ITEM 10.R.

MOORPARK CITY COUNCIL
AGENDA REPORT

TO: **Honorable City Council**

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

DATE: **June 19, 2009 (CC meeting of 07/01/09)**

SUBJECT: **Consider Agreement for Consultant Services for Real Property Services**

BACKGROUND

The City does not maintain an experienced and qualified staff member for real property services. During the past several years real property services have been provided by consultants to the City of Moorpark on an as-needed basis for various Capital Improvement Projects. Hamner, Jewell & Associates (HJA) has provided good services to the City and has the expertise and qualifications to provide the needed real property services. The current contract with HJA expired June 30, 2009. During the past fiscal year these services were used on a very limited basis and the City used only a small portion of the $50,000 contract. It is anticipated that for the next fiscal year these services would be needed for various capital projects including Princeton Avenue Widening, Los Angeles Avenue Widening, and Spring Road Widening.

DISCUSSION

It is staff's intention to establish a new agreement with HJA. The agreement includes hourly rates as attached with annual changes due to cost of living increase for various staff members at HJA who might be requested for services.

The specific services required from HJA will consist of the tasks and obligations defined in Task Orders approved by the City in response to specific project scopes of work and services requested by the City. All tasks requested will be for projects either already budgeted by the City Council, or brought before the City Council for Budget Amendments. The City Manager will have authorization to sign individual Task Orders.

FISCAL IMPACT

Any services requested by the City from HJA will have already been budgeted by the City.

STAFF RECOMMENDATION

Authorize the City Manager to sign the agreement for real property services with HJA in an amount not to exceed $100,000 in FY 2009/10, and with the option to extend the agreement for the next two years subject to final language approval by the City Manager and City Attorney.

Attachment A: Draft Agreement for Professional Services

AGREEMENT FOR PROFESSIONAL SERVICES BETWEEN THE CITY OF MOORPARK AND BEACON INTEGRATED PROFESSIONAL RESOURCES, INC. DBA HAMNER, JEWELL AND ASSOCIATES FOR REAL PROPERTY SERVICES

This Agreement is made and entered into in the City of Moorpark on this _____ day of _____, 2009, by and between the City of Moorpark ("City"), a public body, corporate and political, and Beacon Integrated Professional Resources, Inc. dba Hamner, Jewell and Associates, a California corporation providing real property services ("Consultant"). In consideration of the mutual covenants and conditions set forth herein, the parties agree as follows:

I. Term

This Agreement shall commence on _____ and shall remain and continue in effect until June 30, 2011, unless extended or terminated as provided for herein.

2. Scope of Services

a) City hereby retains Consultant in a contractual capacity to perform right-of-way acquisition services as set forth in Exhibit A (Scope of Services), attached hereto and incorporated herein. The provisions contained in this Agreement will supersede any conflicting provisions in Exhibit A.

b) The specific services required of Consultant under this Agreement will consist of the tasks and obligations defined in Task Orders approved by the City and Consultant, in response to specific project scopes of work and services requested by City. Any duly executed and approved Task Order will become a part of this Agreement. The standard form for the Task Order is set forth in Exhibit A.

c) The maximum Not-to-Exceed amount of compensation which may be authorized by any individual Task Order shall not exceed the total price listed in Section 5a.

d) All combined Task Orders' compensation shall not exceed the total price listed in Section 5a.

e) Consulting services required by the City will be provided on an as-needed basis with the City determining and advising Consultant as to when specific services are required to be performed or completed by Consultant.

f) All services shall be performed to the satisfaction of the City. All services shall be performed according to standards then prevailing in the property acquisition profession.

g) Consultant will, in a professional manner, furnish all of the labor, technical, administrative, professional and other personnel, all supplies and materials, equipment, printing, vehicles, transportation, office space and facilities, and all tests, testing and analyses, calculations, and all other means whatsoever, except as herein otherwise expressly specified to be furnished by the City, necessary or proper to perform and complete the work and provide the professional services required of Consultant by this Agreement.

3. Performance

Consultant shall at all times faithfully, competently and to the best of his/her ability, experience, and talent, perform all tasks described herein. Consultant shall employ, at a minimum, generally accepted standards and practices utilized by persons engaged in providing similar services as are required of Consultant hereunder to meet its obligations under this Agreement.

4. Responsible Individuals

The individual directly responsible for Consultant's overall performance of the Agreement provisions herein above set forth and to serve as principal liaison between Consultant and City shall be Heather Johnson.

