

**MOORPARK CITY COUNCIL
AGENDA REPORT**

TO: Honorable City Council

FROM: Teri Davis, Senior Management Analyst 

DATE: August 26, 2009 (CC Meeting of 9/2/09)

SUBJECT: Consider: 1) A Project Design of the Mountain Meadows Park Handball Wall (Project); 2) Resolution Amending the Fiscal Year (FY) 2009/10 Budget by Authorizing Loan from Park Improvement Community Wide Fund to Fund Project; and 3) The Selection of Toro Enterprises, Inc. to Supply and Install the Project

BACKGROUND

The City Council, on June 17, 2009, approved the City's Mission Statement, Priorities, Goals, and Objectives for FY 2009/10 (Objectives). Item VI.A.14 of the Objectives (Construct a ball wall at Mountain Meadows Park by October 31, 2009), is identified as a staff effort to be accomplished within 0-2 years. The Project would achieve the Objective.

Staff discussed the needs of the Project with an engineering company retained by the City and designs and specifications were developed. A soil sample expert was also retained by the City and a soil sample study was received. In July of this year, staff requested informal bids, for both a masonry wall and a concrete wall, from ten Contractors to provide these services. One of these Contractors submitted a proposal.

DISCUSSION

A proposal for the Project was received from Toro Enterprises, Inc., for \$48,937 for the masonry wall and \$47,417 for the concrete wall. Staff reviewed the proposal and found it to be responsive to the informal bid request. The apparent qualified low bidder is Toro Enterprises, Inc.

The original estimate for this Project, a Park Improvement Fund (PIF) Zone 3 (2113) project, was \$25,000; however, the original estimate is too low for several reasons. First, it did not consider the complete project which included a soil sample study and what information would be in the study. The soil sample study revealed a high level of sulfate, a concrete corrosive, and as a result, a higher concentration of concrete was determined to be needed for the concrete slab of the handball wall. This higher concentration, 4000 pounds per square inch (psi) rather than the original estimate of 2500 psi, requires a specialized inspector to be present while the concrete slab is being mixed and poured (the

City's Building and Safety Inspectors are not qualified for this type of inspection). Second, the original estimate considered a concrete slab foundation that was four inches thick and the City Engineer/Public Works Director revised the thickness to six inches to help prevent cracking. Third, the original estimate considered painted concrete while the recommended design uses colored concrete. Finally, \$7,300 of the original estimate was used for the design and soil samples and another \$1,100 will be needed for the specialized inspector.

The 2009 Basketball Court Lighting Project (Basketball Project) will have PIF Zone 3 (2113) funds in the amount of \$21,000 remaining upon completion of the Basketball Project. This \$21,000, if transferred, would bring the Project Fund to \$46,000. A \$10,000 loan from the Community Wide PIF Zone (2300) will increase PIF Zone 3 by \$10,000 making a total of \$56,000 available in PIF Zone 3 (2113) for this Project.

The City Council is being asked to adopt a resolution (Attachment A), amending FY 2009/10 budget to formally appropriate an additional \$31,000 in funds for this Project.

FISCAL IMPACT

As discussed above, the revised estimated cost of the Project is \$56,000, approximately \$31,000 more than what was included in the FY 2009/10 budget (the original estimate was \$25,000). However, PIF Zone 3 (2113) funding sources, with \$46,000 available for this Project, require temporary loans from the Community PIF Zone (2300) totaling approximately \$10,000. The Council should note that the interest that would be earned by the loaning funding source will be negatively impacted in an approximate amount of \$200; although, the interest would be repaid based on the average local agency investment fund rate for the previous, along with the principal. The timeline for repayment of the loan will depend on the pace of new development and payment of parkland fees. The total cost to the City for the Project will be \$56,000 (2113).

STAFF RECOMMENDATION ROLL CALL VOTE

1. Approve Project Design.
2. Adopt Resolution No. 2009-_____.
3. Authorize the City Manager to sign the negotiated contract for services with Toro Enterprises, Inc. for Mountain Meadows Park Handball Wall Supply and Installation of a Concrete Wall, subject to final language approval by the City Manager and City Attorney.

