

**MOORPARK CITY COUNCIL
AGENDA REPORT**

TO: The Honorable City Council

FROM: Dave Klotzle, City Engineer/Public Works Director 
Prepared by: Teri Davis, Senior Management Analyst

DATE: January 6, 2012 (CC Meeting of 01/18/12)

SUBJECT: Consider Right-of-way Use Agreement between Sunesys, LLC and the City of Moorpark for Installation and Maintenance of a Fiber Optic Communication System

DISCUSSION

Sunesys, LLC (Sunesys) was selected by the Moorpark Unified School District (District) to lease a fiber optic network (Network) to the District to interconnect the District's computer systems. The installation of new fiber optic cables within City right-of-way is necessary before the District can utilize the Network. The Proposed Right-of-way Use Agreement (Attachment A) would authorize Sunesys to install and maintain the Network. Encroachment Permits would be issued by the City for the Network installation within City right-of-way. The Proposed Agreement includes an initial ten-year term which would automatically renew for additional five-year terms in perpetuity as long as the Sunesys Network remains in the right-of-way.

FISCAL IMPACT

1. Sunesys deposited funds with the City to pay all costs to prepare documents associated with this project.
2. Should the City anticipate or realize any expense relocating the Network to facilitate a City project at any time during the term of the Agreement, Sunesys would be obligated to pay relocation expenses directly or to reimburse the City for any expenses.

STAFF RECOMMENDATION

Authorize the City Manager to execute the Agreement with Sunesys, LLC subject to final language approval of the City Manager and City Attorney.

Attachment A – Proposed Agreement

RIGHT-OF-WAY USE AGREEMENT

THIS RIGHT-OF-WAY USE AGREEMENT (“Agreement”) is entered into this _____ day of _____, 2011 (the “Effective Date”) by and between the **City of Moorpark**, a California Municipal Corporation (“City”) and **Sunesys, LLC**, a Delaware Limited Liability Company (“Sunesys”). For the purposes of this Agreement, City and Sunesys may be referred to collectively as the “Parties” or individually as a “Party.”

RECITALS

- A. Sunesys wishes to install certain communication lines and cables in, on or over portions of the rights-of-way of the City which initial project is shown in Exhibit A attached and incorporated by this reference (the “Project”).
- B. The Project will require the occupation of the public rights-of-way and will be completed pursuant to Sunesys’s Certificate of Public Convenience and Necessity (“CPCN”) issued by the California Public Utilities Commission (“CPUC”), D 06-06-047 issued on June 29, 2006.
- C. The City and Sunesys now enter into the present Agreement to install and maintain the Project to provide telecommunication services, which terms shall govern the initial Project as well as Sunesys’ subsequent occupation and use of the rights-of-way in the City.

NOW THEREFORE, in consideration of the mutual promises and agreements contained in this agreement, the parties agree as follows:

1. **Scope of Project and Use.**

City gives permission to Sunesys to encroach over, under and along the public rights-of-way of the Project Area for the purpose of the construction of certain communication lines and cables in certain public rights-of-way, which initial Project is more specifically described in **Exhibit A**. The Project that is described in Exhibit A may be amended and/or augmented by Sunesys pursuant to the terms of Sunesys’s CPCN, and Sunesys shall apply for the appropriate encroachment permit with the City in each case. All work will be constructed at the sole cost and expense of Sunesys.

Any above ground equipment or appurtenance shall be screened from street view with a masonry wall and/or landscaping as determined by the City’s Community Development Director. Detailed landscaping plans are subject to review and approval by the Community Development Director for compliance with the City’s Landscape Standards and Guidelines. Sunesys shall be responsible for the maintenance of any and all parkway landscaping constructed as a requirement of the Project. City shall approve location of any facility or appurtenance, in writing.

