

**MOORPARK CITY COUNCIL
AGENDA REPORT**

TO: Honorable City Council

FROM: David A. Bobardt, Community Development Director 

DATE: November 3, 2011 (CC Meeting of 11/16/2011)

SUBJECT: Consider Third Addendum to the Agreement for Building and Safety Services with Charles Abbott Associates, Clarifying Independent Contractor Status, Allowing for External Access to Electronic Building Permit Records, Providing for Compliance with City Policy against Harassment, Discrimination, and Retaliation, and Reducing Rent

BACKGROUND/DISCUSSION

Charles Abbott Associates (CAA) has been providing the City with Building and Safety services since 1989. The most recent contract with CAA was approved in 2007 after proposals were solicited from 13 firms that provided such services in Southern California. CAA is currently staffing Moorpark with one building official, one building inspector, and one permit technician. Two addenda were made to the contract with CAA in 2010 to adjust rent based on a reduction in space needed and to provide for a mandatory retention on invoices for unfinished work. The current proposed addendum addresses four items, which are discussed below: independent contractor status, allowing for external access to the City's electronic building permit records, providing for compliance with the City's policy against harassment, discrimination, and retaliation, and reducing rent.

Clarification of Contractor Status – The proposed contract amendment provides language for CAA to acknowledge its role as an independent contractor and that employees of the contractor are not entitled to City benefits.

Allowing for External Access to Electronic Building Permit Records – The amendment allows the City to at its sole discretion, provide remote access through a virtual private network (VPN) account to allow CAA employees access from the field to the Building and Safety permit database files located on a City server. This access will improve

efficiency of the building inspector, who would be able to check building records and update them while on the job site. The proposed amendment language would only provide remote access to building records. Safeguards are built in to the amendment language so that the City's files will be protected, and the City could revoke access at any time.

Compliance with City Policy against Harassment, Discrimination, and Retaliation – With the new language, CAA employees would be required to comply with the City Council adopted Policy against Harassment, Discrimination, and Retaliation, including training.

Reducing Rent – Rent to the City is based upon the market rate of \$1.25 per square foot of leasable space which includes support space and office space used by CAA. On July 1, 2011, the City asked CAA to vacate one of its offices that was used for plan storage to provide room for another City consultant. As a result, the total rental space was reduced by 103 square feet, from 389 to 286 square feet, resulting in a reduction in rent payments by \$128.75 per month from \$486.25 to \$357.50. CAA will be credited for the overpayment of rent for the 5 month period from July, 2011 to November 2011, for a total of \$643.75.

In the course of calculating the new rental cost, an error was discovered in the current rental cost, which resulted in a \$100 per month undercharge for the 27 month period from September 2009 to November 2011 for a total of \$2,700.00. CAA will be billed for the rent deficit, minus the difference for rent overpayment for the unused 103 square feet, for a total of \$2056.25. This adjustment will be memorialized in the amendment with deficit to be paid in a lump sum. The new Exhibit D corrects this error, with the new rental fee effective on December 1, 2011.

FISCAL IMPACT

Rent revenues to the City will be reduced by \$128.75 per month due to CAA's reduced space needs.

STAFF RECOMMENDATION

Approve the attached Third Addendum to the Agreement for Building and Safety Services subject to final language approval by the City Manager and City Attorney, and authorize the City Manager to approve future adjustments to the space rental in Exhibit D of the Agreement as warranted by staffing increases or decreases.

ATTACHMENT:

1. Third Addendum to Agreement for Building and Safety Services

**THIRD ADDENDUM TO AUGUST 30, 2007, AGREEMENT FOR
BUILDING AND SAFETY SERVICES**

This _____ day of _____, 2011, Charles Abbott Associates, Inc., a corporation (Consultant) and the City of Moorpark, a general law city (City), entered into this Third Addendum to the Agreement for Building and Safety Services dated August 30, 2007.

IT IS MUTUALLY AGREED by and between the parties as follows:

Section III, GENERAL CONDITIONS, is amended to replace subsection C. in its entirety and add new subsections T., U., and V. as follows:

C. Independent Contractor:

1. 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 or employees or agents of the City, except as set forth in this Agreement for Consultant to serve as an agent to 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.
2. 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.
3. For City business purposes, position titles utilized by Consultant's employees shall be approved by the City Manager or his/her designee. All correspondence and written documents prepared on behalf of the City, including but not limited to letters, memorandums, emails, forms, and permits, shall clearly identify Consultant's employees as employed by Charles Abbott Associates, Inc., to the satisfaction of the City Manager or his/her designee. Additionally, Consultant shall provide its employees with business cards that clearly identify Charles Abbott Associates, Inc. as the employer and include both City and Consultant office contact information to the satisfaction of the City Manager or his/her designee. Consultant shall also provide its employees with metal name badges that include the

employee's name, Charles Abbott Associates, Inc., and "Independent Contractor for City of Moorpark", to the satisfaction of the City Manager or his/her designee. The name badge shall be worn at all times while conducting the business of the City of Moorpark pursuant to this Agreement.

