

**MOORPARK CITY COUNCIL
AGENDA REPORT**

TO: Honorable City Council

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

DATE: July 6, 2012 (CC Meeting of 07/18/12)

SUBJECT: Consider Agreements with Hamner, Jewell and Associates, Inc. for Real Property Services

BACKGROUND

Hamner, Jewell and Associates (Hamner) has provided real property services to the City on an as-needed basis for several years. The original term of the August 13, 2009 Hamner Agreement (2009 Agreement) was June 30, 2010 and the 2009 Agreement allowed the option of extending the term for two additional years. The 2009 Agreement was extended and expired on June 30, 2012. During the term of the 2009 Agreement, the City issued task orders for capital projects including Princeton Avenue Widening Project 8012 (Princeton) and Spring Road Widening Project 8026 (Spring) and an amendment for the Los Angeles Avenue Widening Project 8013 (LA Avenue). Hamner completed tasks for the Spring project; however, not all tasks were completed for Princeton and LA Avenue.

DISCUSSION

It is staff's intention to establish two new agreements with Hamner. One is for General Services on an as-needed basis for a period of three years until June 30, 2015. The other is specifically for the LA Avenue project with a term of three years until June 30, 2015. While Hamner is expected to complete all tasks for LA Avenue under the LA Avenue Agreement, additional specific services are anticipated for other projects and will consist of tasks and obligations defined in Task Orders approved by the City Manager under the General Services Agreement. The first Task Order under the General Services Agreement will be to complete the tasks for Princeton.

The Princeton Task Order under the 2009 Agreement was for \$76,000, all of which has been expended. An additional \$16,000 is needed to complete the tasks for Princeton. The LA Avenue Amendment to the 2009 Agreement was for \$140,000, of which approximately \$62,000 was expended, leaving a balance of approximately \$78,000. Additional services are needed for LA Avenue and certain costs have increased. Staff received a \$99,000 Proposal from Hamner to complete the LA Avenue tasks under a new agreement. This

reflects an increase of approximately \$21,000 from the Amendment to the 2009 Agreement.

FISCAL IMPACT

Sufficient funds for the Princeton and LA Avenue tasks are included in the current Fiscal Year 2012/13 Capital Improvement Budget.

Other task orders requested under the General Services Agreement will be for projects either already budgeted by the City Council or they will be brought before the City Council for Budget Amendments. The City Manager will have authorization to sign Task Orders for services under the General Services Agreement.

STAFF RECOMMENDATION

1. Authorize the City Manager to sign the General Services Agreement with Hamner in an amount not to exceed \$100,000 for a three year period expiring June 30, 2015, subject to final language approval by the City Manager and the City Attorney.
2. Authorize the City Manager to sign the LA Avenue Agreement with Hamner in an amount not to exceed \$99,000 for a three year period expiring June 30, 2015, subject to final language approval by the City Manager and the City Attorney.

Attachment 1: General Services Agreement
Attachment 2: LA Avenue Agreement

AGREEMENT BETWEEN THE CITY OF MOORPARK AND
BEACON INTEGRATED PROFESSIONAL RESOURCES, INC.,
DBA HAMNER, JEWELL AND ASSOCIATES
FOR GENERAL REAL PROPERTY SERVICES

THIS AGREEMENT, is made and effective as of this ____ day of _____, 2012, between the City of Moorpark, a municipal corporation ("City") and Beacon Integrated Professional Resources, Inc., dba Hamner, Jewell and Associates, a corporation ("Consultant"). In consideration of the mutual covenants and conditions set forth herein, the parties agree as follows:

WHEREAS, City has the need for real property 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 June 14, 2012, which is attached hereto as Exhibit C.

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 and continue in effect until June 30, 2015, 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 real property services, as set forth in Exhibit C. In the event there is a conflict between the provisions of Exhibit C and this Agreement, the language contained in this Agreement shall take precedence.

The specific services required of Consultant under this Agreement shall consist of tasks and obligations defined in Task Orders approved by the City and the Consultant, in response to specific project scopes of work and services requested by the City. Any duly executed and approved Task Order shall become a part of this Agreement. The standard form for the Task Order is set forth in Exhibit B.

Compensation for the services to be performed by Consultant shall be in accordance with Exhibit C. Compensation shall not exceed the rates or total contract value of one hundred thousand dollars (\$100,000) as stated in Section 5 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 Heather Johnson, 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 of payment as set forth in Exhibit C, based upon actual time spent on the above tasks. This amount shall not exceed one hundred thousand dollars (\$100,000) for the total term of this 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 ten (10) 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 three (3) 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 subcontractor. Consultant further covenants that if Consultant has contracted with or is performing any services directly or indirectly, with developer(s) and /or developer's consultants and /or property owner(s) and /or firm(s) and /or partnerships 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, Consultant shall immediately notify the City Engineer/Public Works Director, in writing, informing him /her of the nature of the contract. The City Engineer/Public Works Director, in consultation with the City Manager, shall determine whether potential conflict exists, and will assign any work related to the conflict to an alternate real property consultant.

