

**MOORPARK CITY COUNCIL  
AGENDA REPORT**

**TO:** The Honorable City Council

**FROM:** Dave Klotzle, City Engineer/Public Works Director   
Prepared by: Teri Davis, Senior Management Analyst 

**DATE:** November 23, 2011 (CC Meeting of December 7, 2011)

**SUBJECT:** Consider the Selection of MR Consulting for Professional Services Relating to Floodplain Management and Consider Resolution Amending Fiscal Year 2011/12 Budget

**BACKGROUND**

Land development plan check and inspection services for the City of Moorpark (City) are currently provided by RJR Engineering. The City anticipates the need for specialized land development engineering services relating to floodplain management, including review of Conditional Letters of Map Revisions (CLOMRs) and Letters of Map Revision (LOMRs). Additional floodplain services, apart from map reviews, will be needed to coordinate general floodplain management between the City and the Federal Emergency Management Agency (FEMA). MR Consulting has submitted a proposal to perform these specialized engineering services (Exhibit A of Attachment A). MR Consulting would provide personnel for floodplain map reviews, prepare impact reports, coordinate floodplain management efforts between the City and FEMA, and to provide general floodplain management guidance to Staff. MR Consulting has performed floodplain analysis and mapping services for the City in the past and has the personnel to serve the City as needed. A Proposed Agreement for these services is attached (Attachment A).

**DISCUSSION**

While the City anticipates the need for floodplain management services related to land development projects, it is difficult to determine the precise number of hours that will be needed for these services. When the need for floodplain management services arises, a deposit will be collected from the developer to cover the estimated cost of the services.

MR Consulting's cost for the services, plus a 15% City administrative fee would be deducted from the developer's deposit. Any unspent funds would be returned to the developer at the conclusion of the services.

The need for floodplain management services related to land development projects is expected to last no less than five years with an estimated maximum annual cost of \$50,000. Since the Proposed Agreement would be executed in the middle of the current fiscal year, Staff recommends allocating \$25,000 for the current fiscal year and \$50,000 per year for each of the following four fiscal years, or \$225,000 for five years.

**FISCAL IMPACT**

All costs to provide floodplain management services including the 15% City administration fee would be offset by developer deposits collected by the City.

**STAFF RECOMMENDATION** (ROLL CALL VOTE)

1. Authorize the City Manager to execute the agreement with MR Consulting subject to final language approval of the City Manager and City Attorney.
2. Adopt Resolution No. 2011- \_\_\_\_\_

Attachment A – Proposed Agreement  
Attachment B – Draft Resolution

AGREEMENT BETWEEN THE CITY OF MOORPARK AND  
MR CONSULTING, LLC, FOR PROFESSIONAL SERVICES  
RELATING TO FLOODPLAIN MANAGEMENT

THIS AGREEMENT, is made and effective as of this \_\_\_\_\_ day of \_\_\_\_\_, 201\_\_, between the City of Moorpark, a municipal corporation ("City") and, a MR Consulting, a Limited Liability Corporation ("Consultant"). In consideration of the mutual covenants and conditions set forth herein, the parties agree as follows:

WHEREAS, City has the need for floodplain administration 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 November 15, 2011, which is attached hereto as Exhibit A.

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

1. COMPENSATION TO CONSULTANT

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

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

Compensation for the services to be performed by Consultant shall be in accordance with Exhibit B. Payment by City to Consultant shall be in accordance with the provisions of this Agreement.

The fees in compensation to Consultant for services rendered shall be as follows:

A. Floodplain Management Services

For floodplain management services as described in Exhibit A, Consultant shall be paid at an hourly rate pursuant to Exhibit B.

B. Additional Services

In the event that additional services are required of Consultant, Consultant may be authorized to undertake and complete additional work only if additional services are

authorized in writing. Written authorization shall identify the exact nature of the additional services required and a maximum fee to be paid by the City for the completion of the additional services.

