

**MOORPARK CITY COUNCIL  
AGENDA REPORT**

**TO:** Honorable City Council

**FROM:** Yugal K. Lall, City Engineer/Public Works Director  
Prepared by: Shaun Kroes, Senior Management Analyst

**DATE:** May 6, 2009 (CC meeting of 05/20/09)

**SUBJECT:** Consider Award of Agreement to Direct A/V, Inc. for Moorpark Metrolink Station Security Camera Maintenance Services

*W. Lall*  
*(PK)*

**BACKGROUND & DISCUSSION**

The City Council, on January 16, 2008, accepted the installation of a security camera system at the Moorpark Metrolink Train Station and Moorpark Police Services Center as completed. Direct A/V, the contractor that installed the system, provided preventative maintenance services for the first year. Staff proposes continuing the quarterly service with Direct A/V at the rate of \$2,100 per quarter (including \$1,000 in pre-authorized repair costs). The City will receive federal funding for 80% of costs associated with preventative maintenance of the security camera.

Preventative maintenance services are described in Appendix A of the Agreement (see Attachment A). A brief overview of the Scope of Services includes:

- Clean all six cameras and camera equipment
- Check mounting equipment of all cameras and camera equipment
- Check power connections and Ethernet connections at Metrolink Station and Police Services Center
- Check signal levels, link quality and errors of the security camera system

Direct A/V has also submitted hourly rates for services that may be requested by the City for additional maintenance services of the security camera system if needed, or, if the City determines that it wants additional work performed on the security camera system. If during the course of its preventative maintenance service Direct A/V discovers a problem with the security camera system, such as a broken lens or cut cables, Direct A/V is permitted to fix the problems on the scene, so long as repair costs do not exceed \$1,000 (including staff time and parts). If repair costs will exceed \$1,000, Direct A/V will be required to report the problem and wait for a separate purchase order.

Honorable City Council  
May 20, 2009  
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**FISCAL IMPACT**

The City has budgeted \$15,000 for preventative maintenance and repairs to the Metrolink security camera system. Eighty percent of preventative maintenance expenditures are reimbursed from federal funds.

**STAFF RECOMMENDATION**

Authorize City Manager to sign the Agreement subject to final language approval of City Manager and City Attorney.

Attachment:  
A – Agreement

**PROFESSIONAL SERVICES AGREEMENT BETWEEN THE CITY OF MOORPARK  
AND DIRECT A/V, INC., FOR PREVENTATIVE MAINTENANCE SERVICES FOR  
MOORPARK METROLINK SECURITY CAMERA SYSTEM**

**THIS PROFESSIONAL SERVICES AGREEMENT (Agreement), made this \_\_\_\_\_ day of \_\_\_\_\_, 2009** between the City of Moorpark, a municipal corporation, located at 799 Moorpark Avenue, Moorpark, California 93021, hereinafter referred to as "City" and Direct A/V, Inc., hereinafter referred to as "Contractor".

**WITNESSETH**

The Parties hereto do agree as follows:

**WHEREAS**, in January 2008, the City accepted the Metrolink Train Station digital security camera system with computer installed at the Moorpark Police Services Center, and

**WHEREAS**, Contractor provided free preventative maintenance services for the first twelve months after completion of the project on a quarterly basis, and

**WHEREAS**, City intends to continue the quarterly preventative maintenance services with Contractor.

**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, and will continue in effect until June 30, 2010.

The City shall have the exclusive option to extend this Agreement for up to two (2) additional years, in consecutive one-year increments. The City shall advise Contractor of its intention to continue for an additional period at least ninety days prior to the end of this Agreement.

2. Scope of Work – The services to be rendered by Contractor shall be as set forth in Appendix A.
3. Order of Precedence – The provisions of this Agreement shall control all Agreement Documents; in the event of any ambiguity or inconsistency, the same shall be resolved by reference first to the language of any written amendments signed by both parties, then to the language of the Agreement, then attachments to the Agreement.

4. Entire Agreement – This Agreement supersedes any and all agreements, either oral or written, between the parties hereto with respect to the rendering of services by Contractor to the City, and contains all of the covenants and agreements between the parties with respect to the rendering of services by Contractor to the City, and contains all of the covenants and agreements between the parties with respect to the rendering of such services in any manner whatsoever.