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: Lillian D. Jewell, President
Hamner, Jewell and Associates
4476 Market Street, Suite 601
Ventura, California 93003

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

BEACON INTEGRATED PROFESSIONAL SERVICES, INC., DBA HAMNER, JEWELL AND ASSOCIATES

Steven Kueny, City Manager

Lillian D. Jewell, President

Attest:

Maureen Benson, City Clerk

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 \$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 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. A 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.

Exhibit B

CITY OF MOORPARK

TASK ORDER (SAMPLE)
PROPERTY ACQUISITION SERVICES

Reference Agreement No.:	XXXX - XX
Task Order No.:	X
Consultant:	Hamner, Jewell & Associates
Date of Original Agreement:	XX/XX/XXXX
Date of This Task Order:	
Purchase Order Number:	
Project Title	

A. Project Description

[General description of the project and the property services required for the project.]

B. Description of Services

Consultant shall perform the following services pursuant to this Task Order:

[List of tasks and sub-tasks required to be performed.]

C. Schedule

Consultant shall complete the services described above with _____ from the date of the Notice to Proceed.

[Schedule may be a more detailed list of sub-tasks and due dates, such as a bar chart.]

Sample

Task Order No. _____

Agreement No. _____

D. Compensation

Consultant shall be compensated for the services completed under this Task Order in the amount Not-to-Exceed _____.

[Compensation may be set forth in a list broken down by tasks and sub-tasks].

E. City's Responsibilities

City shall provide the following information, reports, documents, etc. required for the performance of the Consultant under this Task Order:

[List of reports, services, etc. (i.e. appraisals, title reports, legal descriptions, etc) to be provided by the City.]

F. Project Managers

1. City's Project Manager: _____

2. Consultant's Project Manager: _____

G. Agreement Provisions

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

CITY OF MOORPARK

CONSULTANT

Steven Kueny, City Manager

Lillian D. Jewell, President

Date _____

Date _____

Scope of Services
Right of Way Acquisition and Relocation Assistance Services
Hamner, Jewell & Associates

Page 1 of 2

- A. **General Scope of Work:** The Consultant may provide real estate consulting services that may include project planning services, acquisition services, relocation services and construction support services. All such services will be provided by the Consultant on projects as authorized and directed by the City under a duly executed and approved Task Order. Consultant will, in the performance of this Agreement, maintain close communication with the City Project Manager or his/her representative. No services will be performed on any specific project until the City has issued a written Notice to Proceed to Consultant for that particular project.
- B. **Performance of Work:** Consultant's professional services shall be performed by or shall be immediately supervised by, a person or persons licensed by the California Department of Real Estate. A specific individual employee of Consultant, approved by City, shall be assigned as Project Manager for each specific project defined in the Task Order.
- C. **Work Tasks:** Upon request by City, Consultant will perform the following tasks in support of projects requiring such services:

Project Planning Tasks

- Preparing procedures for right of way acquisition and relocation activities
- Preparing Relocation Impact Reports and Relocation Plans
- Completing Relocation Surveys, Displacement Analysis, and Cost Estimates
- Feasibility and Budgetary Analysis of Siting and Routing Options
- Right of Way Data Sheets and Property Acquisition Cost Estimates
- Obtaining Title Reports, Appraisals, and Review Appraisals

Tasks Related to Acquisition Services

Consultant may handle negotiations and required documentation to acquire:

- Rights of Entry
- Temporary Easements
- Access Rights
- Partial Acquisitions
- Parcel Acquisitions
- Improvements Pertaining to the Realty

Consultant may also handle the following acquisition-related functions:

- Title Review and Clearance
- Escrow Coordination
- Property Tax Cancellation
- Coordination with Agency Staff and Legal Counsel
- Coordination with State and Federal Agencies
- Utility Prior Rights Review
- Caltrans Right of Way Acquisition Data Sheets
- Caltrans Right of Way Certification

Scope of Services
Right of Way Acquisition and Relocation Assistance Services
Hamner, Jewell & Associates
Page 2 of 2

Tasks Related to Relocation Services

- Identification of appropriate guidelines per project funding requirements
- Tenant Noticing
- Market Searches and Referrals
- Moving Bid Coordination
- Related Property Management
- Business/Industrial Relocation Assistance
- Residential Relocation Assistance
- Utility Relocation Coordination
- Claim Review, Preparation, and Processing

Tasks Related to Construction Support

- Rights of Entry for surveying and other pre-construction work, route selection
- Liaison between property owners and construction management
- Utility Coordination- Evaluation of Prior Rights- Utility Agreements
- Construction and Restoration Reports
- Damage Claim Settlements
- Resolve trespass claims/encroachments
- Property Owner Outreach and Communications
- Construction Noticing

HAMNER, JEWELL & ASSOCIATES
a division of BEACON INTEGRATED PROFESSIONAL RESOURCES, INC.