Attachments: Draft Resolution
 Agreement

RESOLUTION NO. 2009-_____

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MOORPARK, CALIFORNIA, AMENDING THE FISCAL YEAR 2009/10 BUDGET TO REVISE THE APPROPRIATION AND BUDGET AMOUNTS AND AUTHORIZING A LOAN OF \$10,000 FROM THE PARK IMPROVEMENT COMMUNITY WIDE ZONE (2100) TO ZONE 3 (2113) FOR THE MOUNTAIN MEADOWS PARK HANDBALL WALL PROJECT

WHEREAS, on July 1, 2009, the City Council adopted the Budget for Fiscal Year 2009/10 (Budget); and

WHEREAS, the adopted budget included an appropriation in the Park Improvement Fund (PIF) Zone 3 (2113) of \$25,000 for Capital Improvement Project No. 7810 Mountain Meadows Park Handball Wall (Project); and

WHEREAS, the revised cost estimate for this Project is \$56,000; and

WHEREAS, PIF Zone 3 (2113) does not currently have sufficient funds for this purpose; and

WHEREAS, PIF Community Wide (2100) has sufficient funds to loan \$10,000 to PIF Zone 3 (2113) for this purpose; and

WHEREAS, a staff report has been presented to the City Council requesting a loan of \$10,000 from the PIF Community Wide (2100) to the PIF Zone 3 (2113) for the Project, with variable interest based on the average interest rate earned by the Local Agency Investment Fund (LAIF) from the previous year; and

WHEREAS, said staff report directs the loan funds to be transferred from PIF Community Wide (2100) to PIF Zone 3 (2113) when needed and the principal and interest to be repaid as new development and park in-lieu fees are collected; and

WHEREAS, Exhibit "A" attached hereto and made a part hereof, describe said budget amendments and their resultant impacts to the budget line item(s).

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF MOORPARK DOES HEREBY RESOLVE AS FOLLOWS:

SECTION 1. That a Budget amendment in the aggregate increase of \$10,000 as more particularly described in Exhibit "A", is hereby approved.

SECTION 2. The City Clerk shall certify to the adoption of this resolution and shall cause a certified resolution to be filed in the book of original resolutions.

Resolution No. 2009-_____

PASSED AND ADOPTED this 2nd day of September, 2009.

Janice S. Parvin, Mayor

ATTEST:

Deborah S. Traffenstedt, City Clerk

Exhibit A: Budget Revision

EXHIBIT A

**BUDGET AMENDMENT FOR
 PARK IMPROVEMENT ZONE DEVELOPMENT FEES 3 FUND
 TO APPROPRIATE FUNDS
 FOR MOUNTAIN MEADOWS PARK HANDBALL WALL
 FY 2009/10**

FUND ALLOCATION FROM:

Fund Title	Fund-Account Number	Amount
Park Improvement Zone Development Fees 3 Fund	2113-5500	\$ 10,000.00
Total		\$ 10,000.00

DISTRIBUTION OF APPROPRIATION TO EXPENSE ACCOUNTS:

Account Number	Current Budget	Revision	Amended Budget
2113-7800-7810-9632	\$25,000.00	\$ 31,000.00	\$ 56,000.00
2113-7800-7029-9630	\$55,000.00	\$ (20,000.00)	\$ 35,000.00
2113-7800-7808-9613	\$25,000.00	\$ (1,000.00)	\$ 24,000.00
Total	\$105,000.00	\$ 10,000.00	\$ 115,000.00

Finance Approval: *Sp Bon Ahler*

AGREEMENT BETWEEN THE CITY OF MOORPARK
AND TORO ENTERPRISES, INC. FOR THE
MOUNTAIN MEADOWS PARK HANDBALL WALL

THIS AGREEMENT, is made and effective as of the _____ day of _____, 2009, between the City of Moorpark, a municipal corporation (City) and Toro Enterprises, Inc., a corporation (Contractor). In consideration of the mutual covenants and conditions set forth herein, the parties agree as follows:

WHEREAS, City desires to install a handball wall at Mountain Meadows Park; and

WHEREAS, Contractor specializes in providing such services and has the proper work experience, certifications and background to carry out the duties involved; and

WHEREAS, Contractor has submitted to City a Proposal dated August 18 2009, which is attached hereto as Exhibit B.

