

**MOORPARK CITY COUNCIL  
AGENDA REPORT**

**TO:** Honorable City Council

**FROM:** Hugh R. Riley, Assistant City Manager   
**BY:** Ky Spangler, Special Projects Consultant 

**DATE:** January 6, 2012 (CC Meeting of 1/18/12)

**SUBJECT:** Consider Award of a Professional Services Agreement to Rybak Geotechnical, Inc. for Geotechnical Engineering Investigation in the Amount of \$24,600 for the Civic Center Campus Master Plan Environmental Impact Report Including the Moorpark Library Expansion and Reconstruction Project Located at 699 Moorpark Avenue

**BACKGROUND & DISCUSSION**

One of the City Council's top ten priorities for Fiscal Year 2011/2012 is the construction of a new City Hall and Library. The planning and design process for this significant City Capital Improvement project has been under development for several years, and an Environmental Impact Report (EIR) document is under preparation. GKK Works ("GKK") was selected as the architect for the project in 2004 and since that time has been working on design development of the Civic Center Campus Master Plan. The Council is separately considering an amendment to GKK's existing agreement to undertake architectural and engineering design efforts for the expansion and reconstruction of the Moorpark City Library.

The consulting firm preparing the EIR document, BonTerra Consulting ("BonTerra"), has requested the City provide geotechnical and soils investigation data to be incorporated into the Draft EIR covering the entire Civic Center Campus Master Plan project. Additionally, GKK requires geotechnical information as part of the design development for the library expansion and reconstruction planning.

In order to meet both of these goals, Rybak Geotechnical, Inc. ("Rybak") has submitted a proposal (Attachment 1) covering the library expansion and the Civic Center Campus Master Plan. Rybak's proposal provides for subsurface exploration, laboratory testing,

engineering analysis, and report preparation including grading, paving, and design recommendations. Rybak's work will be conducted by Richard Rybak, California registered Geotechnical Engineer and Eirik Haenschke, California registered Engineering Geologist. The resulting report data will be provided by the City to both BonTerra and GKK for their respective use in completing their contractual activities. Rybak anticipates that the geotechnical report and associated recommendations can be provided within four to six weeks of commencing exploration activities.

### **FISCAL IMPACT**

The Capital Improvement budget for Fiscal Year 2011/2012 the Civic Center Complex is \$3,605,303. To date \$1,877,974 has been encumbered leaving an available balance of \$1,699,816. Therefore, no additional funds need to be budgeted for the proposed work at this time. Sufficient funds exist in the budget to cover this work.

### **STAFF RECOMMENDATION**

Approve a Professional Services Agreement with Rybak Geotechnical, Inc. in the amount of \$24,600 for geotechnical engineering investigation services for the Civic Center Campus Master Plan EIR document and reconstruction and expansion of the Moorpark City Library and the and authorize the City Manager to execute the agreement, subject to final language approval of the City Manager and City Attorney.

Attachment 1: Rybak Geotechnical, Inc. Revised Proposal dated January 6, 2012  
Attachment 2: Professional Services Agreement



December 23, 2011  
(Revised January 6, 2012)  
Proposal No. 11-12-151

City of Moorpark  
c/o gkk works  
155 South Fair Oaks  
Pasadena, California 91105

Attn: Javan Nabili, AIA  
Principal

**Subject: Proposal to Prepare a Geotechnical Engineering Investigation  
Proposed Civic Center  
699 Moorpark Avenue, Moorpark, California**

## INTRODUCTION

In accordance with your request, Rybak Geotechnical, Inc. is pleased to submit this proposal to prepare a geotechnical engineering investigation for the subject project. As part of the preparation of this proposal, pertinent, available geotechnical and geologic information has been reviewed. In addition, a site visit by a representative of this office has been conducted.

The responsible geotechnical engineer on the project will be Richard Rybak, registered Geotechnical Engineer in the State of California, license number G.E. 2131. The responsible engineering geologist on the project will be Eirik F. Haenschke, registered Engineering Geologist in the State of California, license number C.E.G. 1597.

## PROPOSED CONSTRUCTION

This proposal has been based upon review of the plan entitled, City of Moorpark - Civic Center Site Plan - Scheme A, prepared by gkkworks, undated. Based on our current understanding, the proposed project will include the following:

- 8,000 square-foot renovation and expansion of the existing library building.
- 35,000 square-foot new city hall which will consist of two, single-story buildings
- New paved parking along the north portion of the existing civic center site.

