

**MOORPARK CITY COUNCIL
AGENDA REPORT**

TO: The Honorable City Council

FROM: Hugh R. Riley, Assistant City Manager 

DATE: February 6, 2006 (CC Meeting of February 15, 2006)

SUBJECT: Consider Award Contract for Design of the Human Services Center to HMC Architects, Inc.

DISCUSSION

One of the City Council's top ten priority projects is the development of a Human Services Center including facilities to provide medical, dental and mental health services and other social services to the City's low and moderate income families. In April 2001, the City of Moorpark Redevelopment Agency acquired a 7.58 acre site on Spring Road for the Police Services Center. Approximately two acres of that site have been designated as the site for the new Human Services Center and this parcel has been acquired by the City with Community Development Block Grant Funds for that purpose. The proposed facility would include a 10,000 square foot medical clinic, a 15,000 square foot "Under-one-Roof" Building and an area for day laborers to assemble to await opportunities for work.

In May 2004, Staff invited more than 70 Architectural firms to submit proposals for the design and development of site improvements and the conceptual design of the buildings for the Human Services Center. The City received proposals from ten architectural firms. HMC was selected as the top candidate firm.

HMC has completed the design and development of the site improvements and conceptual drawings of the Human Service Center. HMC performed satisfactory and was invited to submit a proposal for full design and construction drawings for both the medical clinic and under one roof building.

HMC's submitted a proposal to provide architectural and engineering services. Staff has prepared a professional services agreement between HMC and the city (Attachment I). The fee for their service is computed at a flat 9.5% of the estimated construction cost. The Architect has estimated the construction cost for the Human Services Center

to be \$7,942,831. Staff will have an independent consulting firm also provide an estimate of the construction cost to compare against the Architect's estimate.

STAFF RECOMMENDATION

Approve professional services agreement with HMC Architects in the amount of \$754,569; authorize the City Manager to execute said contract, subject to final language approval by the City Manager and City Attorney.

Attachment I Professional Services Agreement with HMC Architects

ATTACHMENT I

**AGREEMENT BETWEEN THE CITY OF MOORPARK AND
HMC FOR ARCHITECTURAL DESIGN AND CONSULTING SERVICES**

THIS AGREEMENT is made and entered into on this _____ day of February, 2006, in the County of Ventura, State of California, by and between the City of Moorpark, a municipal corporation, hereinafter referred to as "City", and HMC Architects hereinafter referred to as "Architect".

WITNESSETH

WHEREAS, the Architect has completed the design and development of site improvements and conceptual design of the medical clinic and under one roof building; and

WHEREAS, the City requested a proposal from the Architect for full architectural design and construction drawings for the Human Services Center; and

WHEREAS, pursuant to said request, Architect submitted a proposal, which was accepted by City for services.

NOW THEREFORE, in consideration of their mutual promises, obligations and covenants hereinafter contained, the parties hereto agree as follows:

1. **TERM** - The term of this Agreement shall be from the date this Agreement is made and entered, as first written above, until the completion of services and acceptance by the City of the deliverable products and services as specified in the Final Scope of Work included as attached Exhibit A.
2. **INCORPORATION BY REFERENCE** - All exhibits thereof are hereby incorporated in and made part of this Agreement.
3. **CITY OBLIGATIONS** - For furnishing services as specified in this Agreement, City will pay and Architect shall receive as full compensation therefore, a total sum based on the compensation schedule shown in Exhibit "A", attached hereto and made part of this Agreement. Payments to the Architect shall be made within thirty-five (35) days after receipt of an original invoice and back up materials from the Architect and acceptance of the invoice and back up by the City. Invoices will be considered accepted, if not rejected within 15 days of receipt by the City. The total compensation the Architect shall receive for specified in this Agreement shall not exceed \$754,569.

4. ARCHITECT'S OBLIGATIONS - For and in consideration of the payments and agreements herein before mentioned to be made and performed by City, Architect agrees with City to provide services as specified and to do everything required by this Agreement and Exhibit attached hereto. Architect shall review, coordinate and approve the work of all consultants retained by Architect. Architect shall be responsible for all work performed by said consultants (a) as being complete, (b) as meeting City's and Architect's requirements, and (c) as if it had been performed by Architect. Without limiting the generality of the foregoing, Architect warrants on behalf of itself and all subcontractors engaged for the performance of this Agreement, that only persons authorized to work in the United States, pursuant to the Immigration Reform and Control Act of 1986 and other applicable laws, shall be employed in the performance of the work hereunder.

