ITEM 9.C.

MOORPARK CITY COUNCIL
AGENDA REPORT

TO: Honorable City Council

FROM: Mayor Patrick Hunter

DATE: November 20, 2006 (CC Meeting of 12/06/2006)

SUBJECT: Consider Modification to City Council Action of August 16, 2006, Pertaining to Agreement for Services with the Moorpark Chamber of Commerce

DISCUSSION

On August 16, 2006, at my suggestion, the City Council unanimously took the following action:

> MOTION: Mayor Hunter moved and Councilmember Harper seconded a motion to approve the 2006/07 Agreement for Services between the City of Moorpark and the Moorpark Chamber of Commerce, subject to final language approval by the City Manager, and as amended to require a Certified Public Accountant to prepare and sign the annual statement to be provided to the City. The motion carried by unanimous voice vote.

Since that time, the Chamber of Commerce has expressed concern with the potential cost to comply with this action. As a result, I have met several times with Chairperson of the Board Debi Aquino on this and other issues. As a result, I propose the following modification: the City's Finance/Accounting Manager, a certified public accountant (CPA), would review the Chamber's finances and submit a report (not a qualified opinion) to the City Council. The Assistant City Manager and Finance/Accounting Manager have previously reviewed the Chamber's financial records and reports and found them to be generally consistent with sound financial practices.

To effectuate this proposal, I recommend the following action (subject to final language approval by the City Manager):

MOTION: City Manager to select a Certified Public Accountant to review the Moorpark Chamber of Commerce's financial records no less than once annually, and prepare and submit a written financial report to the City Council.

STAFF RECOMMENDATION

Approve modified language as contained in this report.

Attachment A–August 16, 2006 Staff Report

Attachment A

ITEM 10.E.

CITY OF MOORPARK, CALIFORNIA
City Council Meeting
DATE 8-16-2006
ACTION Approved Staff Recommendation, as amended
M. Benson

MOORPARK CITY COUNCIL
AGENDA REPORT

TO: **Honorable City Council**

FROM: **Hugh R. Riley, Assistant City Manager**

DATE: **August 4, 2006 (CC Meeting of 8/16/06)**

SUBJECT: **Consider Approval of the 2006-2007 Agreement for Services with the Moorpark Chamber of Commerce**

DISCUSSION

In past years, the City has contracted with the Moorpark Chamber of Commerce for the provision of business development services for local businesses and marketing services. The agreement for 2006-07 is presented here for the City Council's consideration. The current agreement expired on June 30, 2006.

The Agreement provides for an appropriation of $20,000 as compensation for the performance of certain services of benefit to the City as provided in Exhibit A of the Agreement including the sponsorship of certain special community events, the maintenance of specific business hours at the Chamber office, and the publication and distribution of an Annual Business Directory.

In the new agreement, the Chamber agrees to submit quarterly reports to the City Manager on or before the 15th day of October, January, April, and July describing the activities and results achieved pursuant to the agreement for the prior three month period. The reports will include but not be limited to a quarterly financial statement indicating what revenue is received and how funds are expended and what milestones, as outlined in the agreement, have been achieved and when. The report will also include membership information including the total members on that date, the number of new members, and the activities the Chamber undertook to increase/maintain member numbers. The first quarterly report should be submitted no later than October 15, 2006.

Chamber also agrees to submit an annual financial report of its financial statements for each fiscal year as soon it becomes available but no later than six months following the close of the fiscal year.

The Agreement provides that the Chamber will receive $5,000 upon execution of the agreement, with the remaining funds to be distributed as outlined in Exhibit A.

STAFF RECOMMENDATION

Approve the 2006-2007 Agreement for Services between the City of Moorpark and the Moorpark Chamber of Commerce subject to final language approval by the City Manager.

Attachment: 2006 Agreement for Services (Indicating changes from 2005 document)

2006 AGREEMENT FOR SERVICES

THIS AGREEMENT, made and entered into this ____ day of August~~July~~, 2006 by and between the City of Moorpark, a municipal corporation located in the County of Ventura, State of California, hereinafter referred to as "CITY", and the Moorpark Chamber of Commerce, a California Corporation, hereinafter referred to as "CHAMBER"

W I T N E S S E T H

WHEREAS, the City and Chamber have had an Agreement for Services in previous years; and

WHEREAS, the City has budgeted $20,000.00 in Fiscal Year 2006/07 to fund activities and services provided by the Chamber.

NOW, THEREFORE, The parties hereto do agree as follows:

1. Term of Agreement

   This agreement is effective July 1, 2006 and will continue in effect for twelve (12) consecutive months to June 30, 2007 unless sooner terminated as provided hereinafter.

2. Specific Services

   Chamber agrees to perform the services specified in Exhibit A.

3. Compensation

   The fees in full compensation to Chamber for the services rendered shall be as set forth in Exhibit A.

4. Termination

   This agreement may be terminated with or without cause by either party at any time with no less than 30 days written notice of such termination.