Each party to this Agreement acknowledges that no representations, inducements, promises, or agreements, oral or otherwise, not embodied herein, shall be valid or binding and that no other agreement, statement or promise not contained in this Agreement shall be valid or binding. This Agreement shall not be amended in any way except by a writing expressly purported to be such an amendment, signed and acknowledged by both of the parties hereto.

5. Compensation – Compensation for services to be performed by the Contractor shall not exceed the lump sum rate for Preventative Maintenance Services as specified in the Contractor's Cost Proposal, Appendix B. Additional services requested of the Contractor by the City shall be performed at the hourly rates as specified in Appendix B. The City shall provide requests for additional services in writing and Contractor shall provide a written time and supplies estimate prior to authorization for additional work.

Contractor shall submit to the City a written invoice for services rendered five business days prior to the first Wednesday of the month following the quarter for which services were rendered. Invoices should be accompanied with attachments specified in the Scope of Services Appendix A. The City agrees to pay the amount due to the Contractor within 35 days following the receipt of said invoice.

6. FTA and SCRRRA Requirements – Contractor shall comply with all Federal Transit Administration (FTA) requirements as specified in Attachment 2 and all requirements of the Southern California Regional Rail Authority (SCRRRA).
7. City Obligations – City agrees to comply with all reasonable requests of the Contractor relative to, and provide access to all documents reasonably necessary for, the performance of Contractor's duties under this Agreement. City shall be responsible for approving all work performed by Contractor.
8. Contractor's Obligations – For and in consideration of the payments and agreements herein before mentioned to be made and performed by City, Contractor agrees with City to provide services as specified and to do everything required by this Agreement and all Appendixes and Attachments thereof. Without limiting the generality of the foregoing, Contractor 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.

9. Licenses and Registrations – At all times during the term of this Agreement, Contractor shall have in full force and effect, all licenses and registrations required of it by law for the performance of the services in this Agreement, including a City Business Registration.
  
- 10.1 Indemnification for Other Than Professional Liability – Other than in the performance of professional services and to the full extent permitted by law, Contractor shall indemnify, defend and hold harmless City, and any and all of its employees, officials and agents from and against any liability (including liability for claims, suits, actions, arbitration proceedings, administrative proceedings, regulatory proceedings, losses, expenses or costs of any kind, whether actual, alleged or threatened, including attorneys' fees and costs, court costs, interest, defense costs, and expert witness fees), where the same arise out of, are a consequence of, or are in any way attributable to, in whole or in part, the performance of this Agreement by Contractor or by an individual or entity for which Contractor is legally liable, including but not limited to officers, agents, employees or subconsultants of Contractor.
  
- 10.2 General Indemnification Provisions – Contractor agrees to obtain executed indemnity agreements with provisions identical to those set forth here in this section from each and every subcontractor or any other person or entity involved by, for, with or on behalf of Contractor in the performance of this Agreement. In the event Contractor fails to obtain such indemnity obligations from others as required here, Contractor 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 Contractor 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 Contractor by reason of these sections, hereof, 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 said insurance policies are determined to be applicable to the claim, demand, damage, liability, loss, cost or expense described in these sections hereof.
  
11. Insurance – The Contractor shall maintain prior to the beginning of, and for the duration of this Agreement, insurance coverage as specified in Attachment 1, attached to and made part of this Agreement.