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

1. TERM

The term of the Agreement shall be from the date of execution to completion of the work identified in the Scope of Services and in conformance with the Proposal, unless this Agreement is terminated or suspended pursuant to Article 6 herein.

2. SCOPE OF SERVICES

City does hereby retain Contractor, as an independent contractor, in a contractual capacity to provide supply and install a handball wall for the Mountain Meadows Handball Wall Project (Project), as set forth in Exhibit A. Contractor's Proposal (Exhibit B), dated August 18, 2009, which exhibit is attached hereto and incorporated herein by this reference as though set forth in full and hereinafter referred to as the "Proposal." Where said Scope of Services is modified by this Agreement, or in the event there is a conflict between the provisions of said Scope of Services and this Agreement, the language contained in this Agreement shall take precedence.

Contractor shall perform the tasks described and set forth in Exhibit A, attached hereto and incorporated herein by this reference as though set forth in full. Contractor shall complete the tasks according to the schedule of performance which is also set forth in Exhibit A.

Compensation for the services to be performed by Contractor shall be in accordance with Proposal, as though set forth in full. Compensation shall not exceed the rates or total contract value of forty-seven thousand four hundred seventeen dollars (\$47,417) as stated in the Proposal, without the written authorization of the City

Manager. Payment by City to Contractor shall be in accordance with the provisions of Article 5 of this Agreement.

3. PERFORMANCE

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

4. CITY MANAGEMENT

The individual directly responsible for Contractor's overall performance of the Agreement provisions herein above set forth and to serve as principal liaison between City and Contractor shall be Sean Castillo, and no other individual may be substituted without the prior written approval of the City Manager.

The City's contact person in charge of administration of this Agreement, and to serve as principal liaison between Contractor and City, shall be the City Manager or his designee.

5. PAYMENT

Taxpayer ID or Social Security numbers must be provided, on an IRS 1099 form, before payments may be made to vendors.

The City agrees to pay Contractor upon completion of certain services, in accordance with the payment rates and terms and the schedule of payment as set forth in the Proposal, based upon actual time spent on the Project and costs of materials. This amount shall not exceed forty-seven thousand four hundred seventeen dollars (\$47,417) for the total term of the Agreement unless additional payment is approved as provided in this Agreement.

Contractor shall not be compensated for any services rendered in connection with its performance of this Agreement, which are in addition to those set forth herein, unless such additional services are authorized in advance and in writing by the City Manager. Contractor shall be compensated for any additional services in the amounts and in the manner as agreed to by City Manager and Contractor at the time City's written authorization is given to Contractor for the performance of said services. The City Manager may approve additional work not to exceed ten percent (10%) of the amount of the Agreement.

Contractor will submit invoices for actual services as they are performed. Payment shall be made within thirty (30) days of receipt of each invoice as to all non-disputed fees. Any expense or reimbursable cost appearing on any invoice shall be accompanied by a receipt. If the City disputes any of Contractor's fees or expenses it

shall give written notice to Contractor within (30) days of receipt of any disputed fees set forth on the invoice.

6. TERMINATION OR SUSPENSION WITHOUT CAUSE

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 Contractor at least ten (10) days prior written notice. Upon receipt of said notice, the Contractor 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.

The Contractor may terminate this Agreement only by providing City with written notice no less than thirty (30) days in advance of such termination. In the event of such termination or suspension, Contractor shall be compensated for such services up to the date of termination or suspension. Such compensation for work in progress shall be prorated as to the percentage of progress completed at the date of termination or suspension.