The City Manager, or his designee, shall represent City in all matters pertaining to the administration of this Agreement, review and approval of all products submitted by Consultant. The City Manager is authorized to act on City's behalf to execute all necessary documents which increase the scope of services or change Consultant's compensation, subject to Section 5 hereof.

5. Payment

a) For providing services as specified in this Agreement, City shall pay and Consultant shall receive as full compensation a total sum based on fees as shown in Exhibit B (Time and Materials Fee Schedule), not to exceed a total price of $100,000 for all requested Task Orders during the Term of this Agreement.

b) In the event that additional work is required of Consultant, beyond the Scope of Work for this Agreement, Consultant may be authorized to undertake and complete such additional work only if such authorization is provided in writing, identifying the exact nature of the additional work required and a "not-to-exceed" fee to be paid by the City for such work.

c) Consultant will submit invoices at the completion of each of the tasks. Invoices shall be submitted on or about the first business day of the month, or as soon thereafter as practical, for services provided. Any expense on any invoice shall have appropriate documentation to be considered for payment. Payment shall be made within 30-days of

of Consultant's fees it shall give written notice to Consultant within 15-days of receipt of an invoice of any disputed fees set forth on the invoice.

6. Incorporation by Reference

All exhibits herein referenced are hereby incorporated into and made a part of the Agreement.

7. Suspension or Termination of Agreement without Cause

a) The City may at any time, for any reason, with or without cause, suspend or terminate this Agreement, or any portion hereof, by serving upon the Consultant at least ten (10) days prior written notice. Upon receipt of said notice, the Consultant shall immediately cease all work under this Agreement, unless the notice provides otherwise. If the City suspends or terminates a portion of this Agreement such suspension or termination shall not make void or invalidate the remainder of this Agreement.

b) In the event this Agreement is terminated pursuant to this Section, City shall pay to Consultant the actual value of the work performed up to the time of the termination, provided that the work performed is of value to City. Upon termination of the Agreement pursuant to this Section, Consultant will submit an invoice to City pursuant to Section 5.

8. Default of Consultant

a) The Consultant's failure to comply with the provisions of this Agreement shall constitute a default. In the event that Consultant is in default for cause under the terms of this Agreement, City shall have no obligation or duty to continue compensating Consultant for any work performed after the date of default and can terminate this Agreement immediately by written notice to the Consultant. If such failure by the Consultant to make progress in the performance of work hereunder arises out of causes beyond the Consultant's control, and without fault or negligence of the Consultant, it shall not be considered a default.

b) If the City Manager or his designee determines that the Consultant is in default in the performance of any terms or conditions of this Agreement, the City Manager shall cause to be served upon the Consultant a written notice of the default. The Consultant shall have ten (10) days after service of said notice in which to cure the default by rendering a satisfactory performance. In the event that the Consultant fails to cure its default within such period of time, the City shall have the right, notwithstanding any other provision of this Agreement, to terminate this Agreement without further notice and without prejudice to any other remedy to which it may be entitled at law, in equity or under this Agreement.

9. Indemnification for Professional Liability

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

10. Indemnification for Other than Professional Liability

Other than in the performance of professional services and to the full extent permitted by law, Consultant shall indemnify, defend, and hold harmless City, and any and all of its officials, employees and agents from and against any liability (including liability for claims, suits, actions, arbitration proceedings, administrative proceedings, regulatory proceedings, losses, expenses or costs of any kind, whether actual, alleged or threatened, including attorneys fees and costs, court costs, interest, defense costs, and expert witness fees), where the same arise out of, or 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. The provisions of this Paragraph are not intended to cover claims associated with condemnation, inverse condemnation, or construction damage claims.

11. 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, subcontractor, or any other person or entity involved by, for, with, or on behalf of Consultant in the performance of this Agreement. In the event Consultant fails to obtain such indemnity obligations from others as required here, Consultant agrees to be fully responsible according to the terms of this section. Failure of City to monitor compliance with these requirements imposes no additional obligations on City and will in no way act as a waiver of any rights hereunder. This obligation to indemnify and defend City as set forth here is binding on the successors, assigns or heirs of Consultant and shall survive the termination of this agreement or this section.

City does not and shall not waive any rights that it may have against Consultant by reason of this Section, because of the acceptance by City, or the deposit with City, of any insurance policy or certificate required pursuant to this Agreement. The hold harmless and indemnification provisions shall apply regardless of whether or not said insurance policies are determined to be applicable to any losses, liabilities, damages, costs and expenses described in Sections 9 and 10 of this Agreement.

