

**MOORPARK CITY COUNCIL
AGENDA REPORT**

TO: The Honorable City Council

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

DATE: June 4, 2010 (CC Meeting of 06/16/10)

SUBJECT: Consider Amendment to Agreement for Transit Operating Services and Consider Amendment to Agreement for Bus Capital Maintenance Services

SUMMARY

On July 12, 2007, the City awarded an Agreement for Transit Operating Services and an Agreement for Bus Capital Maintenance Services, to CUSA CC, LLC (CUSA). Both Agreements were for three years, with two one-year extensions. The Agreements expire June 30, 2010 and City staff is recommending that City Council approve the first one-year extension with CUSA CC, LLC.

BACKGROUND/DISCUSSION

With the one-year extension, CUSA has an opportunity to request an updated hourly rate for its services. CUSA has requested the following hourly rate for the City's diesel fleet:

Table 1: Proposed FY 2010/11 Diesel Rates

Service	FY 2009/10	FY 2010/11 Proposed	Percent Change
Operation	\$32.47 per hour	\$33.77 per hour	4.00%
Capital Maintenance	\$19.47 per hour	\$20.64 per hour	6.00%

Production has begun on the City's three compressed natural gas (CNG) buses which will replace three of the City's diesel buses. The CNG buses are expected to begin service in October 2010. The CNG buses will fuel at the Simi Valley Transit Maintenance Facility and the City will pay for the fuel directly instead of CUSA. In anticipation of the new CNG buses, CUSA has proposed the following hourly rates for the City's CNG fleet:

Table 2: Proposed FY 2010/11 CNG Rates

Service	FY 2010/11 Diesel Proposed	FY 2010/11 CNG Proposed	Percent Change
Operation	\$33.77 per hour	\$31.52 per hour	(6.67%)
Capital Maintenance	\$20.64 per hour	\$20.64 per hour	0.00%
CNG Fuel Time Rate	-	\$17.20 per hour	N/A

As detailed above, CUSA has proposed a reduced rate when its drivers travel to and from the Simi Valley Transit Maintenance Facility to fuel. The City of Simi Valley has agreed to allow CUSA's drivers to use the breakroom while the buses fuel. CUSA will not charge the City for the time that the drivers are on break. It is anticipated that each driver will spend approximately 20 to 45 minutes per bus (for a total of three buses per day) to fuel. CUSA has also agreed to reduce the CNG rates after thirty to sixty days of operating and maintaining the CNG buses if it discovers that the actual costs are lower than it anticipated when providing its rates. If CUSA determines that its actual costs are higher than expected, it has agreed not to request any cost increases in FY 2010/11.

Occasionally, CUSA has had to provide its own vehicle due to unexpected mechanical failures of the City's fleet. In the past, CUSA has provided a backup vehicle at no charge. CUSA has requested that the City accept a proposed hourly operating rate of \$32.71 and an hourly capital maintenance rate of \$21.80 for a combined hourly rate of \$54.51. The split between operating and capital maintenance enables the City to claim Federal Transit Administration (FTA) reimbursement for 80% of the capital maintenance costs. CUSA has requested that if its backup vehicle is provided, a minimum 2.5 hour charge would apply.

In addition to the rate changes, staff is also proposing a few additional language changes to the Agreements. Both Amendments update the respective Agreement's Termination and Suspension, Insurance, and Indemnification language. Amendment No. 1 to the Transit Operating Services Agreement adds additional driver background checks.

FISCAL IMPACT

The proposed Amendments would establish the following hourly rates:

Service	FY 2010/11 Proposed Rates
Operation - Diesel	\$32.47 per hour
Operation - CNG	\$31.52 per hour
Capital Maintenance (Diesel and CNG)	\$20.64 per hour
CNG Fuel Time Rate	\$17.20 per hour
Operation – CUSA Vehicle	\$32.71 per hour
Capital Maintenance – CUSA Vehicle	\$21.80 per hour

The Draft FY 2010/11 Budget includes \$132,000 in Traffic Systems Management (TSM) Fund (2001) for CUSA operating the CNG buses; \$40,000 in TSM Fund (2001) for CNG fueling; \$53,000 in Local Transit Programs 8C Fund (5000) for CUSA operating the diesel buses; and \$120,000 in Local Transit Programs 8C Fund (5000) for CUSA maintaining the City's fleet of buses.