- 8-acre expansion of the new civic center to the west, which is anticipated to include one or two new buildings for community and/or civic purposes, a pavilion structure, an amphitheater-type facility for civic uses, park open space, and new at-grade paved parking

Several retaining walls are anticipated due to the re-grading of the site. Grading of the site is anticipated to include removal of onsite stockpiled soils, removal and recompaction of onsite earth materials, placement of additional fill to build up pads, and placement of retaining wall backfill.

## **SCOPE OF SERVICES**

### **General**

Based upon our understanding of the proposed construction and the probable subsurface conditions, the scope of services to be performed by Rybak Geotechnical, Inc., includes subsurface exploration, laboratory testing, engineering analysis and report preparation. Our scope of work does not include testing of the soils/groundwater for contaminants, nor does it include a site-specific fault investigation (i.e. fault trenching).

### **Subsurface Exploration**

Subsurface exploration will include the excavation of 24 exploratory borings, 8 backhoe test trenches, and two test pits. The borings, trenches and test pits will be excavated to depths ranging from 5 to 50 feet beneath the existing ground surface. Based upon our site observations, it appears that an 8 to 10-foot high soil stockpile exists along the western extension of the subject site. Observations of the stockpile indicate that abundant oversize rocks are present. At least six of the backhoe test pits will be excavated through this stockpile to determine the nature of the soils. This will provide information as to the suitability of this stockpile to be either exported from the site, or be reused as properly compacted fill on the site.

The earth materials encountered during excavation of the borings, trenches and test pits will be logged and visually classified in accordance with the Unified Soil Classification System. Both undisturbed, ring samples and bulk samples of the earth materials will be collected and transported to the laboratory for testing. The test trenches in the area of the proposed amphitheater will be downhole logged by the certified engineering geologist. It is anticipated that bedrock will be encountered in this area.

### **Laboratory Testing**

Laboratory testing will be conducted on both undisturbed, ring samples and bulk samples of the encountered earth materials. The purpose of the testing is to determine the engineering properties of the earth materials. Testing is anticipated to include determination of insitu moisture content and

dry density, shear strength, consolidation characteristics, grain-size distribution, Atterberg limits, compaction characteristics, expansion potential, soil corrosion, and R-value.

### **Engineering Analysis and Report Preparation**

Subsequent to exploration and laboratory testing, engineering analysis will be performed utilizing the acquired data. The results of the exploration, laboratory testing and analysis will be synthesized into a geotechnical engineering investigation report. The report will be prepared in conformance with the 2010 California Building Code (CBC). The report will include a summary of the encountered subsurface conditions, a discussion regarding the controlling engineering properties of the soils, and recommendations with respect to the proposed development. Based on the current knowledge of subsurface conditions, the following will be addressed:

1. Preparation of a Site Location Map.
2. Preparation of Site Geologic Map.
3. Evaluation of historical seismicity, with a description of how historical earthquakes have affected the site.
4. Evaluation of mapped spectral acceleration parameters, site classification, site coefficients, and design spectral acceleration parameters.
5. Liquefaction potential evaluation performed utilizing peak ground acceleration equal to  $S_{DS}/2.5$ .
6. Consideration of tsunami or seiche hazard.
7. Evaluation of the surficial and gross stability of the slopes in the area of the proposed amphitheater, and provision of mitigating recommendations, if necessary.
8. Results of the field exploration and laboratory tests, with a complete description of the soil conditions encountered, including logs of exploratory borings, trenches, and test pits, a plan indicating the locations of exploratory excavations and their elevations related to the nearest bench mark.
9. Information on total settlements and differential settlements to be expected, both short and long term, based on type of foundations used.
10. Recommendations regarding foundation types, shallow and deep.
11. Recommendations for design of retaining walls.