12. Independent Contractor – Contractor is and at all times shall remain, as to the City, a wholly independent Contractor. Contractor shall not, at any time or in any manner, represent that he is an officer, employee or agent of the City. Contractor shall comply with all applicable provisions of the Workers' Compensation Insurance and Safety Acts and Labor Code of the State of California.
13. 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.
14. Termination – This Agreement, or portions thereof, may be terminated or canceled in any one of the following manners:
  - 1) By mutual agreement of the parties,
  - 2) Upon thirty (30) days written notice by either party, with or without cause, or
  - 3) If in the sole subjective judgment of City at any time or times after the commencement of the term of this Agreement, Contractor fails to perform the services required of it or fails to perform such services in accordance with the terms hereof, the City, upon at least seventy-two (72) hours written notice to Contractor, and without prejudice to any other remedies the City may have, may terminate Contractor's services and any obligations the City may otherwise have under this Agreement. The written notice shall instruct Contractor to cease its services as of a specified day, and City shall have no further obligation to pay for services tendered or otherwise.
15. Ownership of Reports and Data – Upon completion of any writing required to be provided by Contractor in the course of performing any of the above described services, or upon termination of this Agreement, all original documents prepared by Contractor shall become the sole property of the City and may be used, reused or otherwise disposed of by the City without the permission of the Contractor.
16. Assignment/Successors – Contractor shall not assign this Agreement, or any of the rights, duties or obligations hereunder. It is understood and acknowledged by the parties that the Contractor is uniquely qualified to perform the services provided for in this Agreement.
17. Attorneys' 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 attorneys' fees, court costs, and necessary disbursements, in addition to any other relief to which it may be entitled.
18. Non-Discrimination – In the performance of the terms of this Agreement, the Contractor 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

age, race, color, creed, sex, sexual orientation, national origin or ancestry, religion, or marital status of such person(s). Violation of this provision may result in the imposition of penalties referred to in the Labor Code of the State of California 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 an applicable court in Ventura County, California.
20. Non-Exclusive Agreement – The City reserves the right to contract with other firms during the Agreement term or to issue multiple agreements for individual aspects of the project as may be deemed in the best interests of the City.
21. Public Domain – All products used or developed in the execution of this Agreement will remain in the public domain at the completion of the Agreement.
22. Audit – City shall have the option of inspecting and/or auditing all records and other written materials used by Contractor in preparing its statements to City as a condition precedent to any payment to Contractor.
23. 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.
24. Waiver of Agreement – 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.
25. 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.

26. Notice – Any notice to be given hereunder by either party to the other shall be effected either by personal delivery in writing or by certified mail, postage prepaid, return receipt requested. Mailed notices shall be addressed to the City as follows:

Steven Kueny  
City Manager  
City of Moorpark  
799 Moorpark Avenue  
Moorpark, CA 93021

Mailed notices shall be addressed to the Contractor as follows:

Lawrence Frontino  
President  
Direct A/V Inc.  
12822 Yukon Avenue  
Hawthorne, CA 90250

Each party may change the address by written notice in accordance with this section. Notices delivered personally will be deemed served as of actual receipt; mailed notices will be deemed served as of the second (2<sup>nd</sup>) day after mailing.

27. Authority to Execute Agreement – Both City and Contractor 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.
28. Responsible Individuals – The individual directly responsible for Contractor's overall performance of the Agreement provisions above set forth and to serve as principal liaison between Contractor and City shall be Lawrence Frontino, or designee.

The Moorpark City Manager, or his designee, shall represent City in all matters pertaining to the administration of this Agreement, review and approval of all work to be performed by the Contractor pursuant to this Agreement. The City Manager is authorized to act on City's behalf to execute all necessary documents which increase the Scope of Services or change Contractor's compensation.

29. Conflicts of Interest – Contractor agrees not to work for any private firm located within the City limits or its Area of Interest, or for any public agency where its jurisdiction includes all or part of the City without the prior written consent of the City, during the term of this Agreement.

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

**CITY OF MOORPARK**

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

Date: \_\_\_\_\_

ATTEST

\_\_\_\_\_  
Deborah S. Traffenstedt, City Clerk

**CONTRACTOR**

\_\_\_\_\_  
Lawrence Frontino, President

Date: \_\_\_\_\_

## **APPENDIX A SCOPE OF WORK**

The City of Moorpark's Metrolink Security Camera System is described in detail in the document "Manufacturer's Documentation and Operating/Maintenance Procedures for the Video Surveillance System Installed at the Metrolink Moorpark Station Facility Moorpark, California." Dated, December 19, 2007. Direct A/V Reference: J-1236. The document provides information on maintenance procedures for the equipment located at the Metrolink Station, Metrolink Communications Building, and Moorpark Police Services Center. As-Builts are included in the document.