Consultant shall not be compensated for any services rendered in connection with its performance of this Agreement, which are in addition to those set forth herein, unless such additional services are authorized in advance and in writing by the City Manager. Consultant shall be compensated for any additional services in the amounts and in the manner as agreed to by City Manager and Consultant at the time City's written authorization is given to Consultant for the performance of said services.

#### C. Hourly Rates

The hourly rates for services provided pursuant to this Agreement shall be those contained in Exhibit B. The hourly rates may be adjusted January 1, 2012 and each subsequent January 1 as follows:

Consultant shall notify City in writing forty-five (45) days or more prior to January 1 of the proposed changes in hourly rates. The proposed change shall be either the change in the Consumer Price Index, using the United States City Average for All Urban Consumers All Items Indexes for the previous twelve-month period (September to September) or five percent (5%), whichever is less. Changes in hourly rates consistent with the above limits shall become effective January 1 unless City notifies Consultant in writing of its intention to reject changes in hourly rates. A written request for changes in hourly rates in excess of the above limits shall be submitted to City forty-five (45) days prior to the proposed effective date and shall require City Council approval to become effective.

#### D. Invoicing and Payment

Consultant shall submit invoices monthly for actual services performed. The invoice format and information contained therein shall be as required by the City. 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. Expenses and reimbursable costs shall be reimbursed for costs stated on receipts or other documentation, plus a fifteen percent (15%) administrative fee, and no additional fees shall be payable by City. Equipment hourly access fees are subject to City Manager approval. 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.

#### E. Fiscal Year Compensation

Compensation to Consultant during fiscal year 2011/12 shall not exceed twenty-five thousand dollars (\$25,000.00). Compensation to Consultant during each following

fiscal year shall not exceed fifty thousand dollars (\$50,000.00) for a total maximum of two hundred twenty-five thousand dollars (\$250,000.00) for the term of this Agreement.

2. TERM

The term of this Agreement shall be from the date of execution until June 30, 2016, unless this Agreement is terminated earlier pursuant 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 Massoud Rezakhani, a registered engineer, 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. 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 thirty (30) 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 ninety (90) 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.

## 6. 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 his/her designee determines that the Consultant is in default in the performance of any of the terms or conditions of this Agreement, he/she 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.

## 7. 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.

## 8. INDEMNIFICATION AND HOLD HARMLESS

**Professional Liability:** Consultant shall indemnify, defend (with counsel reasonably acceptable to City) and hold harmless City, and any and all of its officials, employees, and agents (“the Indemnitees”) from and against any liability (including liability for claims, suits, actions, arbitration proceedings, administrative proceedings, regulatory proceedings, losses, expenses, or costs of any kind, whether actual, alleged or threatened, including attorneys’ fees and costs, court costs, interest, defense costs, and expert witness fees), where the same arises out of, are a consequence of, or are in any way attributable to, in whole or in part, the negligence, willful misconduct, errors or omissions, in performance of this Agreement by Consultant or by any individual, or entity for which Consultant is legally liable, including but not limited to officers, agents, employees, or subcontractors of Consultant, except such damage as is caused by negligence of the City or any of its officials, employees, or agents.

**Other than Professional Liability:** Consultant shall indemnify, defend and hold harmless City, and any and all of its employees, officials, and agents from and against any liability (including liability for claims, suits, actions, arbitration proceedings, administrative proceedings, regulatory proceedings, losses, expenses, or costs of any kind, whether actual, alleged or threatened, including attorneys’ fees and costs, court costs, interest, defense costs, and expert witness fees), where the same arise out of, are a consequence of, or are in way attributable to, in whole or in part, the performance of this Agreement by Consultant or by any individual or entity for which Consultant is legally liable, including but not limited to officers, agents, employees, or subconsultants of Consultant.

Consultant agrees to obtain executed indemnity agreements with provisions identical to those set forth here in this Section from each and every subconsultant, 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.

