

**MOORPARK CITY COUNCIL  
AGENDA REPORT**

**TO:** Honorable City Council

**FROM:** Jessica Sandifer, Management Analyst 

**DATE:** December 3, 2010 (CC Meeting of December 15, 2010)

**SUBJECT:** Consider Agreement with CVE Engineering, Inc. for Update and Expansion of Civic Center ALTA Survey and Resolution Amending the Fiscal Year 2010/11 Budget to Fund the Work from the Endowment Fund (2800)

**BACKGROUND**

In March 2009, the City entered into a Real Property Acquisition Agreement (the "Agreement") with Essex Portfolio L.P. for the vehicular access driveway used by the United States Postal Service for their new building on High Street. One of the provisions of the Agreement requires the City to pay for a redesign of the Essex 66kv Pole Relocation Plan, previously prepared by RJR Engineering for Essex.

On September 1, 2010, the City Council approved an Agreement with BJ Palmer and Associates (BJP) to evaluate potential undergrounding scenarios for the electrical utilities in and around the Civic Center site and to prepare a design for the selected scenario. In November, staff met with BJP to discuss some potential scenarios and it is felt that an updated and expanded American Land Title Association (ALTA) survey of the Civic Center site would assist BJP with evaluating and designing these undergrounding scenarios.

**DISCUSSION**

CVE Engineering, Inc. (CVE) prepared an ALTA survey of the Civic Center site in 2008. Since that time, the Post Office and parking lot have been built, several buildings have been demolished, and the flood control channel to the west of City Hall has been undergrounded. Staff is requesting that CVE update the ALTA survey to show these changes and any new utility connections or easements associated with them as well as expanding the map to the west to the point where the flood control channel daylighted and to the east to Walnut Street. Updating and expanding the ALTA survey will enable BJP to have a clear view of where potential undergrounding scenarios could occur.

Honorable City Council  
December 15, 2010  
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**FISCAL IMPACT**

The cost of the Agreement will be \$4,600 with additional costs of \$500 for copying, for a total of \$5,100. There are currently no funds budgeted for this work so a budget amendment in the total contract amount will need to be approved.

The work will be paid for out of the Endowment Fund (2800).

**STAFF RECOMMENDATION (ROLL CALL VOTE)**

1. Approve Agreement with CVE Engineering, Inc. subject to final language approval of the City Manager and City Attorney; and
2. Adopt Resolution No. 2010-\_\_\_\_\_.

Attachment 1 – Agreement  
Attachment 2 - Resolution

**AGREEMENT FOR PROFESSIONAL SERVICES  
BETWEEN THE CITY OF MOORPARK AND CVE  
ENGINEERING, INC. FOR UPDATE AND EXPANSION OF  
CIVIC CENTER ALTA SURVEY MAP**

This Agreement is made and entered into in the City of Moorpark on this \_\_\_\_\_ day of \_\_\_\_\_, 2010, by and between the City of Moorpark, a public body, corporate and politic ("City"), and CVE Engineering, Inc., a California corporation ("Consultant") providing design and engineering services. In consideration of the mutual covenants and conditions set forth herein, the parties agree as follows:

**1. Term**

This Agreement shall commence on the date it is first signed and shall remain and continue in effect until the tasks described herein, and on any amendments hereto, are completed, unless sooner terminated pursuant to the provisions of this Agreement.

**2. Services**

City hereby retains Consultant in a contractual capacity to perform survey services as set forth in Exhibit A, Proposal, attached hereto and incorporated herein. If the Proposal is modified by this Agreement, or in the event there is a conflict between the provisions of the Proposal and this Agreement, the language contained in this Agreement shall take precedence.

**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 John E. Tracy, or his designee.

The City Manager, or his/her 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 of one thousand nine hundred and twenty dollars (\$4,600.00) (based on fees as shown in Proposal) plus reimbursable expenses not to exceed five hundred dollars (\$500). In no event shall total compensation for the herein described work exceed that described in this Section a without prior written authorization from City.

b) In the event that additional work is required of Consultant beyond the Scope of Services for this Agreement, Consultant may be authorized to undertake and complete such additional work only if such authorization by the City Manager is provided in writing, identifying the exact nature of the additional work required and a "not-to-exceed" fee to be paid by 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. Payment shall be made within 30-days of receipt of each invoice as to all non-disputed fees. If the City disputes any 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.

d) Consultant shall provide appropriate documentation for any reimbursable expense invoiced.