STAFF RECOMMENDATION

1. Authorize the City Manager to sign Amendment No. 1 to the Agreement for Transit Operating Services, subject to final language approval of the City Manager and City Attorney.
2. Authorize the City Manager to sign Amendment No. 1 to the Agreement for Bus Capital Maintenance Services, subject to final language approval of the City Manager and City Attorney

Attachments:

- A. Draft Amendment No. 1 for Transit Operating Services
- B. Draft Amendment No. 1 for Bus Capital Maintenance Services

AMENDMENT NO. 1

AGREEMENT BETWEEN THE CITY OF MOORPARK AND CUSA CC, LLC FOR
TRANSIT OPERATING SERVICES

THIS AMENDMENT TO AGREEMENT, made and entered into this ____ day of _____, 2010, by and between the City of Moorpark, a municipal corporation located in the County of Ventura, State of California, hereinafter referred to as "City" and CUSA CC, LLC, hereinafter referred to as "Contractor".

WITNESSETH

Whereas, on July 12, 2007, the City and Contractor entered into an Agreement for providing transit operating services, hereto referred to as Agreement, pertaining to all things necessary to operate and manage fixed-route transit services for the City; and

Whereas, the Agreement expires on June 30, 2010; and

Whereas, the Agreement can be extended for up to two additional one-year periods; and

Whereas, the City desires to extend the Agreement from June 30, 2010 to June 30, 2011; and

Whereas, Contractor has provided updated costs associated with operating City-owned diesel vehicles and City-owned compressed natural gas (CNG) vehicles and Contractor-owned vehicles; and

Whereas, the City desires to add new driver background checks, and adjust the termination language specified in Section 12 of the Agreement; and

Whereas, the City desires to adjust the indemnification language specified in Section 13 of the Agreement; and

Whereas, the City desires to adjust the insurance language specified in Attachment 1 of the Agreement; and

Whereas, both City and Contractor agree to the adjustments to the Agreement and now wish to document said Amendment by jointly approving this Amendment No. 1 to the July 12, 2007 Agreement by amending the Agreement.

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

I. TERM

The term of the Agreement is extended to June 30, 2011.

II. COMPENSATION

Section 2 of the Agreement is hereby amended to include the following hourly rates:

- A. City-owned CNG vehicles: \$31.52 per hour
- B. City-owned CNG vehicles fuel time: \$17.20 per hour
- C. City-owned diesel vehicles: \$33.77 per hour
- D. Contractor-owned vehicles: \$32.71 per hour (minimum 2.5 hour charge)

The hourly rates for the City-owned and Contractor-owned vehicles shall not exceed a combined 22 hours per day.

The City-owned CNG vehicles fuel time shall not exceed more than one hour per vehicle fueled per day.

Contractor agrees to lower the CNG rates after thirty but no later than sixty days of operating the CNG vehicles if it is determined that Contractor's actual costs are lower than expected.

III. BACKGROUND CHECKS

Section 3.1 is hereby added to the Agreement and reads:

SECTION 3.1. BACKGROUND CHECKS

"Contractor shall be registered with the Department of Justice as a Human Resources Agency. Contractor shall at a minimum perform background checks on drivers utilizing a vendor such as Live Scan to ensure that drivers with inappropriate backgrounds are not employed to provide services under this Agreement. Drivers shall have no felony conviction history."

IV. TERMINATION AND SUSPENSION

Section 12 of the Agreement is hereby amended and replaced with the following language:

SECTION 12. TERMINATION OF AGREEMENT

"This Agreement, or portions thereof, may be terminated, canceled or suspended in any one of the following manners:

- 1) By mutual written agreement of the parties.
- 2) Upon thirty (30) days written notice by either party, with or without cause.
- 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 to be provided in accordance with the terms hereof, or fails to comply with any of the requirements and terms of this Agreement 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 after such date.
- 4) 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 maintain in force throughout the term of this Agreement, including any extensions thereof, the insurance coverage required herein, or Contractor effects any willful acts or omissions that endanger the public health and safety, the City may immediately, without prior notification, and without prejudice to any other remedies the City may have, suspend Contractor's services and any obligations the City may otherwise have under this Agreement. Upon receiving written notice of immediate suspension, Contractor shall have up to fourteen (14) days to cure or remedy cause for suspension; however the City may, at the City's sole discretion, terminate this Agreement within the suspension period. Should the Contractor cure or remedy the cause for suspension, and the cure or remedy is accepted, in writing, by the City, Contractor may resume services."

V. Indemnification

Section 13 of the Agreement is hereby amended and replaced with the following language:

- "13.1 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.

- 13.2 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.”

VI. Insurance

Attachment 1 of the Agreement is hereby amended and replaced with Attachment 1 of the Amendment.

VII. Remaining Provisions

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

CITY OF MOORPARK:

CUSA CC, LLC:

Steven Kueny,
City Manager

Darlene Cochran,
Vice President/General Manager

Date _____

Date _____

ATTEST:

Deborah S. Traffenstedt, City Clerk

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 \$5,000,000 per occurrence for all covered losses and no less than \$10,000,000 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 \$10,000,000 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. Any such coverage provided under an umbrella policy shall include a drop down provision providing primary coverage above a maximum \$25,000 self-insured retention for liabilities 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 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 \$10,000,000 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.

