

**MOORPARK CITY COUNCIL
AGENDA REPORT**

TO: Honorable City Council

FROM: Yugal K. Lall, City Engineer/Public Works Director 

DATE: March 9, 2009 (CC meeting of 03/18/09)

SUBJECT: Consider the Selection of RJR Engineering to Provide Engineering Services

BACKGROUND

Engineering Services for the City were provided by Charles Abbott Associates, Inc (CAA), until January 14, 2009. CAA continues to provide Building and Safety services for the City. In September 2008, after notification by CAA of the termination of their contract staff requested proposals from qualified firms for engineering services. Two proposals were received and reviewed and staff is recommending RJR Engineering (RJR) to perform the engineering services for the City. The personnel as provided by RJR are qualified and experienced in engineering services. RJR would provide personnel for complete engineering including tract map and plan check, inspection services, geotechnical and geological reviews. RJR is currently providing similar services for the City of Santa Paula and Calabasas and has the personnel to serve the City on full time or part time basis as needed. Reference checks of RJR were very good. RJR is prepared to commence work as soon as possible at the rates that were charged by CAA. Additionally RJR has committed to complete the outstanding projects that were near completion and assume responsibility as plan check engineer for the amount of fees remaining for each outstanding project. The City has been providing these services in-house since mid-January.

DISCUSSION

Development Project Status: There are about 10 active projects requiring engineering services. In some instances where the plan checks have been completed but the permits have not been issued due to the current state of the economy or for whatever other reason the developer runs the risk of increased costs for additional plan checks due to change in standards and updates of codes. In those instances, the project developer will be made

aware of the needed changes and additional fees. It should be noted that requests for additional fees have been made to the developers of TR5130, TR5463, TR5437, however the fees have not been paid to date.

Provision of Engineering Services: Since mid-January the City's Assistant Engineer position has been utilized for inspection of development projects as well as issuance and administration/inspection of encroachment permits. Based on current and projected workloads, this requires about 40% of the available time. The balance of available time is spent on various capital projects and other departmental assignments. The Building and Safety Technician provided by CAA has been assisting with the issuance of encroachment permits. This service is available because of reduced workload in both Building and Safety and Engineering. This time is charged to Engineering. During this time the need for plan check services has been minimal and has been performed by the City Engineer and Assistant City Engineer as needed.

It is now proposed that an outside consultant be hired to provide the improvement plans and map check services. The City's Assistant Engineer and CAA Building and Safety Technician, will continue to provide inspection and encroachment permit services as described above.

RJR has agreed to the same agreement the City had with CAA with a few exceptions;

1. City will provide inspection services and issue encroachment permits until the development activity warrants a full time inspector. RJR will provide inspection services as requested by the city.
2. RJR will not have regular hours nor be required to rent office space from the City until development activity requires them to provide full time presence at the City Hall. RJR will be available at City Hall on an appointment basis as needed.
3. RJR will provide complete engineering services including geotechnical and geological reviews. CAA hired a sub consultant to perform these services.
4. RJR will be available by phone during regular working hours to answer questions from the City and developer's engineer.

FISCAL IMPACT

Based on the invoices submitted from CAA, through the end of CAA contract January 14, 2009 there is a balance of approximately \$150,000 in developer fees for plan check and inspection services for all developments projects. With a few exceptions, the existing fees are projected to be sufficient for completion of plan checking and inspections. RJR has agreed to provide the necessary remaining plan check (limit to 4) services for the remaining fees for each project. As new projects are submitted, the plan check/inspection fees currently in place would cover all related engineering services.

The Assistant Engineer position will be now be partially funded by developers/permits fees

rather than the general fund and gas tax/TDA.

STAFF RECOMMENDATION

1. Approve the selection of RJR Engineering to perform Engineering Services.
2. Authorize the City Manager to sign the agreement for Engineering Services with RJR Engineering, subject to final language approval by the City Manager and City Attorney.