## **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, the 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 the City. Upon termination of the Agreement pursuant to this Section, the Consultant will submit an invoice to the 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/her 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 of Moorpark, and any and all of its officials, employees, and agents from and against any and all losses, liabilities, damages, costs and expenses, including attorneys 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.

#### **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 Exhibit B attached to and 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:	CVE Engineering, Inc. P.O. Box 7208 612 Racquet Club Lane Thousand Oaks, CA 91360 Attn: John E. Tracy, P.E., 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 agency where its jurisdiction includes all or part of the City without the prior written consent of the City, during the term of this Agreement. 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, 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/she is directly or indirectly interested, or shall any such person have any interest, direct or indirect, in this Agreement or the provisions thereof.

## **19. Governing Law**

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:**

**CVE ENGINEERING, INC.**

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

\_\_\_\_\_  
John E. Tracy, P.E.  
President

**ATTEST:**

\_\_\_\_\_  
Maureen Benson, City Clerk

Exhibit A: Proposal for Professional Services  
Exhibit B: Insurance Requirements

EXHIBIT A

**CVE ENGINEERING, INC.**

Civil, Structural and Design Engineering \* Surveying \* Land Planning  
P.O. Box 7208  
Thousand Oaks, CA 91360  
(805) 496-2282 / (805) 496-1653 FAX / e-mail: [cve@gte.net](mailto:cve@gte.net)

DATE: November 15, 2010

**CLIENT:** City of Moorpark  
Attention: Mrs. Jessica Sandifer  
799 Moorpark Avenue  
Moorpark, CA 93021  
(805) 517-6225 office / (805) 532-2530 facsimile

Contract # 2010-3275 PS

**PROJECT:** Survey Update for City Hall property at 799 Moorpark Avenue, City of Moorpark, County of Ventura, State of California

This agreement, entered into at Thousand Oaks on the 15th day of November 2010 by and between "The City of Moorpark, hereinafter called "Client" and CVE Engineering, Inc. hereinafter called "Engineer" is as follows:

Present record owner of property: City of Moorpark

The Client and Engineer for mutual consideration hereinafter set forth, agrees as follows:

**A.** Perform Survey to update the following items: Civic Center Site, add new facilities, show remove deleted buildings from plans, new Post Office and Parking Lot, new Storm Drain Systems for High Street , show overhead Power Poles and Underground Utilities .

\*Exclusions: processing; research prints, miscellaneous printing; or agency / government fees.

**B.** Client agrees to pay Engineer as compensation for their services as follows:

**Engineering Fee:** Said services will be billed at \$4,600.00 to be due and payable as work progresses. A signed Agreement between the Client and CVE Engineering, Inc. will serve as Notice to Proceed.

**RATES:** Registered Civil Engineer/Design/Consulting/Coordination  
\$120.00 per hour / Survey crew (2 person) \$210.00 per hour

The standard provisions set forth upon the reverse side are here incorporated into and made a part of this agreement. In witness whereof, the parties hereto have accepted, made and executed this agreement upon the terms, conditions, and provisions above stated and on reverse side herewith, the day and year first above written.

**CVE ENGINEERING, INC.**

**CLIENT:**

\*John E. Tracy, R.C.E. 15566, is licensed by the Board for Professional Engineers and Land Surveyors\* California Code of Regulations, Title 16, Chapter 5, Section 463.5

*John E. Tracy*

\_\_\_\_\_  
John E. Tracy, P.E.  
President

\_\_\_\_\_  
City of Moorpark (Authorized signature)

\_\_\_\_\_  
Signed by (please print name here)

Date *November 15, 2010*

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

\*Please sign one copy of this contract (side 1 and 2) and return to our office as Notice to Proceed. Contracts sent by facsimile will be accepted to commence work; however, an original Contract signed by the Client must be received in our offices by mail, delivery, courier, etc. within five (5) days of Contract acceptance by Client. The second copy is for your records.