5. General Conditions

   A. City shall not be called upon to assume any liability for the direct payment of any salary, wage or other compensation to any person employed by Chamber performing services hereunder for City.

   B. Chamber is and shall at all times remain as to the City a wholly independent contractor. Neither the City nor any of its officers, employees,

servants or agents shall exercise control over the conduct of Chamber or any of Chamber's officers, employees or agents, except as herein set forth. Chamber shall not at any time or in any manner represent that it or any of its officers, employees or agents are in any manner employees of the City.

~~C. Chamber agrees to submit to the City Manager: on or before December 31, 2005, a report describing the activities and results provided pursuant to this agreement for the six month period of July 1, 2005 through December 31, 2005; on or before June 30, 2006, a report describing the activities and results provided pursuant to this agreement for the six month period of January 1, 2006 through June 30, 2006~~

C. Chamber agrees to submit quarterly reports to the City Manager on or before the 15th day of October, January, April, and July describing the activities and results achieved pursuant to the agreement for the prior three month period. The report shall include but not be limited to a quarterly financial statement indicating what revenue is received and how funds are expended and what milestones, as outlined in the agreement, have been achieved and when. The report shall also include membership information including the total members on that date, the number of new members, and the activities the Chamber undertook to increase/maintain member numbers. The first quarterly report shall be submitted no later then October 15, 2006.

Chamber shall also provide City an annual report of its financial statements for each fiscal year as soon it becomes available but not later than 6 months after the close of its fiscal year.

~~D. Chamber shall hold harmless, indemnify and defend the City and its officers, employees,' servants and agents serving as independent contractors in the role of City Manager, Assistant City Manager, Director of Community Development or City Attorney from any claim, demand, damage, liability, loss, cost or expense, for any damage whatsoever, including but not limited to death or injury to any person and injury to any property, resulting from misconduct, negligent acts, errors or omissions of Chamber or any of its officers, employees or agents in the performance of this agreement, except such damage as is caused by the sole negligence of the City or any of its officers, employees, servants or agents.~~

D. Chamber shall indemnify, protect, defend, and hold harmless City and any and all of its officials, employees, and agents from and against any and all losses, liabilities, damages, costs and expenses, including attorney's fees and costs to the extent same are caused in whole or in party by any negligent or wrongful act, error or omission of Chamber, its officers, agents, employees or sub-consultants in the performance of professional services under this agreement.

The City does not, and shall not, waive any rights that it may have against Chamber by reason of Paragraph D hereof, because of the acceptance by the City, or the deposit with the City, of any insurance policy or certificate required pursuant to this agreement. This hold harmless and indemnification provision shall apply regardless of whether or not said insurance policies are determined to be applicable to the claim, demand, damage, liability, loss, cost or expense described in Paragraph E hereof and whether or not any claim, demand, damage, liability, loss, cost or expense described in Paragraph D is covered by insurance.

~~F.~~E. Chamber shall secure from a good and responsible company or companies doing insurance business in the State of California, pay for, and maintain in full force and effect for the duration of this agreement those policies of insurance required by this paragraph and shall furnish to the City Clerk of the City certificates of said insurance on or before the commencement of the term of this agreement. Notwithstanding any inconsistent statement in any of said policies or any subsequent endorsement attached hereto, the protection offered by the policies shall:

1) Name the City and its officers, employees, servants and agents serving as independent contractors in the role of City Manager, Assistant City Manager, Director of Community Development, City Attorney, or other official position as additional insured with Chamber.

2) Insure the City and its officers, employees, and agents while acting in the scope of their duties under this agreement against all claims, demands, damages, liabilities, losses, costs or expenses arising from, or in any way connected with, the performance of this agreement by Chamber or the City.

3) Bear an endorsement or have attached a rider whereby it is provided that, in the event of cancellation or amendment of such policy for any reason whatsoever, the City shall be notified by mail, postage prepaid, not less than ten (10) days before the cancellation or amendment is effective. Chamber shall give City ten (10) days written notice prior to the expiration of such policy.

4) Be written on an Occurrence Basis.

~~G.~~F. Consistent with the provisions of Paragraph E, Chamber shall provide general public liability including property damage insurance in an amount not less than one million dollars ($1,000,000.00) per occurrence and annual aggregate.

~~H.~~G. Consistent with the provisions of Paragraph E, Chamber shall provide workers' compensation insurance as required by the California Labor Code. If any class of employees engaged by Chamber in work under this agreement is not protected by the workers' compensation law, Chamber shall provide adequate insurance for the protection of such employees to the satisfaction of the City.

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

~~J.~~I. Payment to Chamber shall be made by City in accordance with the applicable provisions of Exhibit A.

~~K.~~J. 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 of Moorpark
799 Moorpark Avenue
Moorpark, CA 93021
ATTN: City Manager

To: Moorpark Chamber of Commerce
225 West Los Angeles Avenue
Moorpark, CA 93021
ATTN: Chair of the Board

Either party may, from time to time, by written notice to the other, designate a different address that shall be substituted for the one above specified. Notices, payments and other documents shall be deemed delivered upon receipt by personal service or upon deposit in the United States mail.