Preventative maintenance shall be performed on a quarterly basis and shall occur on the following months: July, October, January and April.

The following tasks shall be performed during the quarterly preventative maintenance:

### **Metrolink Station**

- 1) On all six cameras, Contractor shall:
  - clean lower dome
  - check connections
  - check mounting hardware
  
- 2) On all six infra-red (IR) motion detectors, Contractor shall:
  - check mounting hardware
  - check connections
  
- 3) On Fire Tide Node, Contractor shall:
  - check mounting hardware
  - check antenna connections
  - check power connections
  - check Ethernet connections
  
- 4) In Metrolink Communications Building, Contractor shall:
  - vacuum rack inside and out
  - clean equipment
  - clean fan filter on digital video recorder (DVR)
  - check camera power supply
  - check IR power supply
  - check connections on all equipment and terminal blocks

Moorpark Police Services Center

- 1) On Fire Tide Node, Contractor shall:
  - check mounting hardware
  - check antenna connections
  - check power connections
  - check Ethernet connections
  
- 2) Through the computer system, Contractor shall:
  - check signal levels, link quality and errors on Fire Tide Node 1 Radio and Node 2 Radio (RSSI, Link Quality, and Errors shall be documented)
  - check camera and lens functions and presets (includes pan, tilt, zoom, iris, focus and presets check)
  - check Pelco DVR (record/playback functions, time/date functions)

Contractor shall provide a checklist documenting all completed tasks along with its invoice.

If, during the time that preventative maintenance is performed, the Contractor discovers a problem with the system, the Contractor may make necessary repairs at the scene, so long as total repairs (including labor costs) do not exceed \$1,000. Repairs shall be performed at the hourly rates specified in Appendix B.

If repairs to the security camera system will exceed \$1,000, the Contractor shall notify the City and provide a written cost proposal for repairs, including parts, labor and an estimated time to complete repairs. The City must provide the Contractor with a purchase order prior to commencement of the repairs.

**APPENDIX B  
COST PROPOSAL**

- A. Preventative maintenance (PM): For PM services described in Appendix A, City agrees to pay Contractor a lump sum price of \$2,100.00/quarter\* during the term of this Agreement.
- B. Contractor agrees to provide additional services upon request by the City of Moorpark at the hourly rates specified below. Hourly rates shall be valid during the term of this Agreement.

<b>Contractor Hourly Rates for Services</b>	
Position	Hourly Rate
Lead Technician, IBEW	\$85.00
Engineer, State Certified	\$115.00
Foreman, IBBW	\$80.00
Installer, IBBW	\$70.00
Apprentice, IBBW	\$45.00
CAD/Draft Service	\$40.00

\* \$2,100 includes \$1,100 for PM services and \$1,000 in pre-authorized repair costs.

## ATTACHMENT 1 INSURANCE REQUIREMENTS

Prior to the beginning of and throughout the duration of Work, Contractor will maintain insurance in conformance with the requirements set forth below. Contractor will use existing coverage to comply with these requirements. If that existing coverage does not meet requirements set forth here, Contractor agrees to amend, supplement or endorse the existing coverage to do so. Contractor acknowledges that the insurance coverage and policy limits set forth in this section constitute the minimum amount of coverage required. Any insurance proceeds available to the City in excess of the limits and coverage required in this Agreement and which is applicable to a given loss, will be available to the City.

Contractor shall provide the following types and amounts of insurance:

Commercial General Liability Insurance using Insurance Services Office (ISO) "Commercial General Liability" policy form CG 00 01 or the exact equivalent. Defense costs must be paid in addition to limits. There shall be no cross liability exclusion for claims or suits by one insured against another. Limits are subject to review but in no event less than **\$1,000,000** per occurrence for all covered losses and no less than **\$2,000,000** general aggregate.

Business Auto Coverage on ISO Business Auto Coverage form CA 00 01 including symbol 1 (Any Auto) or the exact equivalent. Limits are subject to review, but in no event to be less than **\$1,000,000** per accident. If Contractor owns no vehicles, this requirement may be satisfied by a non-owned auto endorsement to the general liability policy described above. If Contractor or Contractor's employees will use personal autos in any way on this project, Contractor shall provide evidence of personal auto liability for each such person.