STANDARD PROVISIONS OF AGREEMENT

The client and Engineer agree that the following provisions shall be a part of their agreement:

1. The Client binds him/herself, his/her partners, successors, executors, administrators, and assigns to the Engineer to this agreement in respect to all of the terms and conditions of this agreement.
2. In the event that the plans, specifications, and/or field work covered by this contract are those required by various governmental agencies and in the event that due to change of policy of said agencies after the date of this agreement, additional office or field work is required the said additional work shall be paid for by Client as extra work.
3. In the event that any staking is destroyed by an act of God or parties other than engineer, the cost of re-staking shall be paid for by Client as extra work.
4. In the event of any increase of costs due to the granting of wage increases and/or other employee benefits due to the terms of any new labor agreement during the lifetime of this agreement, such increase shall be adjusted to all fees.
5. The Client shall pay the costs of checking and inspection fees, zoning and annexation application fees, assessment fees, soils engineering fees, soils testing fees, aerial topography fees and all other fees, permits, bond premiums, title company charges, blueprints and reproductions, and all other charges not specifically covered by the terms of this agreement.
6. All tracings, survey notes, and other original documents as instruments of service are and shall remain the property of the engineer, except where not specifically covered by the terms of this agreement.
7. Should litigation be necessary to enforce any term or provision of this agreement, or to collect any option of the amount payable under this agreement, then all litigation and collection expenses, witness fees and court costs, and attorney's fees shall be paid to the prevailing party.
8. Fees and other charges will be billed as the work progresses or upon completions, and the net amount shall be due of the time of presentation of billing.
9. A late payment Finance Charge will be computed of 18% per annum and will be applied to any unpaid balance commencing 30 days after the date of the original invoice.
10. In the event of any litigation, Client agrees to pay Engineer Interest on all past due balances of the rate of 18% per annum.
11. Client hereby agrees that the balance as stated on the billing from the Engineer in writing of the particular item that is alleged to be incorrect within ten (10) days from the date of the making of the billing notifies Engineer in writing of the particular item that is alleged to be incorrect.
12. In the event all or any portion of the work prepared or partially prepared by the engineer be suspended, abandoned, or terminated, the Client shall pay the Engineer for the work performed on an hourly basis, not to exceed any maximum contract amount specified herein.
13. In the event that Client institutes a suit against Engineer because of any failure or alleged failure to perform, error, omission, or negligence and such suit is not successfully prosecuted, or if it is dismissed, or if verdict is rendered for Engineer, Client agrees to pay engineer and all costs of defense, including attorney's fees and court costs and any all other expenses of defense which may be needful, immediately following dismissal of the case or immediately upon verdict being rendered in behalf of engineer.
14. Neither the Client nor Engineer shall assign his/her interest in this agreement without the written consent of the other.
15. The Engineer makes no representation concerning the cost figures made in connection with maps, plans, specifications, or drawings other than that all cost figures are estimates only and the Engineer shall not be responsible for fluctuation in cost factors.
16. In the event of litigation on this agreement, the interpretation thereof, and all disputes or controversies arising here under shall be governed by the laws of the State of California.
17. Any work required to be performed by Engineer for Client not expressly mentioned on the reverse hereof, or not contemplated at the time of the original agreement between the parties, shall be paid by Client to Engineer, in addition to the proposed compensation set forth on the reverse hereof, of the hourly rate for such services by Engineer then existing.
18. All agreements on Engineer's part are contingent upon, and Engineer shall not be responsible for damages or be in default or be deemed to be in default by reason of delays in performance by reason of strikes, lockouts, accidents, acts of God and other delays unavoidable or beyond Engineer's reasonable control, or due to shortages or unavailability of labor at established area wage rate or delays caused by failure of owner or owner's agent to furnish information or to approve or disapprove engineer's work promptly, or due to late or slow, or faulty performance of Engineer's work. In the case of the happening of any such cause of delay, the time of completion shall be extended accordingly.
19. In the event that litigation be instituted under the terms and conditions of this agreement, the same is to be brought and tried in judicial jurisdiction of the court of the county in which the Engineer's principal place of business is located and Client waives the right to have brought to, tried in, or removed to any other county or judicial jurisdiction.
20. Engineer does not guarantee the completion or quality of performance of contract or the completion or quality of performance of contracts by the construction contractor or contractors, or other third parties, nor is he responsible for their acts or omissions.
21. Engineer makes no warrant, either express or implied, as to its findings, recommendations, specifications or professional advise except that these were promulgated after being prepared in accordance with generally accepted engineering practices and under the direction registered professional engineers.
22. Client agrees to cooperate in any and every way or manner with Engineer on project.
23. Engineer makes no representations concerning estimates of areas. Estimates of areas are estimated only and are not intended as accurate unless such areas is certified. Certified areas will only be given when requested in writing and at an additional charge to Client.
24. In the event that any changes are made in the plans and specifications by the client or persons other than the Engineer, which affects the Engineer's work, any and all liability arising out of such changes is waived as against the Engineer and the client assumes full responsibility for such changes unless Client has given Engineer prior notice and has received from Engineer written consent for such changes.
25. The Engineer is not responsible and liability is waived by client as against Engineer, for use by client or any other person of any plans or drawings not signed by Engineer.
26. Upon written request, each of the parties hereto shall execute and deliver, or cause to be executed and delivered, such additional instruments and documents, which may be necessary and proper to carry out the terms of this agreement.
27. The terms and provisions of this agreement shall not be construed to alter, waive, or affect any lien or stop notice rights, which the Engineer may have for the performance of engineering services under this agreement.
28. One or more waivers of any term, condition, or covenant by the Engineer shall not be construed by the Client as a waiver of a subsequent breach of the same or any other term, condition or covenant.
29. In the event Client fails to pay Engineer promptly or within fifteen (15) days after invoices are rendered, then Client agrees that engineer shall have the right to consider said default a total breach of this agreement and the duties of the Engineer under this agreement terminated. In such event, Client shall then promptly pay the Engineer for all of the fees, charges, and services performed by Engineer on an agreed hourly basis.
30. In the event any provision of this agreement shall be held to be invalid and unenforceable, the other provisions of this agreement shall be valid and binding on the parties hereto.
31. Services provided within this agreement are for the exclusive use of the client.
32. There are no understandings or agreements except as herein expressly stated.
33. It is agreed that in the event the project received any publicity originating from the owner and/or agent, CVE Engineering, Inc. will receive full Engineering credit within the confines of such publicity.