Sunesys represents that its CPCN authorizes construction activities in relation to the Project and that the Project will be used solely for the purposes authorized in its CPCN as a

“Telephone Corporation” within the meaning of its CPCN and the California Public Utilities Code. If Sunesys uses the Project for purposes other than the services that are sanctioned by the CPCN, the City reserves the right to charge Sunesys full, fair and reasonable compensation for the use of the City’s rights-of-way or to impose other lawful requirements. By entering into this Agreement neither the City nor Sunesys waive any rights reserved to either pursuant to Public Utilities Code Sections 7901 and 7901.1, or otherwise. In addition, neither party waives any rights reserved under the Telecommunications Act of 1996 including, but not limited to, those rights set forth in Section 253 of the Act.

2. Term and Termination.

The term of this Agreement (the “Initial Term”) is ten (10) years, commencing on the date both Sunesys and City have executed this Agreement (“Commencement Date”). This Agreement may be automatically renewed for additional terms (each a “Renewal Term”) of five years each, in perpetuity, so long as Sunesys is occupying the rights-of-way in full compliance with its statewide franchise under the terms of its CPCN, and in full compliance with lawfully adopted ordinances of the City.

3. Permit Fees.

Sunesys will pay any and all published permit, inspection, and related cost-recovery fees of the City consistent with Cal. Gov’t Code § 50030.

4. Assignment/Subletting.

This Agreement may not be assigned by Sunesys without the express written consent of City, which consent will not be unreasonably withheld, conditioned, or delayed. Notwithstanding the foregoing, the transfer of the rights and obligations of Sunesys to a parent, subsidiary, or other affiliate of Sunesys, or to any successor-in-interest or entity acquiring fifty-one percent (51%) or more of Sunesys’s stock or assets (collectively “Exempted Transfers”) will not be deemed an assignment for the purposes of this Agreement and will not require the City’s consent; provided that Sunesys reasonably demonstrates to the City compliance with the following criteria (collectively the “Exempted Transfer Criteria”): (i) the proposed transferee will have a financial strength after the proposed transfer at least equal to that of Sunesys immediately prior to the transfer; (ii) the proposed transferee assumes all of Sunesys’s obligations under this Agreement; and (iii) the experience and technical qualifications of the proposed transferee in providing telecommunications or similar services evidences the ability to operate the Network.

5. Notices.

All notices must be in writing and are effective only when deposited in the U.S. Mail, certified and postage prepaid, or when sent via overnight delivery as follows:

| | |
|-------------------------------------------------------------------------------|---------------------------------------------------------------------------------|
| If to Sunesys: | If to City: |
| Sunesys, LLC ATT: Senior Counsel 202 Titus Ave. Warrington, PA 18976 | City of Moorpark ATT: City Manager 799 Moorpark Ave Moorpark, CA 93021 |

6. Improvements.

All work and entry upon, over, under or along the public rights-of-way must be done under the supervision of Sunesys and its contractors in a good and skillful manner and must comply with all standards imposed by the City from time to time. Any and all damage to the rights-of-way resulting from the activities of Sunesys must be repaired by Sunesys at no expense to the City, and to the reasonable satisfaction of City. The excavation on the public rights-of-way by Sunesys must be monitored by Sunesys for any lateral movement or other forms of trench failure.

7. Compliance with Laws.

- A. Sunesys agrees that the Facilities shall at all times remain in compliance with all local, state, and federal laws regarding public safety.
- B. City and Sunesys agree that pursuant to federal statutes, including 47 U.S.C. § 253 (the “Federal Statutes”), City may not prohibit Sunesys from providing interstate and intrastate expanded telecommunications services, but may manage the public rights-of-way and impose neutral and non-discriminatory requirements to the degree permitted under state and federal law; and as necessary to preserve and advance universal service, protect the public safety and welfare, ensure the continued quality of telecommunications services, and safeguard the rights of consumers, and may, to the extent permitted by applicable state law, (including California Public Utilities Code § 7901), require fair and reasonable, neutral and non-discriminatory compensation from Sunesys for use of equipment affixed to the public rights-of-way, if any, on a non-discriminatory basis. Nothing in this Agreement shall constitute a waiver by Sunesys or City of any state or federal regulation governing the provisioning of telecommunications services.