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

7. DEFAULT OF CONTRACTOR

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

If the City Manager or his designee determines that the Contractor is in default in the performance of any of the terms or conditions of this Agreement, he shall cause to be served upon the Contractor a written notice of the default. The Contractor shall have fifteen days (15) days after service upon it of said notice in which to cure the default by rendering a satisfactory performance. In the event that the Contractor 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.

8. OWNERSHIP OF DOCUMENTS

Contractor shall maintain complete and accurate records with respect to sales, costs, expenses, receipts, and other such information required by City that relate to the performance of services under this Agreement. Contractor shall maintain adequate records of services provided in sufficient detail to permit an evaluation of services. All such records shall be maintained in accordance with generally accepted accounting principles and shall be clearly identified and readily accessible. Contractor shall provide free access to the representatives of City or its designees at reasonable times to such books and records; shall give the City the right to examine and audit said books and records; shall permit City to make transcripts therefrom as necessary; and shall allow inspection of all work, data, documents, proceedings, and activities related to this Agreement. Notification of audit shall be provided at least thirty (30) days before any such audit is conducted. Such records, together with supporting documents, shall be maintained for a period of three (3) years after receipt of final payment.

Upon completion of, or in the event of termination or suspension of this Agreement, all original documents, designs, drawings, maps, models, computer files, surveys, notes, and other documents prepared in the course of providing the services to be performed pursuant to this Agreement 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. With respect to computer files, Contractor shall make available to the City, at the Contractor's office and upon reasonable written request by the City, the necessary computer software and hardware for purposes of accessing, compiling, transferring, and printing computer files.

9. INDEMNIFICATION AND HOLD HARMLESS

Except for the gross negligence or willful misconduct of an Indemnitee (hereinafter defined), the Contractor hereby assumes liability for and agrees to defend (at Indemnitee's option), indemnify, protect and hold harmless City and its Project Consultants, and Engineers, officers, agents, and employees (Indemnitees) from and against any and all claims, charges, damages, demands, actions, proceedings, losses, stop notices, costs, expenses (including counsel fees), judgments, civil fines and penalties, liabilities or any kind or nature whatsoever, which may be sustained or suffered by or secured against the Indemnitees arising out of or encountered in connection with this Agreement or the performance of the Project including, but not limited to, death of or bodily or personal injury to persons or damage to property, including property owned by or under the care and custody of City, and for civil fines and penalties, that may arise from or be caused, in whole or in part, by any negligent or other act or omission of Contractor, its officers, agents, employees or subcontractors including, but not limited to, liability arising from:

- A. Any dangerous, hazardous unsafe or defective condition of, in or on the premises, of any nature whatsoever, which may exist by reason of any act, omission, neglect, or any use or occupation of the premises by Contractor, its officers, agents, employees, or subcontractors;

- B. Any operation conducted upon or any use or occupation of the premises by Contractor, its officers, agents, employees, or subcontractors under or pursuant to the provisions of this Agreement or otherwise;
- C. Any act, omission or negligence of Contractor, its officers, agents, employees, or subcontractors;
- D. Any failure of Contractor, its officers, agents, or employees to comply with any terms or conditions of this Agreement or any applicable federal, state, regional, or municipal law, ordinance, rule, or regulation; and
- E. The conditions, operations, uses, occupations, acts, omissions or negligence referred to in sub-sections 1, 2, 3, and 4, existing or conducted upon or arising from the use or occupation by Contractor on any other premises in the care, custody and control of City.

Contractor's obligations under this Section apply regardless of whether or not such claim, charge, damage, demand, action, proceeding, loss, stop notice, cost, expense, judgment, civil fine or penalty, or liability was caused in part or contributed to by an Indemnitee. However, without affecting the rights of City under any provision of this Agreement, Contractor shall not be required to indemnify and hold harmless City for liability attributable to the active negligence of City, provided such active negligence is determined by agreement between the parties or by the findings of a court of competent jurisdiction. In instances where City is shown to have been actively negligent and where City's active negligence accounts for only a percentage of the liability involved, the obligation of Contractor will be for that entire portion or percentage of liability not attributable to the active negligence of the City.