PERSONAL GUARANTEE: The undersigned individual(s) personally guarantees the payment to CVE Engineering, Inc. any obligation incurred by Client, including all amounts, billed, interest and attorney's fees.

*John E. Tracy, President*

\_\_\_\_\_  
CVE Engineering, Inc.

\_\_\_\_\_  
City of Moorpark

Date *November 15, 2010*

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

CVE Engineering, Inc.  
P.O. Box 7208 \* Thousand Oaks, CA 91360 \* (805) 496-2282

CVE 2010 3275 PS

Return one (1) copy signed copy of this contract to our office as Notice to Proceed and Acceptance of Contract. Conditions on both sides of this Contract are accepted by Client as valid and binding.

Z:\CVE Clients Open\PENDING\_Moorpark Cty WO 3275 PS\Contracts\2010 11 15\_Contract C3275 PS.wp

## EXHIBIT B

### **Insurance Requirements**

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

Consultant shall provide the following types and amounts of insurance:

Commercial General Liability Insurance using Insurance Services Office "Commercial General Liability" policy form CG 00 01 or the exact equivalent. Defense costs must be paid in addition to limits. There shall be no cross liability exclusion for claims or suits by one insured against another. Limits are subject to review but in no event less than \$1,000,000 per occurrence and \$2,000,000 in the 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 employees will use personal autos in any way on this project, Consultant shall provide evidence of statutory requirement for personal auto liability coverage for each such person.