Workers' Compensation on a state-approved policy form providing statutory benefits as required by law with employer's liability limits no less than **\$1,000,000** per accident or disease.

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. Coverage shall be provided on a "pay on behalf" basis, with defense costs payable in addition to policy limits. Policy shall contain a provision obligating insurer at the time insured's liability is determined, not requiring actual payment by the insured first. There shall be no cross liability exclusion precluding coverage for claims or suits by one insured against another. Coverage shall be applicable to the City for injury to employees of Contractor, subcontractors or others involved in the Work. The scope of coverage provided is subject to approval by the City following receipt of proof of insurance as required herein. Limits are subject to review but in no event less than **\$2,000,000** aggregate.

Insurance procured pursuant to these requirements shall be written by insurers that are admitted carriers in the State of California and with an A.M. Bests rating of A- or better and a minimum financial size of VII.

General conditions pertaining to provision of insurance coverage by Contractor. Contractor and the City agree to the following with respect to insurance provided by Contractor:

1. Contractor agrees to have its insurer endorse the third party general liability coverage required herein to include as additional insureds the City, its officials, employees and agents, using standard ISO endorsement CG 2010 with an edition prior to 1992. Contractor also agrees to require all contractors and subcontractors to do likewise.
2. No liability insurance coverage provided to comply with this Agreement shall prohibit Contractor, or Contractor's employees, or agents, from waiving the right to subrogation prior to a loss. Contractor agrees to waive subrogation rights against the City regardless of the applicability of any insurance proceeds, and to require all contractors and subcontractors to do likewise.
3. All insurance coverage and limits provided by Contractor and available or applicable to this Agreement are intended to apply to the full extent of the policies. Nothing contained in this Agreement or any other agreement relating to the City or its operation limits the application of such insurance coverage.
4. None of the coverages required herein will be in compliance with these requirements if they include limiting endorsement of any kind that has not been first submitted to the City and approved in writing.
5. No liability policy shall contain any provision or definition that would serve to eliminate so-called "third party action over" claims, including any exclusion for bodily injury to an employee of the insured or of any contractor or subcontractor.
6. All coverage types and limits required are subject to approval, modification and additional requirements by the City, as the need arises. Contractor shall not make any reductions in scope of coverage (e.g. elimination of contractual liability or reduction of discovery period) that may affect the City's protection without the City's prior written consent.
7. Proof of compliance with these insurance requirements, consisting of certificates of insurance evidencing all of the coverages required and an additional insured endorsement to Contractor'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, the City has the right, but not the duty, to obtain any insurance it deems necessary to protect its interests

under this or any other Agreement and to pay the premium. Any premium so paid by the City shall be charged to and promptly paid by Contractor or deducted from sums due Contractor, at the City's option.

8. Certificate(s) are to reflect that the insurer will provide 30 days notice to the City of any cancellation of coverage. Contractor 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 Contractor or any subcontractor, is intended to apply first and on a primary, non-contributing basis in relation to any other insurance or self insurance available to the City.
10. Contractor agrees to ensure that subcontractors, and any other party involved with the Work who is brought onto or involved in the Work by Contractor, provide the same minimum insurance required of Contractor. Contractor 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. Contractor agrees that upon request, all agreements with subcontractors and others engaged in the Work will be submitted to the City for review.
11. Contractor agrees not to self-insure or to use any self-insured retentions or deductibles on any portion of the insurance required herein and further agrees that it will not allow any contractor, subcontractor, Architect, Engineer, or other entity or person in any way involved in the performance of Work contemplated by this Agreement to self-insure its obligations to the City. If Contractor'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 Contractor, which may include reduction or elimination of the deductible or self-insured retention, substitution of other coverage, or other solutions.
12. The City reserves the right at any time during the term of the Agreement to change the amounts and types of insurance required by giving the Contractor 90 days advance written notice of such change. If such change results in substantial additional cost to the Contractor, the City will negotiate additional compensation proportional to the increased benefit to the City.
13. For purposes of applying insurance coverage only, this Agreement will be deemed to have been executed immediately upon any party hereto taking any steps that can be deemed to be in furtherance of or towards performance of this Agreement.