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 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.

This indemnity shall survive termination of the Agreement or Final Payment hereunder. This indemnity is in addition to any other rights or remedies that the Indemnitees may have under the law or under any other Agreement Documents or Agreements. In the even any claim or demand made against any party which is entitled to be indemnified hereunder, City may, in its sole discretion, reserve, retain or apply any monies to the Contractor under this Agreement for the purpose of resolving such claims; provided, however, City may release such funds if the Contractor provides City with reasonable

assurance of protection of the Indemnitees' interests. City shall, in its sole discretion, determine whether such assurances are reasonable.

10. INSURANCE

Contractor shall maintain prior to the beginning of and for the duration of this Agreement insurance coverage as specified in Exhibit C attached hereto and incorporated herein by this reference as though set forth in full.

11. INDEPENDENT CONTRACTOR

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

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

12. LEGAL RESPONSIBILITIES

The Contractor shall keep itself informed of local, State and Federal laws and regulations which in any manner affect those employed by it or in any way affect the performance of its service pursuant to this Agreement. The Contractor shall at all times observe and comply with all such laws and regulations. The City, and its officers and employees, shall not be liable at law or in equity occasioned by failure of the Contractor to comply with this Section.

13. ANTI DISCRIMINATION

Neither the Contractor, nor any subcontractor under the Contractor, shall discriminate in employment of persons upon the work because of race, religious creed, color, national origin, ancestry, physical handicap, medical condition, marital status or gender of such person, except as provided in Section 12940 of the Government Code. The Contractor shall have responsibility for compliance with this Section. [Labor Code Sec. 1735]

14. UNDUE INFLUENCE

Contractor declares and warrants that no undue influence or pressure is used against or in concert with any officer or employee of the City in connection with the award, terms or implementation of this Agreement, including any method of coercion, confidential financial arrangement, or financial inducement. No officer or employee of the City will receive compensation, directly or indirectly from Contractor, or any officer, employee or agent of Contractor, in connection with the award of this Agreement or any work to be conducted as a result of this Agreement. Violation of this Section shall be a material breach of this Agreement entitling the City to any and all remedies at law or in equity.

15. NO BENEFIT TO ARISE TO LOCAL EMPLOYEES

No member, officer, or employee of the City, or their designees or agents, and no public official who exercises authority over or responsibilities with respect to the Services during his/her tenure or for one year thereafter, shall have any interest, direct or indirect, in any agreement or sub-agreement, or the proceeds thereof, for work to be performed in connection with the Services performed under this Agreement.

16. CONFLICT OF INTEREST

Contractor 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. Contractor further covenants that in the performance of this Agreement, they shall employ no person having such interest as an officer, employee, agent, or subcontractor. Contractor further covenants that Contractor 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 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, now or within the past one (1) year, and further covenants and agrees that Contractor 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 and for a one-year time period following termination of this Agreement.

17. NOTICE

Any notice to be given pursuant to this Agreement shall be in writing, and all such notices and any other document to be delivered shall be delivered by personal service or by deposit in the United States mail, certified or registered, return receipt requested, with postage prepaid, and addressed to the party for whom intended as follows:

To: City Manager
City of Moorpark
799 Moorpark Avenue
Moorpark, California 93021

To: Sean Castillo
Toro Enterprises, Incorporated
511 Buena Vista Avenue
Oxnard, California 93030

Either party may, from time to time, by written notice to the other, designate a different address or contact person, which shall be substituted for the one above specified. Notices, payments and other documents shall be deemed delivered upon receipt by personal service or as of the third (3rd) day after deposit in the United States mail.