5. INDEMNIFICATION FOR PROFESSIONAL LIABILITY- When the law establishes a professional standard of care for Consultant's Services, to the full extent permitted by law, CONSULTANT shall indemnify, protect, defend and hold harmless CITY and any and all of its officials, employees, and agents ("Indemnified Parties") from and against any and all losses, liabilities, damages, costs and expenses, including attorney's fees and costs to the extent same as caused in whole or in part by any negligent or wrongful act, error or omission of CONSULTANT, its officers, agents, employees, subconsultants, contractors and subcontractors (or any entity or individual that CONSULTANT shall bear the legal liability thereof) in the performance of professional services under this Agreement.

6. INDEMNIFICATION FOR OTHER THAN PROFESSIONAL LIABILITY- Other than in the performance of professional services and to the full extent permitted by law, CONSULTANT shall indemnify, defend and hold harmless CITY, and any and all of its officials, employees, 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 any 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, subconsultants, or contractors and subcontractors of CONSULTANT.

7. GENERAL INDEMNIFICATION PROVISIONS- CONSULTANT agrees to obtain executed indemnity agreements with provisions identical to those set forth here in this section from each and every subconsultant, contractor and 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 Paragraphs 5 and 6 of this Agreement.

8. INSURANCE - CONSULTANT shall maintain prior to the beginning of and for the duration of this Agreement insurance coverage as specified in Exhibit B attached to and part of this agreement.
9. INDEPENDENT CONTRACTOR – Architect is and at all times shall remain, as to the City, a wholly independent contractor. Architect shall not, at any time or in any manner, represent that he is an officer, employee or agent of the City. Architect shall comply with all applicable provisions of the Worker's Compensation Insurance and Safety Acts and Labor Code of the State of California.
10. AMENDMENTS - Any amendment, modification, or variation from the terms of this Agreement shall be in writing and shall be effective only upon approval by the City Manager.
11. TERMINATION - Architect may terminate this Agreement only for breach of contract by City and upon thirty (30) days written notice. City may terminate this Agreement without cause, and upon thirty (30) days written notice to Architect, in which case Architect shall be entitled to receive compensation for the reasonable value of the Architect's services performed through the termination date.

Furthermore, if, during the term of this Agreement, City determines that Architect is not faithfully abiding by any term or condition contained herein, City shall provide Architect with written notice and said notice must give Architect a 48-hour notice of time thereafter in which to perform said work or cure the deficiency. If Architect has not performed the work or cured the deficiency within the time specified in the notice, or if a similar failure to perform or deficiency is repeated, such shall constitute a breach of this Agreement and City may terminate this Agreement, immediately by written notice to Architect to said effect. In said event, Architect shall be entitled to the reasonable value of its services performed up to the day it received City Notice of Termination, minus any offset from such payment representing the City's damages from such breach. Failure of the Architect to provide the City reports, exhibits, drawings, documents, charts, graphs and other material which meets or exceeds reasonable professional standards, or in a timely manner, shall entitle City to offset against any amounts owed costs incurred by City to replace or obtain such materials or services which meet or exceed reasonable professional standards in a timely manner from other sources.

City reserves the right to delay any post-termination payment until completion or confirmed abandonment of the project, as may be determined in the City's sole discretion, so as to permit a full and complete accounting of costs. In no event shall Architect be entitled to receive remuneration in excess of the compensation quote in its proposal/bid.