~~L.~~K. Nothing contained in this agreement shall be deemed, construed or represented by the City or Chamber or by any third person to create the

relationship of principal or agent, or of a partnership, or of a joint venture, or of any other association of any kind or nature between the City and Chamber.

~~M.~~L. This agreement constitutes the entire agreement of the parties concerning the subject matter hereof and all prior agreements or understandings, oral or written, are hereby merged herein. This agreement shall not be amended in any way except by a writing expressly purporting to be such an amendment, signed and acknowledged by both of the parties hereto.

~~N.~~M. 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.

~~O.~~N. 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 reasonable attorney's fees, from the losing party, and any judgment or decree rendered in such a proceeding shall include an award thereof.

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

~~Q.~~P. This agreement is made, entered into, 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.

~~R.~~Q. The captions and headings of the various Articles and Paragraphs of this agreement are for convenience and identification only and shall not be deemed to limit or define the content of the respective Articles and Paragraphs hereof.

~~S.~~R. In the performance of the terms of this Agreement, Chamber 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, sex, national origin or ancestry, or religion of such persons.

6. Responsible Individual

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The individual directly responsible for Chamber's overall performance of the agreement provisions herein above set forth and to serve as principal liaison between City and Chamber shall be the Chair of the Board.

Upon mutual written agreement of the parties, other individuals may be substituted in the above capacity.

7. City's Agent

The Moorpark City Manager, or his/her designee, shall have the right to review all work to be performed by the Chamber pursuant to this agreement, and shall be the City's agent in this matter.

City of Moorpark:

_____
Steven Kueny,
City Manager

ATTEST:

_____
Deborah S. Traffenstedt
City Clerk

Moorpark Chamber of Commerce:

_____
Chair of the Board

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Exhibit A

SPECIFIC SERVICES AND COMPENSATION

In addition to those items specified in the Agreement, Chamber agrees as follows:

1. To provide and maintain for the duration of the Agreement open office hours a minimum of 5 days per week, 4 hours per day with regular business hours. In addition, an answering machine or service to receive messages when the office is closed.

2. Within the term of the Agreement, publish a 2007 edition business and community directory of all known businesses in the City, regardless of Chamber membership, and provide for general distribution of 11,000 copies of the directory to City residences and businesses without charge. Chamber may utilize information from City's business registration program to augment this effort and shall provide information to verify data. The City shall have a minimum of eight (8) pages in this directory to provide City information and shall have final editorial authority for any content and photographs on the City's pages of a publication that pertain to the City, its projects, activities and programs.

3. Promote tourism in Moorpark including participation in the activities and programs of the Ventura County Tourism Collaborative and other tourism-related activities.

4. Sponsor the following activities or events:

   ~~•Seminars, workshops and resource services to enhance and promote the retail business sector of Moorpark.~~
   ~~•Sponsor activities that serve to promote the commercial/industrial sector of Moorpark.~~
   ~~•Sponsor a major event to provide networking and promotional exposure opportunities for all sectors of business and industry in Moorpark.~~

   a. At least 3 workshops to enhance and promote the retail business sector of Moorpark. Chamber should note on the quarterly report those workshops that satisfy this requirement.
   b. Sponsor at least 2 activities that serve to promote the commercial/industrial sector of Moorpark.
   ~~a.~~c. Sponsor a major event or series of periodic events to provide networking and promotional exposure opportunities for all sectors of business and industry in Moorpark. A "major event" is defined as a Chamber business networking event and is not to be combined with the Annual Apricot Festival.

5. Recognize City co-sponsorship or support of any of these events in promotional literature and other public information. Copies of flyers recognizing the City's co-sponsorship of events should be submitted with the quarterly reports.

6. Upon City request, actively market to Chamber members, all City-sponsored Economic Development Assistance Programs including advertisements in Chamber promotional materials, newsletters, e-mails, fax transmittals and on the Chamber website.

7. Provide at no cost to the City up to 15 attendees at Annual Installation Dinner.

8. Provide at no cost to the City one Booth Space at the Annual Apricot Festival.

9. Provide at no cost to the City up to 5 attendees at the Community Awards Luncheon.

City agrees as follows:

1. Provide information to Chamber from City's business registration listing and other information on an as needed basis about City activities and projects

~~2.Provide the Chamber payments totaling $20,000 as follows:~~
- ~~$5,000 on July 1, 2005~~
- ~~$5,000 on September 1, 2005~~
- ~~$5,000 on January 1, 2006~~
- ~~$5,000 on March 1, 2006~~

2. Provide the Chamber payments* totaling $20,000 as follows:
   - $5,000 on July 1, 2006 *(or upon execution of this agreement, whichever is later)*
   - $5,000 on October 1, 2006
   - $5,000 on January 1, 2007
   - $5,000 on April 1, 2007

3. Co-sponsor the following events:
   - Annual Business Expo
   - Annual Apricot Festival
   - Annual State of the City Address

**payments will be released when quarterly reports are received from the Chamber.*

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