Professional Liability or Errors and Omissions Insurance as appropriate shall be written on a policy form coverage specifically designed to protect against acts, errors or omissions of the consultant and "Covered Professional Services" as designated in the policy must specifically include work performed under this agreement. The policy limit shall be no less than \$1,000,000 per claim and in the aggregate. The policy must "pay on behalf of" the insured and must include a provision establishing the insurer's duty to defend. The policy retroactive date shall be on or before the effective date of this Agreement.

Worker's 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 of \$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.

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 VII.

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

1. Consultant agrees to have its insurer endorse the third party general liability coverage required herein to include as additional insureds City, its officials, employees, servants, agents, and independent consultants ("City indemnities"), using standard ISO endorsement No. CG 2010 with an edition prior to 1992. Consultant also agrees to require all contractors and subcontractors to do likewise.
2. No liability insurance coverage provided to comply with this Agreement shall prohibit Consultant, or Consultant's employees, or agents, from waiving the right of subrogation prior to a loss. Consultant agrees to waive subrogation rights against City regardless of the applicability of any insurance proceeds, and to require all contractors and subcontractor's to do likewise.
3. All insurance coverage and limits provided by Consultant and available or applicable to this agreement are intended to apply to the full extent of the policies. Nothing contained in this Agreement or any other agreement relating to the City or its operations limits the application of such insurance coverage.
4. None of the coverages required herein will be in compliance with these requirements if they include any limiting endorsement of any kind that has not been first submitted to City and approved of in writing.
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 any contractor or subcontractor.

6. All coverage types and limits required are subject to approval, modification, and additional requirements by the City, as the need arises. Consultant shall not make any reductions in scope of coverage (e.g. elimination of contractual liability or reduction of discovery period) that may affect City's protection without City's prior written consent.
7. Proof of compliance with these insurance requirements, consisting of certificates of insurance evidencing all of the coverages required and an additional insured endorsement to Consultant's general liability policy, shall be delivered to City at or prior to the execution of this Agreement. In the event such proof of any insurance is not delivered as required, or in the event such insurance is canceled at any time and no replacement coverage is provided, City has the right, but not the duty, to obtain any insurance it deems necessary to protect its interests under this or any other agreement and to pay the premium. Any premium so paid by City shall be charged to and promptly paid by Consultant or deducted from sums due Consultant, at City option.
8. Certificates are to reflect that the insurer will provide 30 days notice to City of any cancellation of coverage. Consultant agrees to require its insurer to modify such certificates to delete any exculpatory wording stating that failure of the insurer to mail written notice of cancellation imposes no obligation, or that any party will "endeavor" (as opposed to being required) to comply with the requirements of the certificate.
9. It is acknowledged by the parties of this agreement that all insurance coverage required to be provided by Consultant or any subconsultant, is intended to apply first and on a primary, non-contributing basis in relation to any other insurance or self insurance available to City.
10. Consultant agrees to ensure that subcontractors, and any other party involved with the project, who is brought onto or involved in the project by Consultant, provide the same minimum insurance coverage required of Consultant. Consultant agrees to monitor and review all such coverage and assumes all responsibility for ensuring that such coverage is provided in conformity with the requirements of this section. Consultant agrees that upon request, all agreements with subcontractors and others engaged in the project will be submitted to City for review.
11. Consultant agrees not to self-insure or to use any self-insured retention or deductibles on any portion of the insurance required herein and further agrees that it will not allow any contractor, subcontractor, or other entity or person in any way involved in the performance of work on the project contemplated by this agreement to self-insure its obligations to City. If Consultant's existing coverage includes a deductible or self-insured retention, the deductible or self-insured

retention must be declared to the City. At that time the City shall review options with the Consultant, which may include reduction or elimination of the deductible of self-insured retention, substitution of other coverage, or other solutions.