12. OWNERSHIP OF DOCUMENTS - Upon completion of any report, study or drawings to be provided by Architect or its consultant(s) in the course of performing the services required in the Request for Proposal, or upon sooner termination of the Agreement, all original material prepared by Architect shall become the sole property of the City and may be used, reused or otherwise disposed of by the City without permission of Architect for work relating to this site only and subject to the restrictions provided in the Business and Professions Code, Section 5536.25. "If the City uses any plans, drawings, or other instruments prepared by architects in performance of this Agreement for any project other than the Human Services Center – City of Moorpark, the City of Moorpark will agree to defend, indemnify and hold harmless HMC Architects, and any of its officers, agents, employees, assigns, and successors in interest from and against any and all suits and causes of action, claims, losses, demands, expenses, including, but not limited to, attorney's fees, and costs of litigation and/or arbitration, damage or liability of any nature whatsoever, for death or injury to any person, including the contractor's employees and agents, or damage to or destruction of any property of either party hereto or of third parties, arising in any manner by reason of the reuse of the architect's plans, drawings,

writings, or other instruments as prepared by the architect, should the same be used for any project other than the Human Services Center – City of Moorpark.

13. ASSIGNMENT/SUCCESSORS - Architect shall not assign this Agreement, or any of the rights, duties or obligations hereunder. It is understood and acknowledged by the parties that the Architect is uniquely qualified to perform the services provided for in this Agreement.
14. ATTORNEY'S FEES – If any action at law or suit in equity, including an action for declaratory relief, is brought to enforce or interpret any provision of this Agreement, the prevailing party shall be entitled to reasonable attorney's fees, court costs, and necessary disbursements, in addition to any other relief to which it may be entitled.
15. COMPLETE AGREEMENT - This written Agreement, including all writings specifically incorporated herein by reference, shall constitute the complete agreement between the parties hereto. No oral agreement, understanding, or representation not reduced to writing and specifically incorporated herein shall be of any force or effect, nor shall any such oral agreement, understanding, or representation be binding on the parties hereto.

In the event of conflict between the terms, conditions, or provisions of this Agreement and any such document or instrument, the City shall be the sole person to decide which document or provision shall govern.

16. TIME OF PERFORMANCE - Time is of the essence in this Agreement.
17. CAPTIONS - The captions of the various sections of this Agreement are for convenience and identification only and shall not be deemed to limit or define the content of the respective sections hereof.
18. ANTI-DISCRIMINATION - In the performance of the terms of this Agreement, Architect agrees that it will not engage in, nor permit such subcontractors as it may employ to engage in, discrimination in employment of persons because of the age, race, color, creed, sex, sexual orientation, national origin, ancestry, religion, physical disability, medical disability, medical condition, or marital status of such persons. Violation of this provision may result in the imposition of penalties referred in Labor Code Section 1735.
19. VENUE - This Agreement is made, entered into, and executed in Moorpark, Ventura County, California, and any action filed in any court of law for arbitration of the interpretation, enforcement and/or otherwise of the terms, covenants and

conditions referred to herein shall be filed in the applicable court in Ventura County, California.

20. AUDIT - City shall have the option of inspecting and/or auditing all records and other written materials used by Architect in preparing its statements to City as a condition precedent to any payment to Architect.
21. 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 grounds that the party prepared the Agreement or caused it to be prepared.
22. 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.
23. CAPTIONS AND HEADINGS – The captions and headings of the various Articles and Paragraphs of this Agreement are for the convenience and identification only and shall not be deemed to limit or define the content of the respective Articles and Paragraphs hereof.
24. NOTICE - All written notices to the parties hereto shall be sent by United States mail, postage prepaid by registered or certified mail and addressed as follows:

Architect: Joe A. Kragelund	City of Moorpark
Address: 766 E. Colorado Blvd., Ste. 200	City Manager
Pasadena, California 91101	799 Moorpark Avenue
24-hour contact number: 626/535-0500	Moorpark, CA 93021
	(805) 517-6215
25. AUTHORITY TO EXECUTE AGREEMENT - Both City and Architect do covenant that each individual executing this Agreement on behalf of each party is a person duly authorized and empowered to execute agreements for such party.
26. CONFLICT OF INTEREST - Neither Architect nor any employees, agents or subcontractors of Architect who will be assigned to this project, to the best of Architect's knowledge, own any property or interest in properties, business relationships or sources of income which may be affected by the performance of

this Agreement. Should either party hereto learn of any such interest, income source or business relationship, such fact shall immediately be brought to the attention of the other party hereto. If the parties thereupon cannot mutually agree upon a means to eliminate the conflict, City may terminate the Agreement immediately on the same conditions applicable per Section 8 hereof.