Attachment

1. Draft agreement

**AGREEMENT
FOR
ENGINEERING SERVICES**

THIS AGREEMENT, made and entered into this _____ day of _____, 2009, 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 RJR Engineering Group, a California Corporation, hereinafter referred to as "CONSULTANT."

WITNESSETH

WHEREAS, CITY has the need for certain municipal engineering services; and

WHEREAS, CITY desires to contract for such services with a private consultant in anticipation that said private consultant can provide such services in a manner acceptable to CITY; and

WHEREAS, CONSULTANT is experienced in providing such services for municipal corporations and is able to provide personnel with the proper experience and background to carry out the duties involved; 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 certain functions of a municipal engineering office, and to perform the services in accordance with the terms and conditions hereinafter set forth in Exhibit "A".

I. COMPENSATION TO CONSULTANT

The fees in full Compensation to CONSULTANT for the services rendered shall be as follows:

A. Development Engineering

For the services set forth in Exhibit "A", Section A, these services shall be provided at no cost except those items of work determined by the City Manager or his/her designee to encompass a level of effort necessitating additional compensation. Such items of work shall be authorized in advance by a written Additional Services Authorization (ASA) signed by the City Manager or by his/her designee.

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B. Plan Checks

For services provided as described in Exhibit "A", Section B, a seventy percent (70%) fixed fee, of the current fees collected by CITY. Progress payments shall be made accordingly:

Fifty percent (50%) of fee upon completion of the first plan check; an additional twenty-five percent (25%) upon completion of the second plan check; an additional twenty-five percent (25%) upon completion of the third and final plan check. Completion of the final plan check shall occur when signed by the City Engineer or such other City employee designated by the City Manager.

C. Land Development Review

1. For review and conditioning of tentative maps, development plans, general plan amendments, zone changes and similar entitlements CONSULTANT will receive a fee of Five Hundred Dollars (\$500.00) for small entitlements such as tentative maps of less than ten (10) lots and commercial and industrial developments of less than 5,000 square feet. For entitlements in excess of ten (10) lots and commercial and industrial development in excess of 5,000 square feet services CONSULTANT will receive a fee of Two Thousand Five Hundred Dollars (\$2,500.00).

2. For projects requiring special, hydrological, geological, or other analysis beyond the usual review, CONSULTANT shall receive additional compensation for actual cost for preparation or review of such analysis. For such service, CONSULTANT shall provide CITY with a quotation. No services shall be authorized until written CITY approval is granted and an ASA is signed by the City Manager or his/her designee. The environmental checklist for a project will be used as a guide for projects this additional level of review. The services provided by CONSULTANT pursuant to this Paragraph C. shall be performed in a timely manner to allow City compliance with the processing requirements of the Permit Streamlining Act. CONSULTANT may choose to contract for such special services.

D. Public Works Encroachment Permits

For services provided in Exhibit "A", Section C, processing and issuance of public works encroachment permits, a seventy percent (70%) fixed fee, of the current fees collected by CITY. Payment will be made based upon the fees collected during each calendar month. This service shall be suspended as of the effective date of this Agreement and shall be reinstated upon mutual written agreement between CITY and CONSULTANT. When this service is reinstated it shall be pursuant to the terms of this Paragraph D.

E. Land Development Inspection (Construction Observation)

For services provided as described in Exhibit "A", Section D, a seventy percent (70%) fixed fee, of the current fees collected by CITY. Progress payments shall be made according to the current hourly fee schedule, not to exceed ninety-five percent (95%) of

the total fee, until recommendation of final acceptance of the project is made by the CONSULTANT to the City Engineer (in the event the City Engineer is not a City employee, then the City Manager or his or her designee), at which time the remainder of the fixed fee shall be invoiced as part of the next billing cycle. This service shall be suspended as of the effective date of this contract and shall be reinstated upon mutual written agreement between CITY and CONSULTANT. When this service is reinstated it shall be pursuant to the terms of this Paragraph E.