14. Contractor acknowledges and agrees that any actual or alleged failure on the part of the City to inform Contractor of non-compliance with an insurance requirement in no way imposes any additional obligations to the City nor does it waive any rights hereunder in this or any other regard.
15. Contractor will renew the required coverage annually as long as the City, or its employees or agents face an exposure from operations of any type pursuant to this Agreement.. This obligation applies whether or not the Agreement is canceled or terminated for any reason. Termination of this obligation is not effective until the City executes a written statement to that effect.
16. Contractor shall provide proof that policies of insurance required herein expiring during the term of this Agreement have been renewed or replaced with other policies providing at least the same coverage. Proof that such coverage has been ordered shall be submitted prior to expiration. As coverage binder or letter from Contractor's insurance agent to this effect is acceptable. A certificate of insurance and/or additional insured endorsement as required in these specifications applicable to the renewing or new coverage must be provided to the City within five days of the expiration of coverage.
17. The provisions of any Workers' Compensation or similar act will not limit the obligations of Contractor under this Agreement. Contractor expressly agrees not to use any statutory immunity defenses under such laws with respect to the City, its employees, officials and agents.
18. Requirements of specific coverage features or limits contained in this section are not intended as limitations on coverage, limits or other requirements nor as a waiver of any coverage normally provided by any given policy. Specific reference to a given coverage feature is for purposes of clarification only as it pertains to a given issue, and is not intended by any party or insured to be limiting or all-inclusive.
19. These insurance requirements are intended to be separate and distinct from any other provision in this Agreement and are intended by the parties here to be interpreted as such.
20. The requirements in this section supersede all other sections and provisions of this Agreement to the extent that any other section or provision conflicts or impairs the provisions of this section.
21. Contractor agrees to be responsible for ensuring that no contract used by any party involved in any way with the Work reserves the right to charge the City or Contractor for the cost of additional insurance coverage required by this Agreement. Any such provisions are to be deleted with reference to the City. It is not the intent of the City to reimburse any third party for the cost of complying

with these requirements. There shall be no recourse against the City for payment of premiums or other amounts with respect thereto.

22. Contractor agrees to provide immediate notice to City of any claim or loss against Contractor arising out of the work performed under this Agreement. The City assumes no obligation or liability by such notice, but has the right (but not the duty) to monitor the handling of any such claim or claims if they are likely to involve the City.

**ATTACHMENT 2  
FEDERAL TRANSIT ADMINISTRATION (FTA) REQUIREMENTS**

**1. FEDERAL CHANGES**

The Contractor shall at all times comply with all applicable FTA regulations, policies, procedures and directives, including without limitation those listed directly or by reference in the grant agreements between the Ventura County Transportation Commission (VCTC) and FTA, as they may be amended or promulgated from time to time during the term of this Agreement. Failure by the Contractor to so comply shall constitute a material breach of this Agreement. In the event any such changes significantly affect the cost or the schedule to perform the work, the Contractor shall be entitled to submit a claim for an equitable adjustment under the applicable provisions of this Agreement.

**2. NO GOVERNMENT OBLIGATIONS TO THIRD PARTIES**

The City of Moorpark (City) and the Contractor acknowledge and agree that, notwithstanding any occurrence by the Federal Government in or approval of this solicitation or award of this Agreement, absent the express written consent by the Federal Government, the Federal Government is not a party to this Agreement, and shall not be subject to any obligations or liabilities to City, the Contractor, or any other party (whether or not a party to this Agreement) pertaining to any matter resulting from this Agreement.

The Contractor agrees to include the above clause in each subcontract financed in whole or part with Federal assistance provided by FTA. It is further agreed that the clause shall not be modified, except to identify the subcontractor who will be subject to its provisions.

**3. TITLE VI OF THE CIVIL RIGHTS ACT OF 1964**

During the performance of this Agreement, the Contractor, for itself, its assignees and successors in interest (Contractor), and subcontractors agree as follows:

**A. COMPLIANCE WITH REGULATIONS:**

The Contractor shall comply with the Regulations relative to nondiscrimination in federally assisted programs of the Department of Transportation (DOT) Title 49, Code of Federal Regulations, Part 21, as they may be amended from time to time, (Regulations), which are herein incorporated by reference and made a part of this Agreement.