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

CITY OF MOORPARK

ARCHITECT

Steven Kueny, City Manager

Title: _____

ATTEST:

Deborah S. Traffenstedt, City Clerk

EXHIBIT A



February 6, 2006

Mr. Hugh Riley
Assistant City Manager
City of Moorpark
799 Moorpark Ave.
Moorpark, CA 93021

Regarding: City of Moorpark
Human Services Center
HMC # 2307002-000

Subject: Agreement for Architectural/Engineering Services

Dear Mr. Riley :

HMC ARCHITECTS is pleased to submit the following Agreement to provide Architectural/Engineering Services for the above-mentioned project.

A. Scope of Work:

Human Services Center (HSC) 15,000 SF

Provide full Architectural and Engineering Services for the 15,000 SF one-story Human Services Center. These services will include the full design of the building that will be used for a variety of social facilities for the citizens of Moorpark. Included will be Catholic Charities and First 5 along with other facilities to be determined by the City. The Architect's services will include the building enclosure, demising walls between the various facilities, mechanical, electrical, and plumbing stub outs for each facility. Also included will be the full architectural and interior design of the entire 15,000 sf including built in furniture and finishes. Interior design including colors, materials for the facility will be included. No movable furniture or equipment is to be included. Space in the HSC that is allocated to a specific use will be built out to allow for flexible use of that remaining space.

Clinicas 10,000 SF

Provide full Architectural and Engineering Services for the 10,000 SF one-story Clinicas Building. These will include the full design of the building for this one particular user. Based on programs for three other Clinicas Facilities of different sizes HMC will extrapolate a program that

000015

Hugh Riley
Assistant City Manager
February 6, 2006
Page 2

will fit the 10,000 SF building size. HMC will review the program with Clinicas and get an approval before proceeding to design the facility. HMC will also program each space in the Clinicas facility to determine all MEP requirements and all built-in furnishings. These requirements and furnishings will be included in the Construction Documents. Movable furniture fixtures and equipment will not be included in the Construction Documents Interior design including colors, materials for the facility will be included. HMC will meet with Clinicas to review the progress of the design and to obtain approval of the building layout before proceeding with Construction Documents for the facility.

Site:

The site will be developed with the code-required parking spaces, landscape design, and hardscape design. These items will be included in the construction documents but will be described in a separate document.

Special Considerations:

The project will include working with Southern California Edison's "Savings by Design" program utilizing the "System Approach" to get monetary incentives for providing equipment and systems that conserve energy.

The project will be constructed to allow Catholic Charities, which is currently located on the northeast corner of the site, to continue operations until their new space is available. Afterwards the old facility will be removed and that portion of the site will be constructed to complete the entire project.

B. Compensation:

Fee will be computed at a flat 9.5% of the Computed Construction Cost. The Computed Construction Cost preliminarily estimated to be Seven Million Nine Hundred Forty-Two Thousand, Eight Hundred Thirty-One Dollars (\$7,942,831). Fee preliminarily estimated to be Seven Hundred Fifty Four Thousand, Five Hundred Sixty-Nine Dollars (\$754,569).

000016

Progress payments for Basic Services in each phase shall total the following percentages of the total Basic Compensation payable:

Schematic Design	ten percent (10%)	\$75,457
Design Development	fifteen percent (15%)	\$113,185
Construction Documents	forty percent (40%)	\$301,828
Quality Assurance	five percent (5%)	\$37,728
Agency Compliance	five percent (5%)	\$37,728
Bidding & Negotiation	five percent (5%)	\$37,728
<u>Construction Administration</u>	<u>twenty percent (20%)</u>	<u>\$150,914</u>
Total Basic Compensation	one-hundred percent (100%)	

C. Additional Services:

If Additional Services, such as scope changes, etc. are required beyond the original scope of work, HMC will bill on an hourly basis per Exhibit "A", HMC Rate Schedule attached in the Agreement.

D. Reimbursable Expenses:

Reimbursable expenses including printing, plotting, delivery and other expenses related to Bidding, Agency Review, Construction, or by Owner request are in addition to compensation for Basic and Additional Services. These expenses shall be billed by the Architect to the Owner at 1.10 times the expense incurred by the Architect and/or Architect's Consultants.