2012

(Same rate for 4 consecutive years – 2009, 2010, 2011, and again for 2012)

TIME AND MATERIALS FEE SCHEDULE
For Annual and Multi-Annual Professional Services Contract Clients

Managing Senior Associate	\$160 an hour
Legal Support	\$160 an hour*
Senior Associate II	\$145 an hour
Senior Associate I	\$120 an hour
Associates II	\$100 an hour
Associates I	\$ 90 an hour
Assistants	\$ 70 an hour

These rates are inclusive of secretarial support and general office expenses, overhead, and profit. Reimbursable costs that may be passed through to the client as additional expenses include travel expenses (based upon the standard IRS mileage reimbursement rate, or actual expenses for travel outside of the tri-county area of Ventura, Santa Barbara, and San Luis Obispo), special handling fees such as certified, express mail, and delivery charges, photography and third party photocopy expenses, certain project/client-specific telephone expenses, and other charges made by third parties in connection with performing the scope of services. Such third party expenses may include, but are not limited to, such costs as moving bid fees, title and escrow company charges, and appraisal fees. Fees charged by insurance companies for issuing insurance certificates for client per contract requirements will also be billed through to client for reimbursement.

All third party expenses will be billed to the client at cost plus 10%, with appropriate invoices or other appropriate documentation provided for reference. Mileage and travel costs will be passed through without mark-up.

Statements for work shall be rendered monthly. Payments are due within 30 days. Payments not received within said period will accrue interest at a rate of 10% per annum.

At all times, by pre-directive, our clients may structure and direct our efforts and general time expenditures so as to maintain control of the course and cost of our services.

If Hamner, Jewell & Associates (“HJA”) is called upon or compelled to provide support for litigation or other proceedings, or respond to subpoenas in any way whatsoever related to the work HJA has completed on client’s behalf, client shall pay HJA for required time in accordance with the hourly rates and fees specified in this Fee Schedule, except, however, any time for court testimony and depositions shall be paid at a rate of \$250/hour for HJA Senior Associates, \$200/hour for HJA Associates, and \$135/hour for HJA Assistants. HJA shall additionally be reimbursed for all out-of-pocket and overhead expenses in connection with such proceedings. This provision shall survive the term of the contract.

Rates may be adjusted on January 1 of any year, with thirty days advance written notice.

* At the request of several of our clients, this billing rate category has been added specifically in relation to the qualifications and services of Robert McDowell and Cathy Springford who, as licensed attorneys, can provide cost effective support and coordination with client legal counselors. Hamner, Jewell & Associates does not, however, provide legal representation or counsel; we work closely with the legal counsel of our clients to cost effectively assist in resolving any legal matters associated with services we provide.

AGREEMENT BETWEEN THE CITY OF MOORPARK AND
BEACON INTEGRATED PROFESSIONAL RESOURCES, INC.,
DBA HAMNER, JEWELL AND ASSOCIATES
FOR REAL PROPERTY SERVICES RELATING TO
THE LOS ANGELES AVENUE WIDENING, PROJECT 8013

THIS AGREEMENT, is made and effective as of this ____ day of _____, 2012, between the City of Moorpark, a municipal corporation ("City") and Beacon Integrated Professional Resources, Inc., dba Hamner, Jewell and Associates, a corporation ("Consultant"). In consideration of the mutual covenants and conditions set forth herein, the parties agree as follows:

WHEREAS, City has the need for real property services relating to the Los Angeles Avenue Widening from Spring Road to Moorpark Avenue, Project 8013; 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 June 29, 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 and continue in effect until June 30, 2015, 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 real property 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.