9. INSURANCE

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

10. 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 or employees, or agents of the City except as set forth in this Agreement. 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.

11. CONSULTANT'S EMPLOYEES

Consultant shall ensure all of Consultant's employees assigned to services provided pursuant to this Agreement shall comply with the Fair Political Practices Commission (FPPC), Conflict of Interest Code reporting, "Statement of Economic Interests" as adopted by City Resolution. Consultant shall report to the City Clerk the names and titles of all employees, new employees, and terminations of employees assigned to this Agreement within two (2) weeks of employment, assignment, reassignment or termination of employment to allow for compliance with FPPC reporting requirements.

During the term of this Agreement and for a period of six (6) months after the term of this Agreement, Consultant agrees not to solicit, recruit, or contact any City employee for the purposes of hiring City employee or for the purposes of retaining City employee to work for Consultant as a consultant. Consultant agrees that if any City employee submits an unsolicited application for employment or consulting work to Consultant and Consultant hires City employee as an employee or consultant, Consultant agrees to pay City a fee of seventy-five thousand dollars (\$75,000) to compensate City for costs associated with recruitment of a replacement, training, temporary interim employees, and other expenses.

## 12. 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. 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.

## 13. 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 handicap, medical condition, marital status or gender of such person, except as provided in Section 12940 of the Government Code. The Consultant shall have responsibility for compliance with this Section [Labor Code Section 1735].

## 14. 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.

## 15. 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 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.

## 16. 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.

17. 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 Avenue  
Moorpark, California 93021

To: Massoud Rezakhani, President  
MR Consulting, LLC  
29830 N. 78<sup>th</sup> Way  
Scottsdale, Arizona 95266

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.

18. 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.

19. 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.

20. 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.

21. 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.

22. 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, including attorneys' fees, from the losing party, and any judgment or decree rendered in such a proceeding shall include an award thereof.

23. 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.

24. 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.

25. 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.

26. 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.

27. 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.

28. 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.

29. 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.

30. 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

MR CONSULTING, LLC

\_\_\_\_\_  
Steven Kueny, City Manager

\_\_\_\_\_  
Massoud Rezakhani, President

Attest:

\_\_\_\_\_  
Maureen Benson, City Clerk

Exhibit A

MR Consulting, LLC – November 15, 2011 Proposal



Dave Klotzle, P.E.  
City Engineer/Public Works Director  
City of Moorpark  
799 Moorpark Avenue  
Moorpark, CA 93021

November 15<sup>th</sup>, 2011

**Subject: Scope of Services for Floodplain Management Review for City of Moorpark**

Dear Mr. Klotzle:

Thank you for continued interest in using MRC LLC to assist with City of Moorpark floodplain management needs. This letter presents our understanding of the scope of services and the terms of our engagement.

MRC LLC will provide floodplain management services for various projects within the City of Moorpark including, but not limited to, review of Conditional Letters of Map Revision (CLOMRs), and Letters of Map Revision (LOMRs). Additional services may include general floodplain management guidance as well as coordination with the Federal Emergency Management Agency (FEMA).

Based on the above description of work, MRC LLC is ready to provide our services to the City of Moorpark.

Anticipated floodplain management services may involve the following tasks:

**Task 1 – Conditional Letters of Map Revision**

A Conditional Letter of Map Revision (CLOMR) is FEMA's comment on a proposed project that would, upon construction, affect the hydrologic or hydraulic characteristics of a flooding source and thus result in the modification of the existing regulatory floodway, the effective Base Flood Elevations (BFEs), or the Special Flood Hazard Area (SFHA).

MRC LLC will review CLOMR requests submitted to the City of Moorpark for community acknowledgement to determine their future impact on existing SFHA within City limits. MRC LLC will also review CLOMR submittals to see if they are reasonable and acceptable for submittal to FEMA for review.