E. Other Terms and Conditions of This Agreement:

Reference Attachment " B" of this Agreement.

Hugh Riley
Assistant City Manager
February 6, 2006
Page 4

E. Authorization/Agreement to Proceed:

HMC ARCHITECTS is hereby requested and authorized by Banning Unified School District to provide Architectural/Engineering Services as described above. All the foregoing is agreed to and authorized by:



James L. Gilliam, AIA
Principal
License #C8630

_____ Date

_____ Date

Please review the Agreement and if it meets with your approval, please sign and return one original to my attention.

Sincerely,

HMC ARCHITECTS



Dennis C. Kailey, AIA
Project Manager

Attachments:

Attachment A (Rate Schedule),
Attachment B (Other Terms and Conditions)

cc: L. Eloff, File-CNP

000018

ATTACHMENT "A"
HMC RATE SCHEDULE

Standard Hourly Rate Schedule by Professional Category

(Not all categories need apply to this contract)

	Hourly Rates
Principal	\$ 235.00
Regional Vice President	\$ 215.00
Educational Services	\$ 195.00
Senior Project Manager	\$ 185.00
Senior Healthcare Planner	\$ 185.00
Director of Design	\$ 185.00
Cost Estimator	\$ 165.00
Project Manager	\$ 165.00
Senior Construction Administrator	\$ 165.00
Senior Designer	\$ 155.00
Interior Design Director	\$ 150.00
Designer	\$ 145.00
Graphics	\$ 135.00
Project Leader	\$ 135.00
Technical Services/QA Plan Reviewer/Spec Writer	\$ 135.00
Labor Compliance	\$ 135.00
Interior Senior Designer	\$ 125.00
Construction Administrator	\$ 125.00
Job Captain	\$ 120.00
Senior Drafter	\$ 115.00
Intermediate Drafter	\$ 110.00
Junior Designer	\$ 110.00
Computer Services	\$ 100.00
Interior Design /Project Coordinator	\$ 95.00
Drafter	\$ 95.00
Intern Architect	\$ 85.00
Jr. Interior Designer	\$ 75.00
Construction Administration Support	\$ 75.00
DSA Coordinator	\$ 75.00
Contract Administrator	\$ 75.00
Admin Support	\$ 70.00

These are the current hourly rates effective July 1, 2005 through June 30, 2006 and are subject to change one time annually effective July 1st.

ATTACHMENT "B"

OTHER TERMS AND CONDITIONS

Retainer

An initial payment of zero (-0-) shall be made upon execution of this Agreement and credited to the fee earned at final payment.

Invoicing

The Architect shall invoice its time and reimbursable expenses monthly, and invoices are due and payable upon receipt. Amounts unpaid thirty (30) days after the receipt of the invoice will be subject to a service charge of eighteen percent (18%) per annum. Should the Owner fail to pay current invoices for more than sixty (60) days, the Architect may stop work on the Project until payment is received or terminate this Agreement with the Owner. The Architect shall not be held liable for any damages or losses that may result from such suspension or termination of services according to the provisions set forth in this proposal.

The Owner agrees to return disputed invoices within fifteen (15) days of that invoice with a clear description of the nature of the dispute.

Legal Costs

In the event that legal proceedings between the parties are necessary to enforce the terms of this Agreement, the prevailing party shall be entitled to an award of its litigation costs and expenses, including reasonable attorney's fees.

Project Suspension/Resumption

If the Project is suspended by the Owner for more than thirty (30) consecutive days, the Architect shall be compensated for services performed prior to notice of such suspension. When the Project is resumed, the Architect's compensation shall be equitably adjusted to provide for expenses incurred in the interruption and resumption of the Architect's services. If the project is suspended by the Owner for more than ninety (90) consecutive days, the Architect may terminate the Agreement, by giving not less than seven (7) days written notice.

Termination

Either the Owner or Architect may, for any reason, terminate this Agreement upon not less than seven (7) days written notice to the other party. In the event of termination, the Architect shall be compensated for services performed prior to termination, together with Reimbursable Expenses then due. Termination Expenses are in addition to compensation for Basic and Additional Services and shall be computed as five percent (5%) of the Basic Services and Additional Service Fees.