8. Interference.

Sunesys will resolve technical interference problems with other equipment located at or near the Project on the Commencement Date, or any equipment that becomes attached to the Project at any future date if the City approves additional equipment on the Project.

9. Utilities and Maintenance.

Sunesys will pay for all utilities used at the Project. City will cooperate with Sunesys in Sunesys’s efforts to obtain utilities from any location provided by City or the servicing

utility, including signing any easement or other instrument reasonably required by the utility company. Sunesys agrees to take utility access from the nearest possible connection, to minimize damage to the public rights-of-way. Throughout the life of this Agreement, Sunesys agrees to maintain the facilities that it installs in good operational condition. Sunesys shall remove from facilities any graffiti within seventy-two (72) hours of receiving graffiti report.

10. Default.

If either party is in default under this Agreement for a period of (a) thirty (30) days following receipt of notice from the non-defaulting party with respect to a default which may be cured solely by the payment of money, or (b) thirty (30) days following receipt of notice from the non-defaulting party with respect to a default which may not be cured solely by the payment of money, then, in either event, the non-defaulting party may terminate this Agreement, and may pursue any remedies available to it against the defaulting party under applicable law. If the non-monetary default may not reasonably be cured within a 30-day period, this Agreement may not be terminated if the defaulting party commences action to cure the default within such 30-day period and proceeds diligently to fully cure the default.

11. Taxes.

Sunesys will be responsible for payment of all personal property taxes, use taxes, and possessory interest taxes assessed upon and arising from its use of the communications facility on the Project.

12. Insurance.

Sunesys will 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. Relocation and Rearrangement Obligation.

A. *Relocations at Sunesys' Expense.* Whenever, during the term of this Agreement or any renewal term, the City changes the grade, width or location of any street or improves any street in any manner, including the laying of any sewer, storm drain, conduits, gas, water, electric or other utility system, or other pipes owned or operated by the City or any other City-controlled public agency or City-controlled public utility, or constructs any pedestrian tunnels, or moves existing utilities where Sunesys's facilities are located to an underground location, or other work of the City and such work will, in the sole opinion of the City, render necessary any change in the position or location of any facilities of Sunesys in or into the street, Sunesys will, at its own cost and expense, do any and all things to effect such change in position or location, in conformity with the written notice of the City to Sunesys. If Sunesys fails or refuses to relocate its facilities located in, on, upon, along, under, over, across or above any highway or to pave, surface, grade, repave, resurface or regrade as required, pursuant to any provision of the Agreement, the City or other public entity may cause the work to be done and will keep an itemized account of the entire cost thereof, and the Sunesys will hold harmless the

City, its officers and employees from any liability which may arise or be claimed to arise from the moving, cutting, or alteration of any of Sunesys' facilities, or the turning on or off of water, oil, or other liquid, gas, or electricity. Sunesys agrees to, and will, reimburse the City or other City-controlled public entity for such cost within thirty days after presentation to Sunesys of an itemized account of such costs. *Expense of Others.* Except as provided elsewhere in this Agreement, when rearrangement of facilities is done for the accommodation of any party not identified herein, the cost of such rearrangement will be borne by the accommodated party. Such accommodated party, in advance of such rearrangement, will (a) deposit with Sunesys either cash or a corporate surety bond in an amount, as in the reasonable discretion of Sunesys will be required to pay the costs of such rearrangement; and (b) will execute the instrument agreeing to indemnify and hold harmless Sunesys from any and all damages or claims caused by such rearrangement.