12. Insurance

Consultant 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.

13. Independent Consultant

a) Consultant is and shall at all times remain as to the City a wholly independent Consultant. The personnel performing the services under this Agreement on behalf of Consultant shall at all times be under Consultant's exclusive direction and control. Neither City nor any of its officers, employees, or agents shall have control over the conduct of Consultant or any of Consultant's officers, employees, or agents, except as set forth in this Agreement. 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 officers, employees, or agents of the City. Consultant shall not incur or have the power to incur any debt, obligation, or liability whatever against City, or bind City in any manner.

b) No employee benefits shall be available to Consultant in connection with the performance of this Agreement. Except for the fees paid to Consultant as provided in the Agreement, City shall not pay salaries, wages, or other compensation to Consultant for performing services hereunder for City. City shall not be liable for compensation or indemnification to Consultant for injury or sickness arising out of performing services hereunder.

14. Notices

Any notices which either party may desire to give to the other party under this Agreement must be in writing and may be given either by 1) personal service, 2) delivery by a reputable document delivery service, which provides a receipt showing date and time of delivery, or 3) mailing in the United States Mail, certified mail, postage prepaid, return receipt requested, addressed to the address of the party as set forth below or at any other address as that party may later designate by notice:

City:	City of Moorpark 799 Moorpark Avenue Moorpark, CA 93021 Attn: City Manager
Consultant:	Hamner, Jewell and Associates 4476 Market Street, Suite 601 Ventura, CA 93003 Attention: Lillian D. Jewell, President

15. Assignment

The Consultant shall not assign the performance of this Agreement, nor any part thereof, nor any monies due hereunder, without prior written consent of the City. It is understood and acknowledged by the parties that Consultant is uniquely qualified to perform the services provided for in this Agreement.

16. Entire Agreement.

This written Agreement, including all writings specifically incorporated herein by reference, shall constitute the complete Agreement between the parties hereto. No oral agreement, understanding, or representation not reduced to writing and specifically incorporated herein shall be of any force or effect, nor shall any such oral agreement, understanding, or representation be binding on the parties hereto. 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. 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 provisions. No waiver shall be binding, unless executed in writing by the party making the waiver.

17. Anti-Discrimination

In the performance of the terms of this Agreement, Consultant agrees that it will not engage in, nor permit such subcontractors as it may employ, to engage in discrimination in employment of persons because of the age, race, color, creed, sex, sexual orientation, national origin, ancestry, religion, physical disability, medical disability, medical condition, or marital status of such persons. Violation of this provision may result in the imposition of penalties referred to in the Labor Code of the State of California Section 1735.

18. General Conditions

a) Consultant agrees not to work for any private firm located within the City limits or its Area of Interest, or for any public City where its jurisdiction includes all or part of the City without the prior written consent of the City, during the term of this Agreement. Furthermore, Consultant agrees to limit its actions related to economic interest and potential or real conflicts of interest as such as defined by applicable State law to the same standards and requirements for designated City employees.

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

c) At the time of 1) termination of this Agreement or 2) conclusion of all work, all original reports, documents, calculations, computer files, notes, and other related materials whether prepared by Consultant or its subcontractor(s) or obtained in the course of providing the services to be performed pursuant to this Agreement shall become the sole property of City. Any word processing computer files provided to City shall use Microsoft Word for Windows software.

d) Nothing contained in this Agreement shall be deemed, construed or represented by City or Consultant or by any third person to create the relationship of principal or agent, or of a partnership, or of a joint venture, or of any other association of any kind or nature between City and Consultant.

e) 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.

f) Cases involving a dispute between City and Consultant may be decided by an arbitrator if both sides agree in writing on the arbitration and on the arbitrator selected, with costs proportional to the judgment of the arbitrator.

g) The captions and headings of the various Sections and Exhibits of this Agreement are for convenience and identification only and shall not be deemed to limit or define the content of the respective Sections and Exhibits hereof.

h) If any portion of this Agreement is held by a court of competent jurisdiction to be invalid, void, or unenforceable, the remaining provisions will never-the-less continue in full force without being impaired or invalidated in any way.

i) No officer, employee, director or agent of the City shall participate in any decision relating to this Agreement which affects the individual personal interest or the interest of any corporation, partnership, or association in which he is directly or indirectly interested, or shall any such person have any interest, direct or indirect, in this Agreement or the provisions thereof.