F. The Hourly Rates of the CONSULTANT shall be as provided in Exhibit "B".

The hourly fee rates for services provided pursuant to Paragraphs C., D., E., and F. of this Agreement shall be those contained in Exhibit "B". Said rates may be adjusted July 1, 2010 and each subsequent July 1 as follows:

CONSULTANT shall notify CITY in writing forty-five (45) days or more prior to July 1 of the proposed changes in said hourly rates. The proposed change shall be either the change to the Consumer Price Index, using the U.S. City Average for All Urban Consumers All Items Indexes for the previous 12 month period (April to previous April or seven percent (7%), whichever is less. Said changes consistent with the above limits shall become effective July 1 unless CITY notifies CONSULTANT in writing of its rejection of the intended changes in hourly rates. A written request for changes in excess of the above limits must be submitted to CITY forty-five (45) days prior to the proposed effective date and requires City Council approval to become effective.

G. CITY shall make payment to CONSULTANT within thirty (30) days of receipt of invoices, except for those invoices which are contested or questioned, in writing, and are returned to CONSULTANT within thirty (30) days of receipt of invoices.

II. TERMINATION

This Agreement may be terminated by CONSULTANT when CITY is provided a written notice ninety (90) days in advance of such termination. CITY may terminate this Agreement with or without cause at any time with thirty (30) days written notice of such termination. 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 would be pro-rated as to the percentage of progress completed at the date of termination.

III. GENERAL CONDITIONS

A. 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 subcontractor. 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 partnerships 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 subcontractors 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 of Moorpark and for a one-year time period following termination of this Agreement.

B. CITY assumes no liability for the payment of any salary, wage or other compensation to any person employed by CONSULTANT performing services hereunder for CITY.

C. CONSULTANT is, and shall at all times remain as to CITY, a wholly independent contractor. For City business purposes, position titles utilized by CONSULTANT'S employees shall be approved by the City Manager or his/her designee. All correspondences on City letterhead, via City emails, and use of City business cards shall identify CONSULTANT as an independent contractor. Neither CITY nor any of its officers, employees or agents shall have control over the conduct of CONSULTANT or any of CONSULTANT officers, employees or agents, except as herein set forth. 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 employees of CITY. 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 the CITY and CONSULTANT.

D. All original documents, plans, designs, drawings, inspection reports, logs, computer files, notes and other related materials prepared or obtained in the course of providing the services performed pursuant to this Agreement are the sole property of CITY. In the event of termination of this Agreement in accordance with Article II of this Agreement, and upon written request from CITY, CONSULTANT shall deliver in good condition and in a manner prescribed by CITY all such property within 10 (ten) working days of the written request. Original files of the City shall not be located offsite of City premises, unless the written permission of the City Engineer and/or City Clerk is obtained, and the files remain fully accessible to the City and its officials, employees, and agents.

E. Hold Harmless and Indemnification Provisions:

1. 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, agents, and independent contractors ("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.

2. 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, agents, and independent contractors 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.

3. 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.

4. 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 1 and 2 of this Section.

F. CONSULTANT shall maintain prior to the beginning of and for the duration of this Agreement insurance coverage as specified in Exhibit "C" attached to and part of this Agreement.

G. CONSULTANT shall not assign this Agreement or any of the rights, duties or obligations hereunder. It is understood and acknowledged by the parties that

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CONSULTANT is uniquely qualified to perform the services provided for in this Agreement.

H. CONSULTANT availability to the public shall be by appointment only at City Hall during the hours of 8:00 a.m. and 5:00 p.m. until such time as changed by mutual written agreement by CITY and CONSULTANT. Once changed by mutual agreement CONSULTANT shall have its hours of operation open to the public for the issuance of permits and other related services between 8:00 a.m. and 5:00 p.m. each City workday and shall observe the same holidays as CITY, unless otherwise approved in writing by the City Manager or his/her designee. CONSULTANT does not require rental of any office space and support services from CITY at this time. In the event office space and support services are required CITY shall provide CONSULTANT office space and support services for normal office operation between 8:00 a.m. and 5:00 p.m. each City workday. CONSULTANT agrees to pay CITY monthly rent prior to the fifth day of each month, along with overhead charges for the use of City offices, equipment, technical support services, computer maintenance, software, software maintenance and other associated costs with running an office consistent with City's applicable cost allocation plan and overhead allocation.