Owner's Responsibility

The Owner shall provide full information, including a program which sets forth the Owner's objectives, schedule, constraints, and budget, with reasonable contingencies and criteria. The Owner shall also furnish any reports, tests, surveys, inspection or other documentation of information or consultants reasonably requested by the Architect. All of foregoing shall be furnished at the Owner's expense, and the Architect shall be entitled to rely upon the accuracy and completeness thereof.

Architect of Record

Should the Project proceed beyond the phases of services in this Agreement, the Owner shall designate HMC as the Architect of Record for the Project and will enter into a mutually agreeable Owner/Architect Contract for the remaining phases of services to complete the Project.

Ownership of Documents

The Owner acknowledges that the Architect's Drawings, Specifications, and other documents are instruments of professional services. Nevertheless, the Drawings, Specifications, and other documents prepared under this Agreement shall become the property of the Owner upon completion of this Project and upon payment of all amounts due the Architect. The Architect, however, shall be deemed the author of these documents and shall retain all common law, statutory, and other reserved rights, including the copyright. Should the Owner or any other person, firm or legal entity use, reuse or modify the Architects' Drawings, Specifications or other documents prepared under this Agreement, for other than the Owner's use and occupancy of the completed Project, the Owner agrees to indemnify, defend, and hold the Architect harmless from and against any and all claims, liabilities, suits, demands, losses, costs, and expenses, including reasonable attorneys' fees and all legal expenses and fees incurred on appeal, and all interest thereon, accruing or resulting to any and all persons, firms or any other legal entity, on account of firms, or any other legal entity, on account of any damage or loss to property or person, including death arising out of such use, reuse or modification of the Architect's Drawings, Specifications, and other documents, except where the Architect is found to be solely liable for such damages or losses by a court or forum of competent jurisdiction.

Indemnification

The Architect agrees, to the fullest extent permitted by law, to indemnify and hold the Owner harmless from any damage, liability or cost (including reasonable attorneys' fees and costs of defense) to the extent caused by the Architect's negligent acts, errors or omissions in the performance of professional services under this Agreement and the Architect's Consultants or anyone for whom the Architect is legally liable.

The Owner agrees, to the fullest extent permitted by law, to indemnify and hold the Architect harmless from any damage, liability or cost (including reasonable attorneys' fees and costs of defense) to the extent caused by the Owner's negligent acts, errors or omissions and those of the Owner's contractors, subcontractors, agents, or consultants for anyone for whom the Owner is legally liable, and arising from the Project that is the subject of this Proposal.

The Architect is not obligated to indemnify the Owner in any manner whatsoever for the Owner's own negligence.

Limitation of Liability

In recognition of the relative risks and benefits of the project to both the Owner and the Architect, the risks have been allocated such that the Owner agrees, to the fullest extent permitted by law, to limit the liability of the Architect and his or her subconsultants to the Owner and to all construction contractors and subcontractors on the project for any and all claims, losses, costs, damages of any nature whatsoever or claims expenses from any cause or causes, so that the total aggregate liability of the Architect and his or her subconsultants to all those named shall not exceed \$50,000 or the Architect's total fee for services rendered on this project, whichever is greater. Such claims and causes include, but are not limited to negligence, professional errors or omissions, strict liability, breach of contract or warranty.

Insurance

During the term of this Agreement, the Architect agrees to provide evidence of insurance coverage of four million dollars (\$4M). In addition, the Architect agrees to attempt to maintain continuous professional liability coverage for the period of design and construction of this project if such coverage is reasonably available at commercially affordable premiums. The Architect further agrees that the applicable subconsultants will be required to maintain a minimum of one million dollars (\$1,000,000) Errors and Omissions coverage. For the purposes of this Agreement "reasonably available" and commercially affordable" shall mean that more than half the Architect's practicing in this state in this discipline are able to obtain such coverage.

Nothing contained in the Agreement or otherwise is intended to create a fiduciary relationship between the parties.