19. <u>Governing Law</u>

The City and Consultant understand and agree that the laws of the State of California shall govern the rights, obligations, duties, and liabilities of the parties to this Agreement and also govern the interpretation of this Agreement.

This Agreement is made, entered into, and executed in Ventura County, California, and any action filed in any court or for arbitration for the interpretation,

enforcement or other action of the terms, conditions or covenants referred to herein shall be filed in the applicable court in Ventura County, California.

20. Authority to Execute this Agreement

The person or persons executing this Agreement on behalf of Consultant warrants and represents that this individual has the authority to execute this Agreement on behalf of the Consultant and has the authority to bind Consultant to the performance of its obligations hereunder.

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

CONSULTANT:
Beacon Integrated Professional Resources, Inc. dba
Hamner, Jewell and Associates

Lillian D. Jewell
President

ATTEST:

Deborah S. Traffenstedt, City Clerk

Exhibit "A": Scope of Services
Exhibit "B": Time and Materials Fee Schedule
Attachment "1": Insurance Requirements

EXHIBIT A

Scope of Services

A. General Scope of Work: Consultant will provide governmental real estate services, including, property investigations and obtaining preliminary title reports; initial contacts with property owners regarding willingness to sell; preparation and processing of easements, right-of-way and sale agreements; obtaining real property appraisals; relocation services; property disposition. Services will be provided by Consultant on projects as authorized and directed by the City under a duly executed and approved Task Order. Consultant will, in the performance of this Agreement, maintain close communications with the City Project Manager or his/her representative. No services will be performed on any specific project until the City has issued a written Notice to Proceed to Consultant for that particular project.

B. Performance of Work: Consultant's professional services shall be performed by, or shall be immediately supervised by, a person or persons licensed by the California Department of Real Estate. A specific individual employee by Consultant, and approved by the City, shall be assigned as Project Manager for each specific project defined in the Task Order.

C. Work Tasks: Upon request by City, Consultant will perform the following tasks in support of projects requiring property acquisition:

1. Perform preliminary property investigations, including obtaining County Assessor information and review of previous correspondence and contacts with Owner. Review project plans and visit site with City staff.

2. Obtain and review preliminary title reports.

3. Make initial and follow-up contacts with property owners regarding willingness to sell. Respond to owner's requests for information. Receive, review and transmit information from property owners to City.

4. Obtain and review real property appraisals. Report format will comply with the standards of the Appraisal Institute.

5. Assist City with acquisition price negotiations.

6. Confer with City Attorney and assist with preparation for eminent domain proceedings.

7. Prepare and process easement and right-of-way agreements, purchase offers, appraisal summary statements, and Grant Deeds. Present documents to owners.

8. Provide for recordation of deeds.

9. Perform other real estate consulting services and related matters as requested by the City.

10. When Federal or State funding is involved, as directed, perform all above tasks in conformance with State or Federal procedures and requirements.

11. When necessary, perform tasks related to and/or required in order to transfer to Caltrans, rights-of-way acquired along a State Highway.

D. Individual Project Task Orders: Upon request by the City, Consultant will submit for City review and individual project proposal including all information required to complete a Task Order for the individual project. A sample Task Order form is attached as a part of this Exhibit A

The Task Order proposal will identify the specific tasks to be performed by Consultant. Tasks will be listed in chronological order reflecting the entire scope of work as requested by the City, along with an estimated cost per task and sub-task and a combined Not-to-Exceed cost.

Proposals will contain the names and titles of Consultant's personnel assigned to perform the work and specifically identify the individual who will be the Project Manager.

Proposals will contain a project schedule indicating the various tasks and estimated time required to complete each task. Consultant's project schedule will reflect all work to be performed by Consultant for initial execution through completion, and shall include ample time for City reviews and approvals where necessary.

SAMPLE CITY OF MOORPARK SAMPLE

TASK ORDER
PROPERTY ACQUISITION SERVICES

Reference Agreement No.:	XXXX - XX
Task Order No.:	X
Consultant:	Hamner, Jewell & Associates
Date of Original Agreement:	XX/XX/XXXX
Date of This Task Order:	
Purchase Order Number:	
Project Title	

A. Project Description

[General description of the project and the property services required for the project.]

B. Description of Services

Consultant shall perform the following services pursuant to this Task Order:

[List of tasks and sub-tasks required to be performed.]

C. Schedule

Consultant shall complete the services described above with _____ from the date of the Notice to Proceed.

[Schedule may be a more detailed list of sub-tasks and due dates, such as a bar chart.]