18. CHANGE IN NAME

Should a change be contemplated in the name or nature of the Contractor's legal entity, the Contractor shall first notify the City in order that proper steps may be taken to have the change reflected in the Agreement Documents.

19. ASSIGNMENT

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

20. LICENSES

At all times during the term of this Agreement, Contractor shall have in full force and effect, all licenses required of it by law for the performance of the services in this Agreement.

21. VENUE AND GOVERNING LAW

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. The City and Contractor 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.

22. COST RECOVERY

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 attorneys' fees, from the losing party, and any judgment or decree rendered in such a proceeding shall include an award thereof.

23. ARBITRATION

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

24. ENTIRE AGREEMENT

This Agreement and the Exhibits attached hereto contain the entire understanding between the parties relating to the obligations of the parties described in this Agreement. Each party is entering into this Agreement based solely upon the representations set forth herein and upon each party's own independent investigation of any and all facts such party deems material.

25. CAPTIONS OR HEADINGS

The captions and headings of the various Articles, Paragraphs, 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 Articles, Paragraphs, and Exhibits hereof.

26. 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.

27. PRECEDENCE

In the event of conflict, the requirements of the City's Request for Proposals and this Agreement shall take precedence over those contained in the Consultant's Proposal.

28. 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 ground that the party prepared the Agreement or caused it to be prepared.

29. WAIVER

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.

30. AUTHORITY TO EXECUTE

The person or persons executing this Agreement on behalf of the Contractor warrants and represents that he/she has the authority to execute this Agreement on behalf of the Contractor and has the authority to bind Contractor to the performance of 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

TORO ENTERPRISES, INC.

By: _____
Steven Kueny
City Manager

By: _____
Sean Castillo
President

Attest:

Deborah S. Traffenstedt, City Clerk

Date: _____

EXHIBIT C

INSURANCE REQUIREMENTS

Prior to the beginning of and throughout the duration of the 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 the requirements set forth here, it will be amended 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 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:

1. Commercial General Liability

Commercial General Liability Insurance shall be provided by an 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 shall be no less than \$1,000,000 per occurrence for all covered losses and no less than \$2,000,000 general aggregate.

Contractor's policy shall contain no endorsements limiting coverage beyond the basic policy coverage grant for any of the following:

- a. Explosion, collapse or underground hazard (XCU)
- b. Products and completed operations
- c. Pollution liability
- d. Contractual liability

Coverage shall be applicable to City for injury to employees of contractors, subcontractors, or others involved in the project. Policy shall be endorsed to provide a separate limit applicable to this project.

2. Workers' Compensation

Workers' Compensation insurance shall be provided on a state-approved policy form providing statutory benefits as required by law with employers' liability limits no less than \$1,000,000 per accident for all covered losses.

3. Business Auto Coverage

Business Auto Coverage on ISO Business Auto Coverage form CA 00 01 06 92 including symbol 1 (Any Auto) or the exact equivalent shall be provided. Limits shall be no less than \$1,000,000 per accident, combined single limit. 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, Contract shall provide evidence of personal auto liability coverage for each such person.

4. Excess or Umbrella Liability

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. 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 contractor, subcontractors, or others involved in the Work. The scope of coverage provided is subject to the approval of 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 and aggregate.

5. Course of Construction

Course of Construction insurance shall provide "all risk" coverage for the completed value of the project. Policies shall contain the following provisions: (1) City shall be named as loss payee; and (2) the insurer shall waive all rights of recovery against City.

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

Contractor and City agrees as follows:

1. Contractor agrees to endorse the third party general liability coverage required herein to include as additional insureds City, its officials, employees, agents, using standard ISO endorsement No. CG 2010 with an edition date of 1985. Contractor also agrees to require all contractors, subcontractors, and any one else involved in any way with the project contemplated by this Agreement to do likewise.