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 ninety-nine thousand dollars (\$99,000) as stated in Section 5 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 Heather Johnson, 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 of payment as set forth in Exhibit C, based upon actual time spent on the above tasks. This amount shall not exceed ninety-nine thousand dollars (\$99,000) for the total term of this 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 ten (10) 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 three (3) 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 subcontractor. Consultant further covenants that if Consultant has contracted with or is performing any services directly or indirectly, with developer(s) and /or developer's consultants and /or property owner(s) and /or firm(s) and /or partnerships 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, Consultant shall immediately notify the City Engineer/Public Works Director, in writing, informing him /her of the nature of the contract. The City Engineer/Public Works Director, in consultation with the City Manager, shall determine whether potential conflict exists, and will assign any work related to the conflict to an alternate real property consultant.

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: Lillian D. Jewell, President
Hamner, Jewell and Associates
4476 Market Street, Suite 601
Ventura, California 93003

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

BEACON INTEGRATED PROFESSIONAL
SERVICES, INC., DBA HAMNER,
JEWELL AND ASSOCIATES

Steven Kueny, City Manager

Lillian D. Jewell, President

Attest:

Maureen Benson, City Clerk

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 \$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 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. A 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.



HAMNER, JEWELL & ASSOCIATES

Government Real Estate Services

a division of Beacon Integrated Professional Resources, Inc.

Ventura County Office: 4476 Market Street, Suite 601, Ventura, California 93003
Tel: (805) 658-8844 **Fax:** (805) 658-8859

San Luis Obispo County Office: 340 James Way, Suite 150, Pismo Beach, California 93449
Tel: (805) 773-1459 **Fax:** (805) 773-2418

Writer's e-mail address: hjohnson@hamner-jewell.com

June 29, 2012

Dave Klotzle
 City Engineer/Public Works Director
 City of Moorpark
 Via email to dklotzle@ci.moorpark.ca.us

Subject: City of Moorpark – Los Angeles Avenue Widening
 Proposal for Property Acquisitions and Relocation Assistance Services

Hi Dave,

Thank you for asking us to provide a proposal for the Los Angeles Avenue Widening project. As you know, we commenced work on the full parcel acquisitions for this project back in 2010. However, in order to proceed with the additional partial acquisitions, we await completion of design plans and legal descriptions of the areas to be acquired. You have asked us for a revised proposal in anticipation of proceeding with this next phase of work in the upcoming fiscal year.

We understand that the project will widen Los Angeles Avenue from four lanes to six lanes and will also include the construction of new sidewalks, curb ramps, a storm drain, as well as the installation of a new traffic signal at Millard Street. This section of Los Angeles Avenue is a State Highway so it will be necessary to comply with Caltrans Guidelines and the property rights acquired will eventually be transferred to the State of California to be accepted into the State Highway System. The project is funded with local City funds and federal funds.

This proposal anticipates property acquisition services on the following parcels:

- APN: 506-0-020-650 (Topa Management Partnership) -- *partial acquisition*
- APN: 512-0-350-070 & 080 (Moorpark Plaza Family Partnership) -- *partial acquisition*
- APN: 506-0-020-570 (Vas Security Systems) -- *partial acquisition*
- APN: 512-0-111-250 & 340 (Miranda) -- *partial acquisition*
- APN: 506-0-020-120 (Patton) -- *full acquisition with residential relocation assistance*
- APN: 506-0-020-060 (Figueroa) -- *full acquisition with residential relocation assistance*
- APN: 512-0-111-310 & 320 (Pemji) -- *full acquisition with business relocation for two occupants*
- APN: 506-0-130-xxx (Regal Park HOA) – *temporary construction easement acquisition*

Our proposed scope of work follows on the next page.

Title Reports. Hamner, Jewell & Associates has previously ordered Preliminary Title Reports for each property listed above except the Regal Park Homeowners Association. This proposal includes a Preliminary Title Report on the Regal Park Homeowners Association property. It does not include additional budget for updated title reports on the other properties. We will utilize the old reports and any updates we can obtain free of charge from the title company so as to avoid incurring additional costs in advance of proceeding with the acquisition and escrow process. Additional fees may be due to the title company as part of the transactional closing costs and title insurance fee that will be paid through escrow.

Property Owner Outreach. When you provide us with Right of Way maps and authorization to proceed with owner contacts, we will contact and meet with property owners to review the needs of the project and gather any information that may be helpful in aiding the design engineers in finalizing construction plans. We can also seek permission to enter for any design-stage access needs.

Appraisals. Once we are provided with legal descriptions, plats, and area calculations for the partial acquisition parcels and any associated temporary construction easements that need to be acquired for the project, along with updated and detailed design drawings, we can proceed with ordering appraisals. Since the appraisals on the Premji, Patton and Figueroa parcels are dated, this proposal includes appraisal updates on these three properties, prepared by Ventura Appraisal Consulting Corporation. It also includes a Fixtures and Equipment appraisal on the Premji property in conjunction with a full acquisition of this parcel and the displacement of the business tenancies.