I. CITY shall assign CONSULTANT staff city email addresses and make access via the internet available to CONSULTANT staff. Unless approved by the City Manager in writing, access to CITY network shall be limited to Outlook software for email, calendar, contacts and FileMaker Pro software for tracking of engineering permits.

J. CONSULTANT will ensure all of his/her employees assigned to this Agreement comply with the Fair Political Practices Commission, Conflict of Interest Code reporting, "Statement of Economic Interests," as adopted by City Resolution.

K. CONSULTANT will report to the City Clerk the names and titles of all employees, new employees and terminations of employment assigned to this Agreement within two (2) weeks of said employment, or termination to allow for compliance with reporting requirements under Conflict of Interest reporting mandated deadlines.

L. During the term of this contract, and for a period of six months after the term of this contract, CONSULTANT agrees not to solicit, recruit, or contact any City employee for purposes of hiring such employee or for purposes of retaining such 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 such City employee as an employee or consultant, CONSULTANT shall pay to City a fee of Seventy-Five Thousand Dollars (\$75,000.00) to compensate CITY for costs associated with recruitment of a replacement, training, temporary interim employees, and other related expenses.

M. 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.

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N Any notice to be given pursuant to this Agreement shall be in writing and all such notices and any other document to be delivered must 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 who intended as follows:

TO: City of Moorpark
799 Moorpark Avenue
Moorpark, CA 93021
Attn: City Manager

TO: RJR Engineering Group
1956 Palma Drive, Suite J
Ventura, CA 93003
Attn: Robert W. Anderson, NSPE, RCE, JD, GC

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.

O. 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 written amendment, signed and acknowledged by both of the parties hereto.

P. 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.

Q. 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.

R. 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.

S. This Agreement is made, entered into, executed and is to be performed in Moorpark, 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.

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T. 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.

IV. RESPONSIBLE INDIVIDUAL

The individual in responsible charge for the performance of the duties set forth herein shall be Robert W. Anderson, NSPE, RCE, JD, GC, a Registered Civil Engineer No. 58383, and Al Echarren, a Licensed Land Surveyor No. 4137.

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

In the event of a vacancy in the City Engineer position of the City, the City Manager may appoint an employee or officer of CONSULTANT as Acting City Engineer. CONSULTANT agrees to perform the responsibilities of City Engineer consistent with the terms of this Agreement and applicable state law.

V. IMPLEMENTATION

CITY shall provide CONSULTANT with written notice in advance of the date at which these services are to be implemented if different than the date of the Agreement.

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

CITY OF MOORPARK

RJR ENGINEERING GROUP

Janice S. Parvin
Mayor

Robert W. Anderson
Principal Engineer

ATTEST:

Deborah S. Traffenstedt
City Clerk

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EXHIBIT "A"
SCOPE OF SERVICES

