

**MOORPARK CITY COUNCIL
AGENDA REPORT**

TO: The Honorable City Council
FROM: Steven Kueny, City Manager 
DATE: March 9, 2006 (CC Meeting of March 15, 2006)
SUBJECT: Consider Professional Services Agreement with Richard A. Diaz

DISCUSSION:

As you are aware, Richard A. Diaz is scheduled to retire from the Ventura County Sheriff's Department on March 24, 2006. Captain Diaz has served as the City's Chief of Police for over three years and has become familiar with the Moorpark community and our City organization.

The proposed Professional Services Agreement (copy attached) would retain Captain Diaz in a consultant capacity to work on specific projects and assignments for the City. He would initially work in the Assistant City Manager's office with a primary focus on emergency management activities. He would also be available to assist city staff with community relations and economic development activities as well as general administrative assignments.

Between April and June 2006, it is projected that he would provide about 240 hours of service. In the future, such service will be between 400 and 960 hours (statutory maximum for a retiree under PERS) in a fiscal year. The hourly rate under this agreement is \$42.00, increasing to \$45.00 effective July 1, 2006.

STAFF RECOMMENDATION:

Approve the Professional Services Agreement with Richard A. Diaz and authorize the City Manager to sign on behalf of the City.

SK:db
Attachment: Agreement for Professional Services

AGREEMENT FOR PROFESSIONAL SERVICES

THIS AGREEMENT, made and entered into this 3rd day of April, 2006, between the **City of Moorpark**, a municipal corporation, hereinafter referred to as "**CITY**", and **Richard A. Diaz**, hereinafter referred to as "**CONSULTANT**".

WITNESSETH:

WHEREAS, CITY has a need for certain project management services; and

WHEREAS, CITY desires to contract for such services with a private consultant;
and

WHEREAS, City wishes to retain CONSULTANT for the performance of said services.

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

CITY does hereby appoint CONSULTANT in a contractual capacity to perform the services in accordance with the terms and conditions hereinafter set forth and with the authorities and responsibility ordinarily granted to this type of consultant work.

I. COMPENSATION AND SERVICES

The fees in full compensation to CONSULTANT for the services rendered, and an initial list of assignments for which services shall be provided, shall be as set forth in Exhibit "A", Administrative and Management Services. CONSULTANT shall submit payment requests on a monthly basis.

II. TERMINATION

This agreement may be terminated with or without cause by either party at any time with no less than (10) days written notice to CONSULTANT by CITY and no less than thirty (30) days written notice to CITY by CONSULTANT.

In the event of such termination, CONSULTANT shall be compensated for such services up to the date of termination. Such compensation for work in progress shall be limited to actual services performed.

III. 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 CONSULTANT performing services hereunder for CITY.
- B. CONSULTANT is and shall at all times remain as to CITY a wholly independent contractor. Neither CITY nor any of its officers, employees, servants, or agents shall have control over the conduct of CONSULTANT or any of the Consultant's officers, employees, or agents, except as herein set forth.
- C. At the time of termination of this agreement, all original documents, designs, drawings, reports, logos, diskettes, computer files, notes or other related materials, whether prepared by CONSULTANT or his/her sub-contractor(s), or obtained in the course of providing the services to be performed pursuant to this agreement shall be made available to CITY upon 24 hours notice for duplications and retention of duplicates.
- D. CONSULTANT shall hold harmless and indemnify CITY and its officers, employees, servants, and agents 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, of CONSULTANT or any of its officers, employees, or agents in the performance of this agreement, except such damage as is caused by the negligence of CITY or any of its officers, employees, servants, agents or others not under the control of CONSULTANT.

City does not, and shall not, waive any rights that it may possess against CONSULTANT because of the acceptance by CITY, or the deposit with 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 any insurance policies are determined to be applicable to the claim, demand, damage, liability, loss, cost or expense.

- E. In the event CONSULTANT hires employees other than officers, then CONSULTANT shall provide workers' compensation insurance as required by the California Labor Code. If any class of employees engaged by CONSULTANT in work under this agreement is protected by the workers' compensation law, CONSULTANT shall provide adequate insurance for the protection of such employees to the satisfaction of the CITY.
- F. 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.

- G. Payment to CONSULTANT shall be made by CITY within 30 days of receipt of invoice, except for those which are contested or questioned and returned by CITY, with written explanation within 30 days of receipt of invoice. CONSULTANT shall provide to City a written response to any invoice contested or questioned and further, upon request of CITY, provide CITY with any and all documents related to any invoice.
- H. 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
Attn: City Manager
799 Moorpark Avenue
Moorpark, CA 93021

To: Richard A. Diaz
2473 North Grand Avenue
Fillmore, CA 93015

Either party may, from time to time, by written notice to the other, designate a different address, which 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.