- B. *Rearrangement of the Facilities of Others.* Nothing contained in this Agreement will be construed to require the City to move, alter or relocate any of its facilities upon said streets, at its own expense, for the convenience, accommodation or necessity of any other public utility, person, firm or corporation; or to require the City or any person, firm or corporation now or hereafter owning a public utility system of any type or nature, to move, alter or relocate any part of its system upon said streets for the convenience, accommodation or necessity of Sunesys.
- C. *Notice of Relocation.* Sunesys will be given not less than one hundred twenty days' written notice of any relocation or rearrangement of facilities which Sunesys is required to make hereunder. Such notice will specify in reasonable detail the work to be done by Sunesys and will specify the time that such work is to be accomplished. In the event that the City will change the provisions of any such notice given to Sunesys, Sunesys will be given an additional period not less than ninety days to accomplish such work. In case Sunesys fails to commence work in compliance with such written notice within thirty days after service of same upon Sunesys (unless Sunesys will be unable to comply with such notice by reason of strikes, riots, acts of God, or act of public enemies), the Community Development Director may cause the work required in said notice to be done by the City or at the election of the City, by a private contractor at Sunesys's sole cost and expense, pursuant to the provisions in paragraph 13.A., above.

14. Indemnity.

- A. Sunesys shall defend, indemnify and hold harmless the City, its officers, officials, employees, representatives, and agents (Indemnified Parties), from and against any and all actions, suits, proceedings, claims, demands, losses, costs, and expenses, including legal costs and attorneys' fees, for injury to or death of person(s), for damage to property (including property owned by the City) and for errors and omissions committed by Sunesys, its officers, anyone directly or indirectly employed by Sunesys, any subcontractor, and agents or anyone for whose acts any of them may be liable, arising directly or indirectly out of or related to Sunesys's performance under this Agreement. In the event the Indemnified Parties are made a party to any action, lawsuit, or other adversarial proceedings in any way involving such claims, Sunesys

shall provide a defense to the Indemnified Parties, or at the City's option, reimburse the Indemnified Parties their costs of defense, including attorneys' fees, incurred in defense of such claim. In addition, Sunesys shall be obligated to promptly pay any final judgment or portion thereof rendered against the Indemnified Parties, except to the extent such judgment resulted from the negligence of an Indemnified Party.

- B. In the event any portion of the activities is performed by a subcontractor, Sunesys warrants that all such subcontractors shall abide by all the terms and conditions in this Agreement, including, without limitation, furnishing insurance coverages as provided for in this Agreement.
- C. The provisions of this section shall not be read to limit in any respect whatsoever Sunesys's obligations as provided in this Agreement.
- D. This obligation to indemnify and defend City as set forth here is binding on the successors, assigns or heirs of Sunesys and shall survive the termination of this Agreement or this section.
- E. 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 this Section.

15. Bond/Surety.

- A. Sunesys shall, within thirty (30) days of the Effective Date of this Agreement, file with the City Clerk, and yearly thereafter, maintain in full force and effect, a surety running to the City in a sum equal to 100% of the estimated construction costs of the Project as determined by the City Engineer, with the form and type of surety to be approved by the City Manager and City Attorney, conditioned that Sunesys shall, will and truly observe, fulfill, and perform each and every term and condition of this Agreement, and in case of a breach of condition of said Agreement, at the discretion of the City Council, the whole amount of the penal sum therein shall be paid to the City in addition to any damages recoverable by the City and shall be recoverable from the principal and sureties of the bond. Sunesys shall provide a replacement surety in a sum equal to 100% of the reassessed value of the Project whenever the City determines the value of the Project has increased but no more than once every five (5) years during the term of this Agreement.
- B. Nothing herein shall insulate Sunesys from liability in excess of the amount of said surety or shall be construed as a waiver by the City of any remedy at law against Sunesys for any breach of the terms and conditions of this Agreement, or for any damage, loss or injuries suffered by the City in case of any damage, loss or injury suffered by any person, firm, or corporation by reason of any work done or any activity conducted by the Sunesys in the exercise of this Agreement.

16. Miscellaneous.

- A. *Governing Law; Jurisdiction.* This Use Agreement shall be governed and construed by and in accordance with the laws of the State of California, without reference to its conflicts of law principles. If suit is brought by a party to this Use Agreement, the parties agree that trial of such action shall be vested exclusively in the state courts of California, or in the relevant United States District Court in California.
- B. *Attorneys' Fees.* Should any dispute arising out of this Use Agreement lead to litigation, the prevailing party shall be entitled to recover its costs of suit, including (without limitation) reasonable attorneys' fees.
- C. *Representations and Warranties.* Each of the parties to this Agreement represents and warrants that it has the full right, power, legal capacity, and authority to enter into and perform the parties' respective obligations hereunder and that such obligations shall be binding upon such party without the requirement of the approval or consent of any other person or entity in connection herewith.