12. Recommendations for grading including site preparation, backfilling, and compaction.
13. Recommendations for on-grade floor slab support including subgrade preparation and criteria for testing and subgrade preparations for compliance with specified procedures.
14. Recommendations on the influence and treatment of expansive soils.
15. Recommendations on the use of site excavated materials for use as fill or backfill material.
16. Information regarding ground water conditions, if any, including construction problems.
17. Recommendations for design of on-grade paving.
18. Recommendations regarding the corrosion potential of the on-site and the corrosive effect of the soils on concrete steel and underground piping.
19. Temporary excavations during construction; allowable slope gradients; necessary shoring.

## **COST OF SERVICES**

Based on the scope of the project and our services as outlined in this proposal, the fee for the preparation of the geotechnical engineering investigation will be **\$24,600**. If the payment of prevailing wage is mandatory on this project then the fee would be **\$28,200**. Assuming our investigation is to be strictly for the existing library expansion, the non-prevailing way fee would be \$6,400, and the prevailing wage fee would be \$7,200. These fees include exploration, laboratory testing, report preparation, presentation of seven copies of the report, and payment for an encroachment permit for exploration. The fee does not include the following:

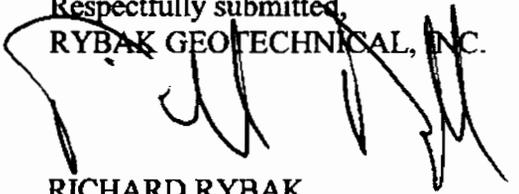
- costs related to report submittal to any reviewing agencies
- fees for geotechnical services during construction
- bonds that may be required

It is anticipated that the report can be provided within four to six weeks of commencing exploration. The date exploration is commenced is dependent on drilling contractor availability, current site owner concerns, among other items.

### **AUTHORIZATION**

Should you find the scope of work and total fee acceptable, please acknowledge your acceptance by providing this office a written agreement. We appreciate the opportunity to offer our proposal on this project. Any questions regarding the terms and conditions of this proposal should be directed to the undersigned. The fees and terms outlined in this proposal will be honored for a period of six months from the date of this proposal.

Respectfully submitted,  
RYBAK GEOTECHNICAL, INC.



RICHARD RYBAK  
President

## ATTACHMENT 2

### AGREEMENT BETWEEN THE CITY OF MOORPARK AND RYBAK GEOTECHNICAL, INC., FOR GEOTECHNICAL INVESTIGATION SERVICES

THIS AGREEMENT, is made and effective as of this \_\_\_\_ day of \_\_\_\_\_, 2012, between the City of Moorpark, a municipal corporation ("City") and Rybak Geotechnical, Inc., a California corporation ("Consultant"). In consideration of the mutual covenants and conditions set forth herein, the parties agree as follows:

WHEREAS, City has the need for geotechnical investigation services; and

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

WHEREAS, Consultant has submitted to City a Proposal dated January 6, 2012, which is attached hereto as Exhibit B.

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

#### 1. TERM

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

#### 2. SCOPE OF SERVICES

City does hereby retain Consultant, as an independent contractor, in a contractual capacity to provide geotechnical investigation services, as set forth in Exhibit B. In the event there is a conflict between the provisions of Exhibit B and this Agreement, the language contained in this Agreement shall take precedence.

Consultant shall perform the tasks described and set forth in Exhibit B. Consultant shall complete the tasks according to the schedule of performance which is also set forth in Exhibit B.

Compensation for the services to be performed by Consultant shall be in accordance with Exhibit B. Compensation shall not exceed the rates or total contract value of twenty-four thousand six hundred dollars (\$24,600.00) as stated in Exhibit B, without the written authorization of the City Manager. Payment by City to Consultant shall be in accordance with the provisions of this Agreement.

#### 3. PERFORMANCE

Consultant shall at all times faithfully, competently and to the best of their ability, experience, standard of care, 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 in meeting its obligations under this Agreement.

#### 4. MANAGEMENT

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

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

#### 5. PAYMENT

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

The City agrees to pay Consultant monthly, in accordance with the payment rates and terms and the schedule of payment as set forth in Exhibit B, based upon actual time spent on the above tasks. This amount shall not exceed twenty-four thousand six hundred dollars (\$24,600.00) for the total term of the Agreement unless additional payment is approved as provided in this Agreement.

Consultant shall not be compensated for any services rendered in connection with its performance of this Agreement, which are in addition to those set forth herein, unless such additional services are authorized in advance and in writing by the City Manager. Consultant shall be compensated for any additional services in the amounts and in the manner as agreed to by City Manager and Consultant at the time City's written authorization is given to Consultant for the performance of said services.