- I. Nothing contained in this agreement shall be deemed, construed, or represented by CITY or CONSULTANT 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 CITY and CONSULTANT.
- J. This agreement constitutes the entire agreement of the parties concerning the subject matter hereto and all prior written 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.
- K. 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 a party prepared the agreement or caused it to be prepared.

- L. No waiver of any provision of this agreement shall be deemed, or shall 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.
- M. 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.
- N. Cases involving a dispute between CITY and CONSULTANT may be decided by an arbitrator if both sides agree in writing to arbitration and on the arbitrator selected, with costs proportional to the judgment of the arbitrator.
- O. 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 to herein, shall be filed in the applicable court in Ventura County, California.
- P. 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.
- Q. CONSULTANT agrees that he has no interest, nor shall he acquire any interest, directly or indirectly, which will conflict in any manner or degree with the performance of the services hereunder. CONSULTANT further agrees that he 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 partnerships and/or public agencies owning property and/or processing an entitlement application for property in the CITY or its Area of Interest, and further agrees that he shall provide no service or enter into any contract with any developer(s) and/or property owner(s) and/or firms(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, prior to completion of the term of this Agreement.

CONSULTANT further agrees he shall provide no service or enter into any contract with any individual or entity that has a contract to provide

services, materials, or equipment to CITY without the prior written consent of the City Manager.

- R. CONSULTANT agrees that he shall not provide a reference or response to personnel and work experience related inquiries pertaining to any current or prior employees of City and shall refer all such matters to the City's Human Resources office.
- S. If any portion of this agreement is held by a court of competent jurisdiction to be invalid, void, or unenforceable, the remaining provisions will nevertheless continue in full force without being impaired or invalidated in any way.

IV. RESPONSIBLE INDIVIDUAL

The individual directly responsible for CONSULTANT'S overall performance of the contract provisions herein above set forth and to serve as principal liaison between CITY and CONSULTANT shall be Richard A. Diaz.

The individual directly responsible for the CITY shall be the City Manager or his/her designee.

V. EFFECTIVE DATE AND IMPLEMENTATION DATE

The effective date of the agreement shall be April 3, 2006.

CITY OF MOORPARK

CONSULTANT

By _____
Steven Kueny
City Manager

Richard A. Diaz

Date _____

Date _____

EXHIBIT A

ADMINISTRATIVE AND MANAGEMENT SERVICES

A. Services

The services to be provided by CONSULTANT shall include assisting CITY staff with emergency management, homeland security, code compliance, economic development, and community relations activities and programs and general administrative and management assignments.

B. Assignments

Assignments shall be provided to CONSULTANT in writing.

C. Monthly Status Reports

CONSULTANT shall provide the CITY a Monthly Status Report listing all of the active assignments to date, the scope and nature of each assignment, the scope and nature of the services to be provided for each assignment, the work performed during the billing period and the status of the assignment to date.

D. Compensation

1. Hourly Rate: \$42.00 [To be increased to \$45.00 effective 7/1/2006]
2. Maximum hours per fiscal year: 960
3. Reimbursable Costs: Actual Cost of preapproved items
4. Travel Within the County: None
5. Travel Outside the County: Use of his personal vehicle to attend meetings or other purposes in fulfillment of this Agreement shall be paid on a per mile basis consistent with applicable published IRS rates for the Los Angeles/Ventura area. Travel distance shall be measured from Moorpark, or the CONSULTANT'S residence, whichever is less. Requests for payments of these costs shall be made in the same manner as compensation for services under this Agreement.

E. General Provisions

1. Nature of Services: It is understood that CONSULTANT'S services are being provided to CITY using the best knowledge, experience and expertise of the CONSULTANT to expedite project

assignments and delivery in an efficient and effective manner. However, CONSULTANT shall not be responsible for the accuracy, performance, or actions of the CITY, or other consultants, contractors, utilities, other public agencies or any other person(s). CONSULTANT shall serve in an advisory capacity to the CITY.

2. Insurance: CONSULTANT shall provide the CITY with a Certificate of Insurance showing proof of automobile liability and property damage insurance coverage for limits amounts acceptable to the City. Said Insurance Certificate shall name the CITY as "Also Insured". CONSULTANT shall not be required to provide any other insurance coverage to the CITY.
3. Facilities and Clerical Assistance: CITY shall provide a work space and related office equipment for CONSULTANT as deemed appropriate and clerical assistance for access and management of City records related to services provided by CONSULTANT.
4. Cell Phone: CONSULTANT at his sole expense shall maintain a cell phone with voice mail and paging capabilities and with a phone number within the 805 area code.

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