2. Any waiver of subrogation express or implied on the part of the City to any party involved in this Agreement or related documents applies only to the extent of insurance proceeds actually paid. City, having required that it be named as an additional insured to all insurance coverage required herein, expressly retains the right to subrogate against any party for sums not paid by insurance. For its part, Contractor agrees to waive subrogation rights against City regardless of the applicability of any insurance proceeds, and to require all contractors, subcontractors, or others involved in any way with the project contemplated by this Agreement to do likewise.
3. All insurance coverage maintained or procured by Contractor or required of others by Contractor pursuant to this Agreement shall be endorsed to delete the subrogation condition as to the city, or to specifically allow Contractor or others providing insurance herein to waive subrogation prior to a loss. This endorsement shall be obtained regardless of existing policy wording that may appear to allow such waivers.
4. It is agreed by Contractor and City that insurance provided pursuant to these requirements is not intended by any party to be limited to providing coverage for the vicarious liability of City, or to the supervisory role, if any, of City. All insurance coverage provided pursuant to this or any other Agreement (express or implied) in any way relating to City is intended to apply to the full extent of the policies involved. Nothing referred to here or contained in any agreement involving City in relation to the project contemplated by this Agreement is intended to be construed to limit the application of insurance coverage in any way.
5. 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.
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 discover period) that may affect City's protection without City's prior written consent.
7. Proof of compliance with these insurance requirements, consisting of binders of coverage, or endorsements, or certificates of insurance, at the option of City, shall be delivered to City at or prior to the execution of this Agreement. In the event such proof of 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 Contractor or deducted from sums due Contractor, at City option.

8. Contractor agrees to endorse, and to required others to endorse, the insurance provided pursuant to these requirements, to require 30 days notice to City and the appropriate tender prior to cancellation of such liability coverage and notice of any material alteration or non-renewal of any such coverage, and to require contractors, subcontractors, and any other party in any way involved with the project contemplated by this Agreement to do likewise.
9. It is acknowledged by the parties of this Agreement that all insurance coverage required to be provided by Contractor or any subcontractor, and any other party involved with the project who is brought onto or involved in the project by Contractor, 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 project who is brought onto or involved in the project by Contractor, provide the same minimum insurance coverage 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 Agreement. Contractor agrees that upon request, all agreements with subcontractors and others engaged in this project will be submitted to City for review.
11. Contractor agrees that all layers of third party liability coverage required herein, primary, umbrella and excess, will have the same starting and expiration date. Contractor agrees further that all other third party coverages required herein will likewise have concurrent starting and ending dates.
12. 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 on the project contemplated by this Agreement to self-insure its obligations to 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.
13. The City reserves the right at any time during the term of this 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 City.

14. For purposes of applying insurance coverage only, all contracts pertaining to the project will be deemed to be executed when finalized and any activity commences in furtherance of performance under this Agreement.
15. Contractor acknowledges and agrees that any actual or alleged failure on the part of City to inform Contractor 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.
16. Contractor 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. The insurance shall include but not be limited to products and completed operations and discontinued operations, where applicable. Termination of this obligation is not effective until City executes a written statement to that effect.
17. Contractor agrees to waive its statutory immunity under any workers' compensation statute or similar statute, in relation to the City, and to require all subcontractors and any other person or entity involved in the project contemplated by this Agreement to do likewise.
18. Requirements of specific coverage features are not intended as limitations on other requirements or 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 all-inclusive.
19. Any provision in any of the construction documents dealing with the insurance coverage provided pursuant to these requirements, is subordinate to and superseded by the requirements contained herein. These insurance requirements are intended to be separate and distinct from any other provision in this Agreement and are intended by the parties to be interpreted as such.
20. All liability coverage provided according to these requirements must be endorsed to provide a separate aggregate limit for the project that is the subject of this Agreement and evidencing products and completed operations coverage for not less than two years after issuance of a final certificate of occupancy by all appropriate government agencies or acceptance of the completed work by City.

21. Contractor 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 Contractor 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. Contractor agrees to obtain and provide to City a copy of Professional Liability coverage for Architects or Engineers on this project through Contractor. City shall determine the liability limit.