A. DEVELOPMENT ENGINEERING

1. When requested by the City Manager or his/her designee, CONSULTANT will attend regular and special City Council and Planning Commission meetings and meetings with City staff, public officials, community leaders, developers, contractors, and the general public.
2. CONSULTANT will provide to the City Manager or his/her designee, general comments and/or conditions on private and public development applications, planning programs and land development controls, including reports from other agencies.
3. When requested by the City Manager or his/her designee, CONSULTANT will provide general technical advice on engineering and public works activities.
4. CONSULTANT will advise the City as to development engineering and construction financing available from other governmental agencies.
5. CONSULTANT will establish working relationships and coordination with all other public agencies and private utilities involving engineering matters affecting City of Moorpark.
6. When required, CONSULTANT will analyze City's general needs and make general recommendations pertaining to long and short-range maintenance and improvement programs consistent with the economic capabilities of the City.
7. When required, CONSULTANT will provide general engineering consultation in connection with problems such as construction traffic control, street signs, street maintenance programs, flood control, etc.
8. When necessary, CONSULTANT will review and provide general comments on development regulations, development fees and ordinances pertaining to engineering matters.
9. CONSULTANT will provide comments pertaining to controls on land development projects including, but not limited to scope of work on proposed General Plan amendments and updates to various elements, Subdivision Map Act revisions, and revisions to the City's Subdivision Ordinance.
10. CONSULTANT will assemble and maintain on-site such records as are customarily maintained by a municipal engineering office for its contracted functions. Such records shall at all times be the property of the City and shall be open for City inspection. Such records shall be organized and neatly filed in accordance with normal engineering practices and filing standards established by

CITY. At a minimum, the files will be organized in a system that has been approved by CITY and shall include one copy of the final approved or recorded map or site plan, all correspondence on the project, a copy of the issued grading permit, encroachment permit, bonds and other pertinent material to the development of the project as determined by the City Manager or his/her designee. No destruction of original City records shall occur unless written approval of the City is obtained in accordance with the requirements of State law and established City Council policy.

11. CONSULTANT will cooperate with and respond to inquiries from CITY and its contractual firms for investigating claims against CITY and, as determined by City, provide reports, statements and/or other requested information in a timely manner.
12. Provide assistance in the preparation for legal and/or actions related to Development Engineering functions including attendance at closed sessions and depositions, but excluding preparation for and attendance at court and arbitration proceedings.
13. Provide assistance to CITY's Code Compliance Division, when requested, regarding compliance with grading requirements of the California Building Code.
14. Annually assist with the preparation of development engineering, public works and capital improvements budgets.
15. Provide reports, documentation and analysis as requested by the City Manager or his/her designee.
16. Respond to requests by City's internal and external auditors for information regarding charges, fees, project costs or other services which are provided. CONSULTANT will maintain all records in conformance with generally accepted accounting principles and the requirements on OMB Circular A-87.
17. On a weekly basis maintain the Excel based Engineering Permit Monitor of the status of all engineering services including, but not limited to development projects, inspections, plan check status, and bonds. CONSULTANT shall provide weekly electronic copies to all department heads, the Deputy City Manager, the Assistant City Manager and the City Manager or his/her designee through the City's email system.
18. Advise CITY on availability of grant funding applications from federal, state, and regional agencies for traffic safety studies and improvements.
19. When CONSULTANT has offices at City Hall, CONSULTANT will provide computer hardware and software consistent with the City's network for each company employee to the satisfaction of the City of Moorpark Information Systems Division and the City Manager or his/her designee.

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B. PLAN AND MAP CHECKING (REVIEW)

Plans and supporting documents will be picked up by CONSULTANT the day following submittal to CITY. CONSULTANT will provide CITY with plan check copies as required in B.4. below. CITY will be responsible for delivery of plan check copies to the permit applicant.

1. CONSULTANT will review and check Final Maps, Parcel Maps, grading plans, and soils reports for compliance with State Map Act, City ordinances, conditions of approval, Development Agreements and sound engineering practices.
2. CONSULTANT will check all improvement plans prepared by private developers for facilities under the jurisdiction of the CITY.
3. CONSULTANT will establish the required performance, labor and material bond amounts and accept the posting of such securities as part of the development process.
4. All plans shall ready for permit issuance at the conclusion of the third plan check. The following minimum plan check turnaround times will apply.
5. CONSULTANT shall sign maps and improvement plans per Subdivision Map Act and Business and Professions Code if applicable:
 - a. **First plan check:** Within twenty (20) business days after submission of a completed set of plans.
 - b. **Second plan check:** Within ten (10) business days after submission of requested changes.
 - c. **Third plan check:** Within five (5) business days after submission of requested changes.