Consultant shall submit invoices monthly for actual services performed. Invoices shall be submitted on or about the first business day of each month, or as soon thereafter as practical, for services provided in the previous month. Payment shall be made within thirty (30) days of receipt of each invoice as to all non-disputed fees. Any expense or reimbursable cost appearing on any invoice shall be accompanied by a receipt or other documentation subject to approval of the City Manager. If the City disputes any of Consultant's fees or expenses it shall give written notice to Consultant within thirty (30) days of receipt of any disputed fees set forth on the invoice.

#### 6. TERMINATION OR SUSPENSION WITHOUT CAUSE

The City may at any time, for any reason, with or without cause, suspend, or terminate this Agreement, or any portion hereof, by serving upon the 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.

The Consultant may terminate this Agreement only by providing City with written notice no less than thirty (30) days in advance of such termination.

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

#### 7. DEFAULT OF CONSULTANT

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 or suspend 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.

If the City Manager or his/her designee determines that the Consultant is in default in the performance of any of the terms or conditions of this Agreement, he/she shall cause to be served upon the Consultant a written notice of the default. The Consultant shall have five (5) days after service upon it 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.

#### 8. OWNERSHIP OF DOCUMENTS

Consultant shall maintain complete and accurate records with respect to sales, costs, expenses, receipts, and other such information required by City that relate to the performance of services under this Agreement. Consultant shall maintain adequate records of services provided in sufficient detail to permit an evaluation of services. All such records shall be maintained in accordance with generally accepted accounting principles and shall be clearly identified and readily accessible. Consultant shall provide free access to the representatives of City or the City's designees at reasonable times to such books and records; shall give the City the right to examine and audit said books and records; shall permit City to make transcripts therefrom as necessary; and shall allow inspection of all work, data, documents, proceedings, and activities related to this Agreement. Notification of audit shall be provided at least thirty (30) days before any such audit is conducted. Such records, together with supporting documents, shall be maintained for a period of ten (10) years after receipt of final payment.

Upon completion of, or in the event of termination or suspension without cause of this Agreement, all original documents, designs, drawings, maps, models, computer files, surveys, notes, and other documents prepared in the course of providing the services to be performed pursuant to this Agreement shall become the sole property of the City and may be used, reused, or otherwise disposed of by the City without the permission of the Consultant. With respect to computer files, Consultant shall make available to the City, at the Consultant's office and upon reasonable written request by the City, the necessary computer software and hardware for purposes of accessing, compiling, transferring, and printing computer files.

9. INDEMNIFICATION AND HOLD HARMLESS

**Professional Liability:** Consultant shall indemnify, defend (with counsel reasonably acceptable to City) and hold harmless City, and any and all of its officials, employees, and agents ("the Indemnitees") 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 arises out of, are a consequence of, or are in any way attributable to, in whole or in part, the negligence, willful misconduct, errors or omissions, in 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, or subcontractors of Consultant, except such damage as is caused by negligence of the City or any of its officials, employees, or agents.

**Other than Professional Liability:** Consultant 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 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, or subconsultants of Consultant.

Consultant agrees to obtain executed indemnity agreements with provisions identical to those set forth here in this Section from each and every subconsultant, 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 this Section.

10. INSURANCE

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

11. INDEPENDENT CONSULTANT

Consultant is and shall at all times remain as to the City a wholly independent Contractor. The personnel performing the services under this Agreement on behalf of 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 or employees, or agents of the City except as set forth in this Agreement. Consultant shall not incur or have the power to incur any debt, obligation, or liability against City, or bind City in any manner.

No employee benefits shall be available to 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.

12. LEGAL RESPONSIBILITIES

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

13. ANTI DISCRIMINATION

Neither the Consultant, nor any subconsultant under the Consultant, shall discriminate in employment of persons upon the work because of race, religious creed, color, national origin, ancestry, physical handicap, medical condition, marital status or gender of such person, except as provided in Section 12940 of the Government Code.

The Consultant shall have responsibility for compliance with this Section [Labor Code Section 1735].

