 with an edition prior to 1992. Consultant also agrees to require all contractors and subcontractors to do likewise.
2. No liability insurance coverage provided to comply with this Agreement shall prohibit Consultant, or Consultant's employees, or agents, from waiving the right to subrogation prior to a loss. Consultant agrees to waive subrogation rights against the City regardless of the applicability of any insurance proceeds, and to require all contractors and subcontractors to do likewise.
3. All insurance coverage and limits provided by Consultant and available or applicable to this Agreement are intended to apply to the full extent of the policies. Nothing contained in this Agreement or any other agreement relating to the City or its operation limits the application of such insurance coverage.
4. None of the coverages required herein will be in compliance with these requirements if they include limiting endorsement of any kind that has not been first submitted to the City and approved in writing.
5. No liability policy shall contain any provision or definition that would serve to eliminate so-called "third party action over" claims, including any exclusion for bodily injury to an employee of the insured or of any contractor or subcontractor.
6. All coverage types and limits required are subject to approval, modification, and additional requirements by the City, as the need arises. Consultant shall not make any reductions in scope of coverage (e.g. elimination of contractual liability or reduction of discovery period) that may affect the City's protection without the City's prior written consent.
7. Proof of compliance with these insurance requirements, consisting of certificates of insurance evidencing all of the coverages required and an additional insured endorsement to Consultant's general liability policy, shall be delivered to city at or prior to the execution of this Agreement. In the event such proof of any insurance is not delivered as required, or in the event such insurance is canceled or reduced at any time and no replacement coverage is provided, the City has the right, but not the duty, to obtain any insurance it deems necessary to protect its interests under this or any other Agreement and to pay the premium. Any

premium so paid by the City shall be charged to and promptly paid by Consultant or deducted from sums due Consultant, at the City's option.

8. Certificate(s) are to reflect that the insurer will provide 30 days notice to the City of any cancellation or reduction of coverage. Consultant agrees to require its insurer to modify such certificates to delete any exculpatory wording stating that failure of the insurer to mail written notice of cancellation or reduction of coverage imposes no obligation, or that any party will "endeavor" (as opposed to being required) to comply with the requirements of the certificate.
9. It is acknowledged by the parties of this Agreement that all insurance coverage required to be provided by Consultant or any subcontractor, is intended to apply first and on a primary, non-contributing basis in relation to any other insurance or self-insurance available to the City.
10. Consultant agrees to ensure that subcontractors, and any other party involved with the Work who is brought onto or involved in the Work by Consultant, provide the same minimum insurance required of Consultant. Consultant agrees to monitor and review all such coverage and assumes all responsibility for ensuring that such coverage is provided in conformity with the requirements of this section. Consultant agrees that upon request, all agreements with subcontractors and others engaged in the Work will be submitted to the City for review.
11. Consultant agrees not to self-insure or to use any self-insured retentions or deductibles on any portion of the insurance required herein and further agrees that it will not allow any contractor, subcontractor, Architect, Engineer, or other entity or person in any way involved in the performance of Work contemplated by this Agreement to self-insure its obligations to the City. If Consultant's existing coverage includes a deductible or self-insured retention, the deductible or self-insured retention must be declared to the City. At that time, the City shall review options with the Consultant, which may include reduction or elimination of the deductible or self-insured retention, substitution of other coverage, or other solutions.
12. The City reserves the right at any time during the term of the Agreement to change the amounts and types of insurance required by giving the Consultant 90 days advance written notice of such change. If such change results in substantial additional cost to the Consultant, the City will negotiate additional compensation proportional to the increased benefit to the City.
13. For purposes of applying insurance coverage only, this Agreement will be deemed to have been executed immediately upon any party hereto taking any steps that can be deemed to be in furtherance of or towards performance of this Agreement.
14. Consultant acknowledges and agrees that any actual or alleged failure on the part of the City to inform Consultant of non-compliance with an insurance

requirement in no way imposes any additional obligations to the City nor does it waive any rights hereunder in this or any other regard.

15. Consultant will renew the required coverage annually as long as the City, or its employees or agents face an exposure from operations of any type pursuant to this Agreement. This obligation applies whether or not the Agreement is canceled or terminated for any reason. Termination of this obligation is not effective until the City executes a written statement to that effect.
16. Consultant shall provide proof that policies of insurance required herein expiring during the term of this Agreement have been renewed or replaced with other policies providing at least the same coverage. Proof that such coverage has been ordered shall be submitted prior to expiration. A coverage binder or letter from Consultant's insurance agent to this effect is acceptable. A certificate of insurance and/or additional insured endorsement as required in these specifications applicable to the renewing or new coverage must be provided to the City within five days of the expiration of coverage.
17. The provisions of any Workers' Compensation or similar act will not limit the obligations of Consultant under this Agreement. Consultant expressly agrees not to use any statutory immunity defenses under such laws with respect to the City, its employees, officials, and agents.
18. Requirements of specific coverage features or limits contained in this section are not intended as limitations on coverage, limits, or other requirements nor as a waiver of any coverage normally provided by any given policy. Specific reference to a given coverage feature is for purposes of clarification only as it pertains to a given issue, and is not intended by any party or insured to be limiting or all-inclusive.
19. These insurance requirements are intended to be separate and distinct from any other provision in this Agreement and are intended by the parties here to be interpreted as such.
20. The requirements in this section supersede all other sections and provisions of this Agreement to the extent that any other section or provision conflicts or impairs the provisions of this section.
21. Consultant agrees to be responsible for ensuring that no contract used by any party involved in any way with the Work reserves the right to charge the City or Consultant for the cost of additional insurance coverage required by this Agreement. Any such provisions are to be deleted with reference to the City. It is not the intent of the City to reimburse any third party for the cost of complying with these requirements. There shall be no recourse against the City for payment of premiums or other amounts with respect thereto.
22. Consultant agrees to provide immediate notice to City of any claim or loss against Consultant arising out of the work performed under this Agreement. The

City assumes no obligation or liability by such notice, but has the right (but not the duty) to monitor the handling of any such claim or claims if they are likely to involve the City.