T. Remote Access to City Server:

1. City may, at its sole discretion, provide remote access through a virtual private network (VPN) account to Consultant to allow Consultant employees access from the field to the Building and Safety permit database files located on a City server. Access may include the ability to read files as well as update file data in the Building and Safety permit database. City may revoke remote access at any time for any reason.
2. If VPN remote access is provided by City, Consultant shall be responsible for obtaining and maintaining all portable electronic equipment necessary for remote access. Consultant understands and agrees that City assumes no liability for any malfunction or damage to Consultant's equipment.
3. Consultant understands and agrees that City shall be responsible for issuing individual passwords for VPN remote access to Consultant's employees, that each password issued by City is for the sole use of the person issued that password, and that the password shall not be shared with anyone. Consultant further understands and agrees that the passwords shall not be used for any purpose other than access to the Building and Safety permit database during the City's normal working hours; that any access outside of the City's normal working hours shall require the authorization of the Community Development Director or other designee of the City Manager; and that Consultant shall take reasonable steps to keep passwords secure and to prevent their disclosure, modification, or use by any unauthorized person in a manner to the satisfaction of City. Consultant agrees that its employees shall not save their VPN password into the electronic device used to obtain remote access to the City's Building and Safety permit database, and the VPN password shall be fully entered each time of VPN remote access. The intent of this requirement is to ensure that if an electronic device used to access the City's Building and Safety permit database is lost or stolen, there will be no automatic password access to the City's database by an unauthorized person.
4. Consultant understands and agrees to notify the City immediately when any Consultant employee providing Building and Safety services to the City, who has been issued a password, is no longer providing Building and Safety services to City on behalf of Consultant, and shall also immediately notify City if any electronic device used to access the City's Building and Safety permit database is lost, stolen, or compromised. Consultant also

agrees to provide email correspondence to the Community Development Director on the first Monday of each month, identifying the names of each of Consultant's current employees with a continuing, active VPN remote access to the City's Building and Safety permit database. The intent of this requirement is to ensure the City will have the opportunity to regularly verify Consultant's personnel with authorized VPN remote access to the City's Building and Safety permit database.

5. Consultant understands and agrees to provide written acknowledgement from each employee providing Building and Safety services for the City that the employee has read and agrees to comply with the requirements of this Third Addendum to the Building and Safety Services Agreement; and the Moorpark Administrative Policy (MAP) CM-29: Appropriate Use of City Computer and Related Equipment and Acceptable Internet and E-Mail Use on City's Computer Network, and as may be amended from time to time, when using any City computer equipment, any Consultant-provided computer equipment used on City premises or off-site in the course of work for the City, and any personal computer equipment when used on City premises or off-site in the course of work for the City. For the purposes of this Section, computer equipment includes all stationary and mobile devices capable of accessing the internet, sending or receiving e-mails, or accessing the City's server.

U. Compliance with City Policy against Harassment, Discrimination, and Retaliation:

Consultant understands and agrees to provide written acknowledgement from each employee providing Building and Safety services for the City that the employee has read and agrees to comply with the City Council adopted Policy against Harassment, Discrimination, and Retaliation, and as may be amended from time to time. Consultant agrees to provide at least two (2) hours of classroom or other effective interactive training and education regarding sexual harassment, discrimination, and retaliation to all of its supervisory employees assigned to work for the City, a minimum of once every two (2) years and within six (6) months for a new hire.

V. Adjustment for Rent Under- and Over-Payment for Unused Space:

In consideration of underpayment of rent by \$100.00 per month for the period from September 2009 to November 2011 (\$2,700.00) and overpayment for unused space by \$128.75 from July, 2011 to November, 2011 (\$643.75), Consultant agrees to pay to City \$ 2056.25 within thirty (30) days of the effective date of this agreement.

Exhibit D, RENT, OVERHEAD AND MAINTENANCE, is replaced in its entirety to read as follows:

EXHIBIT "D"
RENT, OVERHEAD AND MAINTENANCE

Table 1 shows the square footage of office and support space for Building and Safety. This rent schedule is effective December 1, 2011. Rent is based upon the market rate of \$1.25/square foot of leasable space. Rent may be adjusted annually by City each July 1 based on a survey of the Moorpark and surrounding area. Notification of increased rent will be given, in writing, at least thirty (30) days prior to July 1.

TABLE 1			
PER PERSON COST PER MONTH	TOTAL SUPPORT SPACE IN SQ. FT. FOR 3 PEOPLE	TOTAL OFFICE SQ. FT UTILIZED	MARKET RENTAL RATE (AT \$1.25/SQ. FT.) PER MONTH
Building & Safety	81 (27 X 3)	205	\$357.50

Table 2 shows the costs for overhead and maintenance per person. This cost schedule is effective December 1, 2011. The calculation of total cost is based upon the four personnel in Building and Safety. Operation and Maintenance costs may be adjusted annually by City each July 1 based upon adjustments in the City costs of operations and maintenance. Notification of increased operation and maintenance cost will be given, in writing, at least thirty (30) days prior to July 1.

TABLE 2					
PER PERSON COST PER MONTH	OPERATIONS AND MAINTENANCE FOR IT	UTILITIES (GAS, ELECTRIC AND WATER)	COPY MACHINE AND SUPPLIES	PHONE	TOTAL COST PER MONTH
Building & Safety	\$337	\$67	\$15	\$40	\$459.00

Except as amended by this Third Addendum, all of the provisions of the Agreement as previously amended shall remain in full force and effect.

IN WITNESS WHEREOF, the parties hereto have caused this Addendum to be executed by their duly authorized officers the day and year first above written.

CITY OF MOORPARK

CHARLES ABBOTT ASSOCIATES, INC.

Janice S. Parvin, Mayor

Rusty R. Reed, President

ATTEST:

Maureen Benson, City Clerk