**B. NONDISCRIMINATION**

In accordance with Title VI of the Civil Rights act, as amended, 42 U.S.C. 200d section 3 03 of the Age Discrimination Act of 1975, as amended, 42 U.S.C. 6102, section 202 of the Americans with Disabilities Act of 1990, 42 U.S.C. 12132, and Federal Transit laws at 49 U.S.C. 5332, the Contractor agrees that it will not discriminate against any employee or applicant for employment because of race, color, creed, national origin, sex, age, or disability. In addition, the Contractor agrees to comply with applicable Federal implementing regulations and other implementing requirements FTA may issue.

**C. EQUAL EMPLOYMENT OPPORTUNITY**

The following equal employment opportunity requirements apply to this Agreement:

1. **Race, Color, Creed, National Origin, Sex** – In accordance with title VII of the Civil Rights Act, as amended, 42 U.S.C. 5332, the Contractor agrees to comply with all applicable equal employment opportunity requirements of the U.S. Department of Labor (USDOL) regulations, "Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor," 41 CFR Parts 60 et seq., (which implement Executive Order No. 11246 Relating to Equal Employment Opportunity," as amended by Executive Order No. 11375, "Amending Executive Order No. 11246 Relating to Equal Employment Opportunity," 42 U.S.C. 2000e note), and with any applicable Federal statutes, executive orders, regulations, and Federal policies that may in the future affect construction activities undertaken in the course of the project for which this Agreement work is being performed. The Contractor agrees to take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, creed, national origin, sex, or age. Such action shall include, but not be limited to, the following: employment, upgrading, demotion or transfer, recruitment of recruitment advertising, layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. In addition, the Contractor agrees to comply with any implementing requirements FTA may issue.
2. **Age** – In accordance with section 4 of the Age discrimination in Employment Act of 1967, as amended, 29 U.S.C. 623 and Federal Transit laws at 49 U.S.C. 5332, the Contractor agrees to refrain from discrimination against present and prospective employees for reasons of age. In addition, the Contractor agrees to comply with any implementing requirements FTA may issue.

3. **Disabilities** – In accordance with Section 102 of the Americans with Disabilities Act of 1990, as amended, 42 U.S.C. 12112, the Contractor agrees that it will comply with the requirements of U.S. Equal Employment Opportunity Commission, "Regulations to Implement the Equal Employment Provisions of the Americans with Disabilities Act," 29 CFR Part 1630, pertaining to employment of persons with disabilities. In addition, the Contractor agrees to comply with any implementing requirements FTA may issue.
4. **Immigration and Naturalization Act of 1986** – In connection with the execution of this Agreement, the Contractor must comply with all aspects of the federal Immigration and Naturalization Act of 1986.

**D. SOLICITATIONS FOR SUBCONTRACTORS, INCLUDING PROCUREMENT OF MATERIALS AND EQUIPMENT:**

In all solicitations either by competitive bidding or negotiation made by the Contractor for work to be performed under a subcontract, including procurement of materials or leases of equipment, each potential subcontractor or supplier shall be notified by the Contractor of the Contractor's obligations under this Agreement and the Regulations relative to non-discrimination on the grounds of race, color, or national origin.

**E. INFORMATION AND REPORTS:**

The Contractor shall provide all information and reports required by the Regulations or directives issued pursuant thereto, and shall permit access to its books, records, accounts, other sources of information and its facilities as may be determined by City or the FTA to be pertinent to ascertain compliance with such Regulations, orders and instructions. Where any information required of a Contractor is in the exclusive possession of another who fails or refuses to furnish this information, the Contractor shall so certify to City or the FTA as appropriate, and shall set forth what efforts it has made to obtain the information.

**F. SANCTIONS FOR NONCOMPLIANCE:**

In the event of the Contractor's noncompliance with nondiscrimination provisions of this Agreement, City shall impose contract sanctions as it or the FTA may determine to be appropriate, including, but not limited to:

1. Withholding of payments to the Contractor under the Agreement until the Contractor complies; and/or
2. Cancellation, termination, or suspension of the Agreement, in whole or in part.