14. UNDUE INFLUENCE

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

15. NO BENEFIT TO ARISE TO LOCAL EMPLOYEES

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

16. CONFLICT OF INTEREST

Consultant covenants that neither they nor any officer or principal of their firm have any interests, nor shall they acquire any interest, directly or indirectly, which will conflict in any manner or degree with the performance of their services hereunder. Consultant further covenants that in the performance of this Agreement, they shall employ no person having such interest as an officer, employee, agent, or subconsultant. Consultant further covenants that Consultant has not contracted with nor is performing any services directly or indirectly, with the developer(s) and/or property owner(s) and/or firm(s) and/or partnership(s) and/or public agency(ies) owning property and/or processing an entitlement application for property in the City or its Area of Interest, now or within the past one (1) year, and further covenants and agrees that Consultant and/or its subconsultants shall provide no service or enter into any contract with any developer(s) and/or property owner(s) and/or firm(s) and/or partnership(s) and/or public agency(ies) owning property and/or processing an entitlement application for property in the City or its Area of Interest, while under contract with the City and for a one (1) year time period following termination of this Agreement.

17. NOTICE

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

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

To: Richard Rybak  
Rybak Geotechnical, Inc.  
16022 Arminta Street, Suite 7  
Van Nuys, California 91406

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

18. CHANGE IN NAME

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

19. ASSIGNMENT

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

20. LICENSES

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

21. VENUE AND GOVERNING LAW

This Agreement is made, entered into, and executed in Ventura County, California, and any action filed in any court or for arbitration for the interpretation, enforcement or other action of the terms, conditions, or covenants referred to herein shall be filed in the applicable court in Ventura County, California. The City and 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.

22. COST RECOVERY

In the event any action, suit or proceeding is brought for the enforcement of, or the declaration of any right or obligation pursuant to this Agreement or as a result of any

alleged breach of any provision of this Agreement, the prevailing party shall be entitled to recover its costs and expenses, including attorneys' fees, from the losing party, and any judgment or decree rendered in such a proceeding shall include an award thereof.

23. ARBITRATION

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

24. ENTIRE AGREEMENT

This Agreement and the Exhibits attached hereto contain the entire understanding between the parties relating to the obligations of the parties described in this Agreement. All prior or contemporaneous agreements, understandings, representations, and statements, oral or written, are merged into this Agreement and shall be of no further force or effect. Each party is entering into this Agreement based solely upon the representations set forth herein and upon each party's own independent investigation of any and all facts such party deems material.

25. CAPTIONS OR HEADINGS

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

26. AMENDMENTS

Any amendment, modification, or variation from the terms of this Agreement shall be in writing and shall be effective only upon approval by both parties to this Agreement.

27. PRECEDENCE

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

28. INTERPRETATION OF AGREEMENT

Should interpretation of this Agreement, or any portion thereof, be necessary, it is deemed that this Agreement was prepared by the parties jointly and equally, and shall not be interpreted against either party on the ground that the party prepared the Agreement or caused it to be prepared.

29. WAIVER

No waiver of any provision of this Agreement shall be deemed, or shall constitute, a waiver of any other provision, whether or not similar, nor shall any such

waiver constitute a continuing or subsequent waiver of the same provision. No waiver shall be binding unless executed in writing by the party making the waiver.

30. AUTHORITY TO EXECUTE

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

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed the day and year first above written.

CITY OF MOORPARK

RYBAK GEOTECHNICAL, INC.

By: \_\_\_\_\_  
Steven Kueny, City Manager

By: \_\_\_\_\_  
Richard Rybak, President

Attest:

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

Exhibit A: Insurance Requirements  
Exhibit B: Consultant's Proposal dated January 6, 2012

## Exhibit A

### INSURANCE REQUIREMENTS

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

Consultant shall provide the following types and amounts of insurance:

Commercial General Liability Insurance using Insurance Services Office (ISO) "Commercial General Liability" policy form CG 00 01 or the exact equivalent. Defense costs must be paid in addition to limits. There shall be no cross liability exclusion for claims or suits by one insured against another. Limits are subject to review but in no event less than \$1,000,000 per occurrence for all covered losses and no less than \$2,000,000 general aggregate.

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

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

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

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. 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 \$2,000,000 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 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 or reduced 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 thirty (30) days notice to the City of any cancellation or reduction 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 or reduction of coverage 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 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 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.