IN WITNESS WHEREOF, and in order to bind themselves legally to the terms and conditions of this Use Agreement, the duly authorized representatives of the parties have executed this Use Agreement as of the Effective Date.

CITY OF MOORPARK

Date: _____

Steven Kueny, City Manager

Date: _____

Maureen Benson, City Clerk

SUNESYS, LLC

Date: _____

Exhibit B

Insurance Requirements

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

Consultant shall provide the following types and amounts of insurance:

Commercial General Liability Insurance using Insurance Services Office (ISO) "Commercial General Liability" policy form CG 00 01 or the exact equivalent. Defense costs must be paid in addition to limits. There shall be no cross liability exclusion for claims or suits by one insured against another. Limits are subject to review but in no event less than \$2,000,000 per occurrence for all covered losses and no less than \$4,000,000 general aggregate. This minimum limit shall increase to \$2,500,000 per occurrence and \$5,000,000 in aggregate in year five of this Agreement and to \$3,000,000 per occurrence and \$6,000,000 in aggregate in year ten of this Agreement.

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

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

Excess or Umbrella Liability Insurance (Over Primary) if used to meet limit requirements, shall provide coverage at least as broad as specified for the underlying coverages. Any such coverage provided under an umbrella liability policy shall include a drop down provision providing primary coverage above a maximum 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 of VII.

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

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

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

8. Certificate(s) are to reflect that the insurer will provide 30 days notice to the City of any cancellation of or reduction in coverage. Consultant agrees to require its insurer to modify such certificates to delete any exculpatory wording stating that failure of the insurer to mail written notice of cancellation imposes no obligation, or that any party will "endeavor" (as opposed to being required) to comply with the requirements of the certificate.
9. It is acknowledged by the parties of this Agreement that all insurance coverage required to be provided by Consultant or any subcontractor, is intended to apply first and on a primary, non-contributing basis in relation to any other insurance or self insurance available to the City.
10. Consultant agrees to ensure that subcontractors, and any other party involved with the Work who is brought onto or involved in the Work by Consultant, provide the same minimum insurance required of Consultant. Consultant agrees to monitor and review all such coverage and assumes all responsibility for ensuring that such coverage is provided in conformity with the requirements of this section. Consultant agrees that upon request, all agreements with subcontractors and others engaged in the Work will be submitted to the City for review.
11. Consultant agrees not to self-insure or to use any self-insured retentions or deductibles on any portion of the insurance required herein and further agrees that it will not allow any contractor, subcontractor, Architect, Engineer, or other entity or person in any way involved in the performance of Work contemplated by this Agreement to self-insure its obligations to the City. If Consultant's existing coverage includes a deductible or self-insured retention, the deductible or self-insured retention must be declared to the City. At that time, the City shall review options with the Consultant, which may include reduction or elimination of the deductible or self-insured retention, substitution of other coverage, or other solutions.
12. The City reserves the right at any time during the term of the Agreement to change the amounts and types of insurance required by giving the Consultant 90 days advance written notice of such change. If such change results in substantial additional cost to the Consultant, the City will negotiate additional compensation proportional to the increased benefit to the City.
13. For purposes of applying insurance coverage only, this Agreement will be deemed to have been executed immediately upon any party hereto taking any steps that can be deemed to be in furtherance of or towards performance of this Agreement.
14. Consultant acknowledges and agrees that any actual or alleged failure on the part of the City to inform Consultant of non-compliance with an insurance requirement in no way

imposes any additional obligations to the City nor does it waive any rights hereunder in this or any other regard.

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

no obligation or liability by such notice, but has the right (but not the duty) to monitor the handling of any such claim or claims if they are likely to involve the City.