**G. INCORPORATION OF PROVISIONS:**

The Contractor shall take such action with respect to any subcontract or procurement as City or the FTA may direct as a means of enforcing such provisions including sanctions for noncompliance; provided, however, that, in the event a Contractor becomes involved in, or is threatened with, litigation with a subcontractor or supplier as a result of such direction, the Contractor may request City, and in addition, the Contractor may request the United States to enter into such litigation to protect the interests of the United States.

**H. SUBCONTRACTS**

The Contractor also agrees to include these requirements in each subcontract financed in whole or in part with Federal assistance provided by FTA, modified only if necessary to identify the affected parties.

**4. ACCESS TO RECORDS AND REPORTS**

The Contractor agrees to provide VCTC, the FTA Administrator, the Comptroller General of the United States, the City or any of their authorized representatives access to any books, documents, papers and records of the Contractor which are directly pertinent to this Agreement for the purposes of making and conducting audits, inspections, examinations, excerpts, and transcriptions.

The Contractor also agrees, pursuant to 49 CFR 633.1.7, to provide the FTA Administrator or his or her authorized representatives, including any Project Management Oversight (PMO) contractor, access to the Contractor's records and construction sites pertaining to a major capital project, defined at 49 U.S.C. 5302(a)1, which is receiving federal financial assistance through the programs described in 49 U.S.C. 5307, 5309 or 5311. The Contractor agrees to permit any of the foregoing parties to reproduce by any means whatsoever or to copy excerpts and transcriptions as reasonably needed.

The Contractor agrees to maintain all books, records, accounts and reports required under this Agreement for a period of not less than three years after the date of termination or expiration of this Agreement, except in the event of litigation or settlement of claims arising from the performance of this Agreement, in which case the Contractor agrees to maintain such books, records, account and reports until VCTC, the FTA Administrator, the Comptroller General, the City or any of their duly authorized representatives, have disposed of all such litigation, appeals, claims or exceptions related thereto.

## 5. TERMINATION

**Termination for Convenience** - The City, by written notice, may terminate this Agreement, in whole or in part, when it is in the Government's interest. If this Agreement is terminated, the City shall be liable only for payment under the payment provisions of this Agreement for services rendered before the effective date of termination.

**Termination for Default [Breach or Cause]** - If the Contractor does not deliver supplies in accordance with the Agreement delivery schedule, or, if the Agreement is for services, the Contractor fails to perform in the manner called for in the Agreement, or if the Contractor fails to comply with any other provisions of the Agreement, the City may terminate this Agreement for default. Termination shall be effected by serving a notice of termination on the Contractor setting forth the manner in which the Contractor is in default. The Contractor will only be paid the Agreement price for supplies delivered and accepted, or services performed in accordance with the manner of performance set forth in the Agreement.

If it is later determined by the City that the Contractor had an excusable reason for not performing, such as a strike, fire, or flood, events which are not the fault of or are beyond the control of the Contractor, the City, after setting up a new delivery of performance schedule, may allow the Contractor to continue work, or treat the termination as a termination for convenience.

**Opportunity to Cure [General Provision]** - The City in its sole discretion may, in the case of a termination for breach or default, allow the Contractor seventy-two (72) hours in which to cure the defect. In such case, the notice of termination will state the time period in which cure is permitted and other appropriate conditions

If Contractor fails to remedy to City's satisfaction the breach or default or any of the terms, covenants, or conditions of this Agreement within [ten (10) days] after receipt by Contractor or written notice from City setting forth the nature of said breach or default, City shall have the right to terminate the Agreement without any further obligation to Contractor. Any such termination for default shall not in any way operate to preclude City from also pursuing all available remedies against Contractor and its sureties for said breach or default.

**Waiver of Remedies for any Breach** - In the event that City elects to waive its remedies for any breach by Contractor of any covenant, term or condition of this Agreement, such waiver by City shall not limit City's remedies for any succeeding breach of that or of any other term, covenant, or condition of this Agreement.