12. The City reserves the right at any time during the term of the contract to change the amounts and types of insurance required by giving the Consultant ninety (90) days advance written notice of such change. If such change results in substantial additional cost to the Consultant, the City will negotiate additional compensation proportional to the increased benefit to City.
13. For purposes of applying insurance coverage, only, this Agreement will be deemed to have been executed immediately upon any party hereto taking any steps that can be deemed to be in furtherance of or towards performance of this Agreement.
14. Consultant acknowledges and agrees that any actual or alleged failure on the part of the City to inform Consultant of non-compliance with any insurance requirement in no way imposes any additional obligations on City nor does it waive any rights hereunder in this or any other regard.
15. Consultant will renew the required coverage annually as long as City, or its employees or agents face an exposure from operations of any type pursuant to this Agreement. This obligation applies whether or not the Agreement is canceled or terminated for any reason. Termination of this obligation is not effective until City executes a written statement to that effect.
16. Consultant shall provide proof that policies of insurance required herein expiring during the term of this Agreement have been renewed or replaced with other policies providing at least the same coverage. Proof that such coverage has been ordered shall be submitted prior to expiration. A coverage binder or letter from Consultant's insurance agent to this effect is acceptable. A certificate of insurance and/or additional insured endorsement is required in these specifications applicable to the renewing or new coverage must be provided to City within five days of the expiration of the coverages.
17. The provisions of any workers' compensation or similar act will not limit the obligations of Consultant under this agreement. Consultant expressly agrees not to use any statutory immunity defenses under such laws with respect to City, its employees, officials, and agents.
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 of insured to be limiting or all-inclusive.

19. These insurance requirements are intended to be separate and distinct from any other provision in this agreement and are intended by the parties here to be interpreted as such.
20. The requirements in this Section supersede all other sections and provisions of this Agreement to the extent that any other section or provision conflicts with or impairs the provisions of this Section.
21. Consultant agrees to be responsible for ensuring that no contract used by any party involved in any way with the project reserves the right to charge City or Consultant for the cost of additional insurance coverage required by this Agreement. Any such provisions are to be deleted with reference to the City. It is not the intent of City to reimburse any third party for the cost of complying with these requirements. There shall be no recourse against City for payment of premiums or other amounts with respect thereto.
22. Consultant agrees to provide immediate notice to City of any claim or loss against Consultant arising out of the work performed under this agreement. City assumes no obligation or liability by such notice, but has the right (but not the duty) to monitor the handling of any such claim or claims if they are likely to involve City.

ATTACHMENT 2

RESOLUTION NO. 2010 - \_\_\_\_\_

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MOORPARK, CALIFORNIA, AMENDING THE FISCAL YEAR 2010/11 BUDGET BY APPROPRIATING \$5,100 FROM THE ENDOWMENT FUND (2800) FOR UPDATE AND EXPANSION OF THE CIVIC CENTER ALTA SURVEY MAP

WHEREAS, on June 16, 2010, the City Council adopted the Operating and Capital Improvement budget for Fiscal Year 2010/11; and

WHEREAS, a staff report has been presented to the City Council recommending hiring CVE Engineering, Inc. to conduct an update and expansion of the Civic Center site ALTA survey map; and

WHEREAS, a budget adjustment in the aggregate amount of \$5,100 is requested from the Endowment Fund (2800) for this work; and

WHEREAS, Exhibit "A", attached hereto and made a part hereof, describes said budget amendment and the resultant impact to the budget line item.

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

SECTION 1. A budget amendment in the amount of \$5,100 from the Endowment Fund (2800), as more particularly described in Exhibit "A", attached hereto, 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.

PASSED AND ADOPTED this 15th day of December, 2010.

\_\_\_\_\_  
Janice S. Parvin, Mayor

ATTEST:

\_\_\_\_\_  
Maureen Benson, City Clerk

Attachment: Exhibit A – Budget Amendment

**EXHIBIT A**

**BUDGET AMENDMENT FOR  
ENDOWMENT FUND  
FOR UPDATE AND EXPANSION OF ALTA SURVEY MAP - CIVIC CENTER SITE  
2010/11**

**FUND ALLOCATION FROM:**

Fund	Account Number	Amount
Endowment Fund	2800-5500	\$ 5,100.00
Total		\$ 5,100.00

**DISTRIBUTION OF APPROPRIATION TO EXPENSE ACCOUNTS:**

Account Number	Current Budget	Revision	Amended Budget
2800.2100.2007.9103	\$ 11,720.00	\$ 5,100.00	\$ 16,820.00
Total	\$ 11,720.00	\$ 5,100.00	\$ 16,820.00

Approved as to Form:           *JL*