### **Task 2 – Letters of Map Revision**

A Letter of Map Revision (LOMR) is FEMA's modification to an effective Flood Insurance Rate Map (FIRM), or Flood Boundary and Floodway Map (FBFM), or both. LOMRs are generally based on the implementation of physical measures that affect the hydrologic or hydraulic characteristics of a flooding source and thus result in the modification of the existing regulatory floodway, the effective Base Flood Elevations (BFEs), or the Special Flood Hazard Area (SFHA). The LOMR officially revises the Flood Insurance Rate Map (FIRM) or Flood Boundary and Floodway Map (FBFM), and sometimes the Flood Insurance Study (FIS) report.

MRC LLC will review LOMR requests submitted to City of Moorpark for community acknowledgement and to determine their impact on existing SFHA within City limits. MRC LLC will also review LOMR requests to determine if they are reasonable and done with acceptable methods according to FEMA.

### **Task 3 – Coordination with FEMA**

MRC LLC will serve as ongoing liaison between City of Moorpark and FEMA staff and PTS Contractors. This coordination may include, but is not limited to, City of Moorpark review of CLOMR/LOMR's, City of Moorpark status within the NFIP, and general coordination with FEMA Region IX.

### **Task 4 – General Floodplain Management Guidance**

MRC LLC will provide City of Moorpark with guidance in regards to proposed and upcoming FEMA policy changes and advice on how to handle changes as they occur. MRC LLC will also work with City of Moorpark officials in regards to the Community Rating System (CRS). The CRS is a voluntary incentive program that recognizes and encourages community floodplain management activities that exceed the minimum NFIP requirements.

### **Reimbursable Expenses**

City of Moorpark agrees to reimburse MRC LLC for out-of-pocket expenses such as copies and materials needed for submittal along with travel expenses directly involved with coordination. These expenses will be provided at cost plus 15 percent.

### **Schedules**

Upon receipt of an approved task order for each specific review or item of work, MRC LLC will begin development of the above-mentioned tasks.

MRC LLC's services will be provided on a time and expense basis. Charges will include professional fees (commensurate with the level of expertise of the personnel assigned to the project), equipment usage fees, and other out-of-pocket expenses according to our *Schedule of Rates & Charges*, a copy of which is enclosed and made a part hereof by reference.

MRC LLC's services are provided only in accordance with our *Terms and Conditions of Agreement*, a copy of which is enclosed and made a part hereof by reference. It is our understanding that MRC LLC's retention on this project is solely with your organization and all charges (i.e., fees and expenses) incurred by MRC LLC on this project will be the responsibility of your Company, independent of other parties/payees involved. If your organization is not responsible for these charges, please contact me immediately.

Please indicate your understanding and acceptance of the terms of retention by signing and returning a copy of this letter. If you have any questions or require additional information, please do not hesitate to contact me at (602-317-4303). We look forward to continuing our successful history working with the City of Moorpark in addressing floodplain management needs.

Sincerely,

Massoud Rezakhani  
Principal, MRC LLC

Accepted by:

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Authorized Signature

Dave Klotzle, P.E.  
City Engineer/Public Works Director  
City of Moorpark  
799 Moorpark Avenue  
Moorpark, CA 93021

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Date

## Exhibit B

### 2012 MR Consulting, Inc. - Hourly Rates

Principal	\$150.00
Senior Technical Specialist	\$150.00
Project Manager	\$136.00
Senior Hydrologist	\$125.00
Senior Hydraulic Engineer	\$120.00
Senior GIS Analyst	\$106.00
GIS Analyst	\$ 86.00
Clerical II	\$ 50.00

Equipment Charges – Technical equipment may be used to assist Consultant. An hourly access fee is charged for selected equipment. For example, if the scanning electron microscope was used, an hourly access fee would be assessed and invoiced. Hourly access fees may be adjusted in some instances when equipment is dedicated to a project for an extended period of time.