Additional plan checks beyond the third plan check shall only be permitted when approved in advance by the City Manager or his/her designee. Recovery of cost for such plan check shall be at the billing rates shown in Exhibit B. Recovery of costs beyond the fourth plan check may be reduced to less than one hundred percent (100%) if the City Manager or his/her designee determines that the need for the additional plan check is the fault of CONSULTANT.

C. ENCROACHMENT PERMITS

CITY will receive process, issue, and provide construction observation for encroachment permits. At a time mutually agreed upon in writing by CITY and CONSULTANT, CONSULTANT will receive, process, issue, and provide construction observation for encroachment permits. CONSULTANT shall provide CITY monthly with

a list of all new encroachment permits for the previous month showing the location of said encroachment, the date of issuance, property owner and encroachment permit number. Annually CONSULTANT shall provide CITY with a listing of all active encroachment permits showing the location of said encroachment, the date of issuance, property owner and encroachment permit number.

D. LAND DEVELOPMENT INSPECTION (CONSTRUCTION OBSERVATION)

Land development inspection (construction observation) will be provided by CITY. At a time mutually agreed upon in writing by CITY and CONSULTANT, CONSULTANT will perform the following:

1. CONSULTANT will provide field inspection during the construction of public works improvements by private developers and at the proper time, recommend notices of completion and, acceptance of work including reports concerning exoneration of bonds or other surety.
2. CONSULTANT will report to the City Manager or his/her designee obstructions, potholes, unsafe traffic control signing or other easily observable public safety items that may be observed in driving to and from the site of inspections.

E. GEOLOGY AND SOILS ENGINEERING

CONSULTANT will provide consulting geology and soils engineering specialties as part of Sections A, B, C, and D. These services will be provided by plan check turnaround times for geology and soils engineering and shall conform to the requirements for Plan and Map Checking in Section B and run concurrently with the overall project plan check.

F. CAPITAL IMPROVEMENT PROJECTS

CONSULTANT will perform the following, when authorized in writing with an ASA:

1. Prepare plans, specifications and cost estimates for CITY projects.
2. Provide a design survey; construction survey; and construction administration and observation of CITY projects.
3. Provide special engineering reports regarding such matters as assessment district formation, annexations, etc.
4. Check plans, specifications and cost estimates, as well as provide construction administration and observation for CITY projects designed by others.
5. Process plans, specifications and permits through other agencies for review and approval.
6. Perform other duties assigned relating to traffic and transportation engineering.

G. ASSESSMENT ENGINEERING

CONSULTANT will act as Engineer of Work and provide customary Assessment District Engineering support services to the City on an as needed basis. Included in this area of service are the following: research and compilation of assessment records and parcel data; compilation and maintenance of database records; review of engineer's plans; development of assessment budgets and cost estimates, cost allocation to parcels; preparation of assessment roll; preparation of Engineer's Report and Legislative documents consistent with the requirements of Proposition 218, and the Landscaping and Lighting Act of 1972; attendance and presentation at staff meetings; and City Council meetings, coordination with City Clerk and County Agencies; and annual assessment administration activities.

EXHIBIT 'B'
HOURLY RATE SCHEDULE

PERSONNEL SERVICES	RATES
Principal Engineer.....	\$168.30
Senior Geologist	\$145.86
Project Engineer/Designer	\$112.20
Staff Engineer/Designer.....	\$102.00
Field Inspector	\$70.38
Permit Technician	\$60.18
Secretarial/Word Proc.....	\$45.90

Effective 03/18/09

EXHIBIT "C" 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. In the event the amount of commercial general liability insurance provided to another public agency client of Consultant is greater than the amounts stated in this paragraph, this same insurance coverage shall be provided 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 \$1,000,000 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, subconsultants 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.

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. Best's 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 contractors ("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 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 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.

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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 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 subcontractor, 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. Architect,

Engineer 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.

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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.

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