AMENDMENT NO. 1

AGREEMENT BETWEEN THE CITY OF MOORPARK AND CUSA CC, LLC FOR
BUS CAPITAL MAINTENANCE SERVICES

THIS AMENDMENT TO AGREEMENT, made and entered into this ____ day of _____, 2010, by and between the City of Moorpark, a municipal corporation located in the County of Ventura, State of California, hereinafter referred to as "City" and CUSA CC, LLC, hereinafter referred to as "Contractor".

WITNESSETH

Whereas, on July 12, 2007, the City and Contractor entered into an Agreement for providing bus capital maintenance services, hereto referred to as Agreement, pertaining to all things necessary to maintain the City's fixed-route transit vehicles for the City; and

Whereas, the Agreement expires on June 30, 2010; and

Whereas, the Agreement can be extended for up to two additional one-year periods; and

Whereas, the City desires to extend the Agreement from June 30, 2010 to June 30, 2011; and

Whereas, Contractor has provided updated costs associated with maintaining City-owned diesel vehicles and City-owned compressed natural gas (CNG) vehicles and Contractor-owned vehicles; and

Whereas, the City desires to adjust the termination language specified in Section 12 of the Agreement; and

Whereas, the City desires to adjust the indemnification language specified in Section 13 of the Agreement; and

Whereas, the City desires to adjust the insurance language specified in Attachment 1 of the Agreement; and

Whereas, both City and Contractor agree to the adjustments to the Agreement and now wish to document said Amendment by jointly approving this Amendment No. 1 to the July 12, 2007 Agreement by amending the Agreement.

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

I. TERM

The term of the Agreement is extended to June 30, 2011.

II. COMPENSATION

Section 2 of the Agreement is hereby amended to include the following hourly rates:

- | | |
|--------------------------------|--|
| A. City-owned CNG vehicles: | \$20.64 per hour |
| B. City-owned diesel vehicles: | \$20.64 per hour |
| C. Contractor-owned vehicles: | \$21.80 per hour (minimum 2.5 hour charge) |

The hourly rates for the City-owned and Contractor-owned vehicles shall not exceed a combined 22 hours per day.

Contractor agrees to lower the CNG rates after thirty but no later than sixty days of maintaining the CNG vehicles if it is determined that Contractor's actual costs are lower than expected.

Section 2, Paragraph 2 of the Agreement is also hereby amended to replace the phrase "Section 10, Liquidated Damages" with "Section 9, Liquidated Damages".

III. TERMINATION OF AGREEMENT

Section 12 of the Agreement is hereby amended and replaced with the following language:

SECTION 12. TERMINATION AND SUSPENSION

"This Agreement, or portions thereof, may be terminated, canceled or suspended in any one of the following manners:

- 1) By mutual written agreement of the parties.
- 2) Upon thirty (30) days written notice by either party, with or without cause.
- 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 to be provided in accordance with the terms hereof, or fails to comply with any of the requirements and terms of this Agreement 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 after such date.

- 4) 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 maintain in force throughout the term of this Agreement, including any extensions thereof, the insurance coverage required herein, or Contractor effects any willful acts or omissions that endanger the public health and safety, the City may immediately, without prior notification, and without prejudice to any other remedies the City may have, suspend Contractor's services and any obligations the City may otherwise have under this Agreement. Upon receiving written notice of immediate suspension, Contractor shall have up to fourteen (14) days to cure or remedy cause for suspension; however the City may, at the City's sole discretion, terminate this Agreement within the suspension period. Should the Contractor cure or remedy the cause for suspension, and the cure or remedy is accepted, in writing, by the City, Contractor may resume services."

IV. Indemnification

Section 13 of the Agreement is hereby amended and replaced with the following language:

"13.1 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.

13.2 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.”

V. Insurance

Attachment 1 of the Agreement is hereby amended and replaced with Attachment 1 of the Amendment.

VI. Remaining Provisions

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

CITY OF MOORPARK:

CUSA CC, LLC:

Steven Kueny,
City Manager

Darlene Cochran,
Vice President/General Manager

Date _____

Date _____

ATTEST:

Deborah S. Traffenstedt, City Clerk

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 \$5,000,000 per occurrence for all covered losses and no less than \$10,000,000 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 \$10,000,000 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. Any such coverage provided under an umbrella policy shall include a drop down provision providing primary coverage above a maximum \$25,000 self-insured retention for liabilities 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 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 \$10,000,000 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.