Sample

Task Order No._____

Agreement No._____

D. Compensation

Consultant shall be compensated for the services completed under this Task Order in the amount Not-to-Exceed _____.

[Compensation may be set forth in a list broken down by tasks and sub-tasks].

E. City's Responsibilities

City shall provide the following information, reports, documents, etc. required for the performance of the Consultant under this Task Order:

[List of reports, services, etc. (i.e. appraisals, title reports, legal descriptions, etc) to be provided by the City.]

F. Project Managers

1. City's Project Manager: _____
2. Consultant's Project Manager: _____

G. Agreement Provisions

All other provisions of the above mentioned Agreement shall remain in full force and effect.

CITY OF MOORPARK	CONSULTANT
_____	_____
Steven Kueny, City Manager	Lillian D. Jewell, President
Date_____	Date_____

HAMNER, JEWELL AND ASSOCIATES

a division of BEACON INTEGRATED PROFESSIONAL RESOURCES, INC.

2009
TIME AND MATERIALS FEE SCHEDULE
For Annual and Multi-Annual Professional Services Contract Clients

Managing Senior Associate	$160 an hour
Legal Support	$160 an hour*
Senior Associate II	$145 an hour
Senior Associate I	$120 an hour
Associates II	$100 an hour
Associates I	$ 90 an hour
Assistants	$ 70 an hour

These rates are inclusive of secretarial support and general office expenses, overhead, and profit. Reimbursable costs that may be passed through to the client as additional expenses include travel expenses (based upon the standard IRS mileage reimbursement rate, or actual expenses for travel outside of the tri-county area of Ventura, Santa Barbara, and San Luis Obispo), special handling fees such as certified, express mail, and delivery charges, photography and third party photocopy expenses, certain project/client-specific telephone expenses, and other charges made by third parties in connection with performing the scope of services. Such third party expenses may include, but are not limited to, such costs as moving bid fees, title and escrow company charges, and appraisal fees. Fees charged by insurance companies for issuing insurance certificates for client per contract requirements will also be billed through to client for reimbursement.

All third party expenses will be billed to the client at cost plus 10%, with appropriate invoices or other appropriate documentation provided for reference. Mileage and travel costs will be passed through without mark-up.

Statements for work shall be rendered monthly. Payments are due within 30 days.

At all times, by pre-directive, our clients may structure and direct our efforts and general time expenditures so as to maintain control of the course and cost of our services.

Rates may be adjusted on January 1 of any year, with thirty days advance written notice, with maximum adjustment based upon the published CPI..

---

* At the request of several of our clients, this billing rate category has been added specifically in relation to the qualifications and services of Robert McDowell and Cathy Springford who, as licensed attorneys, can provide cost effective support and coordination with client legal counselors. Hamner, Jewell and Associates does not, however, provide legal representation or counsel; We work closely with the legal counsel of our clients to cost effectively assist in resolving any legal matters associated with services we provide.

Attachment 1

Insurance Requirements

Prior to the beginning of and throughout the duration of 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 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 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.

Consultant 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 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 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 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 the City for injury to employees of

Consultant, subconsultants 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 $1,000,000 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, error or omissions of the Consultant and "Covered Professional Services" as designated in the policy must specifically include work performed under this Agreement. The policy limit shall be no less than $1,000,000 per claim and in the aggregate. The policy must "pay on behalf of" the insured and must include a provision establishing the insurer's duty to defend. The policy retroactive date shall be on or before the effective date of this Agreement.

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

General conditions pertaining to provision of insurance coverage by Consultant. Consultant and the 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 the City, its officials, employees and agents, using standard ISO endorsement 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 to subrogation prior to a loss. Consultant 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. Consultant 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 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, 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 Consultant or deducted from sums due Consultant, 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. 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 the City.

10. Consultant agrees to ensure that subcontractors, and any other party involved with the Work who is brought onto or involved in the Work by Consultant, provide the same minimum insurance 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 Work will be submitted to the 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 contemplated by this Agreement to self-insure its obligations to the 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 Agreement to change the amounts and types of insurance required by giving the Consultant 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 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. Consultant acknowledges and agrees that any actual or alleged failure on the part of the City to inform Consultant 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. Consultant 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 terrminated for any reason. Termination of this obligation is not effective until the 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. As 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 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 Consultant under this Agreement. Consultant 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. Consultant 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 Consultant 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. Consultant agrees to provide immediate notice to City of any claim or loss against Consultant 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.