Mediation

In an effort to resolve any conflicts that arise during the design or construction of the Project or following the completion of the Project, the Owner and the Architect agree that all disputes between them arising out of or relating to this Agreement shall be submitted to nonbinding mediation unless the parties mutually agree otherwise.

The Owner and the Architect further agree to include a similar mediation provision in all agreements with independent contractors and consultant retained for the Project and require all independent contractors and consultants also to include a similar mediation provision in all agreements with subcontractors, subconsultants, suppliers or fabricators so retained, thereby providing for mediation as the primary method for dispute resolution between the parties to those agreements.

Assignment

Neither party to this Agreement shall transfer, sublet or assign any rights under or interest in this Agreement (including but not limited to monies that are due or monies that may be due) without the prior written consent of the other party.

Hazardous Materials

It is acknowledged by both parties that the Architect's scope of services does not include any services related to asbestos or hazardous or toxic materials. In the event the Architect or any other party encounters asbestos or hazardous or toxic materials or toxic mold at the jobsite, or should it become known in any way that such materials at the jobsite, or any adjacent areas that may affect the performance of the Architect's services, the Architect may, at the Architect's option and without liability for consequential or any other damages, suspend performance of services on the project until the Owner retains appropriate specialist consultant(s) or contractor(s) to identify, abate, and/or remove the asbestos or hazardous or toxic materials, and warrant the jobsite is in full compliance with the applicable laws and regulations.

Third Party Contracts

The Owner shall, upon request of the Architect, supply a copy of the executed Agreement with the Owner's Construction Manager or Project Management Firm, relating to services provided under this Agreement.

EXHIBIT B

INSURANCE REQUIREMENTS

Prior to the beginning of and throughout the duration of the 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 the 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 City in excess of the limits and coverage required in this agreement and which is applicable to a given loss, will be available to City.

CONSULTANT shall provide the following types and amounts of insurance:

Commercial General Liability Insurance using Insurance Services Office "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 \$2,000,000 per occurrence.

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 coverage 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. Any such coverage provided under an umbrella liability policy shall include a drop down provision providing primary coverage above a maximum \$25,000 self-insured retention for liability not covered by primary but covered by the 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 City for injury to employees of

CONSULTANT, contractors and subcontractors or others involved in the Work. The scope of coverage provided is subject to approval of City following receipt of proof of insurance as required herein. Limits are subject to review but in no event less than \$2,500,000 per occurrence for commercial general liability insurance.

Professional Liability or Errors and Omissions Insurance as appropriate shall be written on a policy form coverage specifically designed to protect against acts, errors 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.

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 VII.

General conditions pertaining to provision of insurance coverage by CONSULTANT-- CONSULTANT and 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 City, its officials, employees, servants, agents, and independent consultants ("City indemnities"), using standard ISO endorsement No. 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 of subrogation prior to a loss. CONSULTANT agrees to waive subrogation rights against 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 operations limits the application of such insurance coverage.
4. None of the coverages required herein will be in compliance with these requirements if they include any limiting endorsement of any kind that has not been first submitted to City' and approved of 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 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 City's protection without 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 at any time and no replacement coverage is provided, 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 City shall be charged to and promptly paid by CONSULTANT or deducted from sums due CONSULTANT, at City option.
8. Certificate(s) are to reflect that the insurer will provide 30 days notice to City of any cancellation 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 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 subconsultant, is intended to apply first and on a primary, non-contributing basis in relation to any other insurance or self insurance available to City.
10. CONSULTANT agrees to ensure that subcontractors, and any other party involved with the project, who is brought onto or involved in the project by CONSULTANT, provide the same minimum insurance coverage 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 project will be submitted to 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, or other entity or person in any way involved in the performance of work on the project contemplated by this agreement to self-insure its obligations to 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 contract 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 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 City to inform CONSULTANT of non-compliance with any insurance requirement in no way imposes any additional obligations on 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 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 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 City within five days of the expiration of the coverages.

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 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 with 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 project reserves the right to charge City or CONSULTANT for the cost of additional insurance coverage required by this agreement. Any such provisions are to be deleted with reference to City. It is not the intent of City to reimburse any third party for the cost of complying with these requirements. There shall be no recourse against 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. 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 City.