## Exhibit C

### 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.

Professional Liability or Errors and Omissions Insurance as appropriate shall be written on a policy form coverage specifically designed to protect against acts, error or omissions of the Consultant and "Covered Professional Services" as designated in the policy must specifically include work performed under this Agreement. The policy limit shall be no less than \$1,000,000 per claim and in the aggregate. The policy must "pay on behalf of" the insured and must include a provision establishing the insurer's duty to defend. The policy retroactive date shall be on or before the effective date of this Agreement.

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. Any such coverage provided under an umbrella liability policy shall include a drop down provision providing primary coverage above a maximum of \$25,000 self-insured retention for liability not covered by primary but covered by umbrella. 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 Contractor 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 thirty (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 ninety (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. As 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.

RESOLUTION NO. 2011- \_\_\_\_\_

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MOORPARK, CALIFORNIA, AMENDING THE FY 2011/12 BUDGET TO REVISE THE APPROPRIATION AND BUDGET AMOUNTS FOR THE RETENTION OF CONSULTANT FOR FLOODPLAIN MANAGEMENT SERVICES [ENGINEERING FUND (FUND 2620)]

WHEREAS, on June 15, 2011, the City Council adopted the Budget for Fiscal Year 2011/12; and

WHEREAS, a staff report has been presented to the City council requesting a budget adjustment increasing appropriations by the amount of \$25,000; and

WHEREAS, a staff report has been presented to the City council requesting a budget adjustment increasing revenues by the amount of \$28,750; and

WHEREAS, Exhibit "A" attached hereto and made a part hereof, describe said budget amendments and their resultant impacts to the budget line item(s).

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF MOORPARK DOES HEREBY RESOLVE AS FOLLOWS:

SECTION 1. That a budget amendment increasing appropriations by the amount of \$25,000 as more particularly described in Exhibit "A", is hereby approved.

SECTION 2. That a budget amendment increasing revenues by the amount of \$28,750 as more particularly described in Exhibit "A", is hereby approved.

SECTION 3. The City Clerk shall certify to the adoption of this resolution and shall cause a certified resolution to be filed in the book of original resolutions.

PASSED AND ADOPTED this 7th day of December, 2011.

\_\_\_\_\_  
Janice S. Parvin, Mayor

ATTEST:

\_\_\_\_\_  
Maureen Benson, City Clerk

Exhibit A: Budget Revision

**EXHIBIT A**

**BUDGET AMENDMENT FOR  
Engineering Fund  
Provide Specialized Engineering Services for  
Floodplain Management  
FY 2011/12**

**FUND BALANCE ALLOCATION:**

<b>Fund Title</b>	<b>Fund-Account Number</b>	<b>Amount</b>
2620 - Engineering Fund	2620-5500	\$ 25,000.00
2620 - Engineering Fund	2620-5500	\$ (28,750.00)
Total		\$ (3,750.00)

**REVENUE BUDGET ALLOCATION:**

<b>Account Number</b>	<b>Current Budget</b>	<b>Revision</b>	<b>Amended Budget</b>
2620-3844	\$0.00	\$ 25,000.00	\$ 25,000.00
2620-3802	\$ 5,000.00	\$ 3,750.00	\$ 8,750.00
	\$ -	\$ -	\$ -
	\$ -	\$ -	\$ -
	\$ -	\$ -	\$ -
Total	\$ 5,000.00	\$ 28,750.00	\$ 33,750.00

**EXPENDITURE APPROPRIATION:**

<b>Account Number</b>	<b>Current Budget</b>	<b>Revision</b>	<b>Amended Budget</b>
2620-8410-0000-9103	\$0.00	\$ 25,000.00	\$ 25,000.00
	\$ -	\$ -	\$ -
	\$ -	\$ -	\$ -
	\$ -	\$ -	\$ -
Total	\$ -	\$ 25,000.00	\$ 25,000.00

Finance Approval: 