Review Appraisals. Formal review appraisals are required under federal funding guidelines and Caltrans requirements, prior to purchase offer presentation. Therefore, once the appraisals are completed, we will submit them to the City and to the County of Ventura Real Estate Division for review. The County will issue a reviewer's certificate to meet Caltrans review requirements.

Property Acquisition. After the appraisal processes are complete and the appraisals are approved by the City, we can proceed with purchase offers. We would prepare purchase offer packages that will include an offer letter, Appraisal Summary Statement, right of way agreements, and deeds in formats previously approved by the City. Upon City approval to proceed with the purchase offers, which will be evidenced by City signature on each Appraisal Summary Statement, we would present purchase offers to each property owner and work with them to reach agreements. As purchase agreements are reached, we would handle processing of the transactional paperwork for City acceptance and though escrows, title clearance, and deed recordation.

Eminent Domain. If there are any properties on which we are unable to obtain cooperative purchase agreements within the timeline required by the City, we will coordinate with the City Attorney to provide information in preparation for a Necessity Hearing before the City Council and we will attend the Hearing. Based upon prior property acquisition attempts by the City on some of the project parcels, a Necessity Hearing may be required for this project.

Relocation Assistance. Relocation Assistance is anticipated for two residential occupancies (Patton and Figueroa) and two businesses (on the Premji property). This assistance will be provided in accordance with federal Uniform Act requirements and will include relocation noticing, determination of maximum benefits, claim preparation, and payment processing through City for payment and distribution.

For our services, we would bill monthly for our time and materials, per our 2012 Time and Materials Fee Schedule, attached. We will bill only for time actually expended and will work closely with you to assure that our efforts are directed towards the areas deemed appropriate per your general direction. Any time that you work with people rather than a specific controllable task, it is always difficult to estimate in advance the amount of time it may take to complete our work. Our efforts are affected by the accessibility, responsiveness, and level of cooperation or resistance of the property owners and tenants, as well as the timeliness of the City's actions, responses, and authorizations to proceed as the project progresses. However, we suggest you allocate a proposed budget **\$99,000** for the work described herein. Following is our breakdown of the projected costs for this project under this budget:

• 1 Preliminary Title Report (Regal Park Homeowners Association)	\$ 1,375
• 5 Real Estate Appraisals*	\$ 11,000
• 3 Appraisal Updates (Patton, Figueiroa, Premji)	\$ 4,950
• Fixtures & Equipment Appraisal (Penji property)**	\$ 4,730
• 4 Appraisal Reviews (by County of Ventura)***	\$ 4,620
• Acquisition Process (4 partial, 3 full acquisitions & 1 TCE)****	\$ 39,000
• Relocation Process (max 2 businesses & 2 residential relocations)****	\$ 25,000
• Preparation of Right of Way Certification (not to exceed 12 hours)	\$ 1,500
• Reimbursable Expenses (mileage, FedEx, etc.)	\$ 1,000
	\$ 93,175
	+ 6% contingency: \$ 5,590
	TOTAL (rounded) \$ 99,000

* Appraisals based upon proposal from Ventura Appraisal Consulting Corporation, valid for 12/31/12.

** If the City decides only to pursue a partial take of the Premji property and the businesses will not be displaced, the fixtures and equipment appraisal will not be ordered.

***Formal Appraisal Reviews are required under Caltrans and federal guidelines. Reviews will be completed by the County of Ventura.

****A maximum of **580 hours** of Hamner, Jewell & Associates staff time is allotted for the property acquisition and relocation assistance, projected over a maximum 12 month term. Hamner, Jewell & Associates can also provide assistance in property owner coordination during the construction stage of the project, but such services, if desired, would be covered under supplemental budget and contract authorization. Additional HJA staff time will also be at additional budget and expense.

To assist you with this work, we will require construction plans showing the right of way acquisition lines, and legal descriptions, plats and area calculations for all temporary and permanent acquisition parcels to be acquired for the project. We will require access to and regular communications with the project team and City staff in order to facilitate and effectively coordinate our work. The City Attorney must also be available to review and pre-approve offer packages and purchase agreements, as well as to consult on any necessary settlement negotiations and agreement provisions. The City must also provide any eminent domain counsel if such becomes necessary. Our goal at Hamner, Jewell & Associates is always to obtain amicable agreements between the property owners and the City, avoiding the need for any eminent domain action, however we cannot guarantee that such agreements will be reached with each and every property owner. As for relocation assistance, it is critical to establish a timely system for promptly processing payments of relocation assistance claims, as time is of the essence in most relocation situations and prompt payment processing is critical to encouraging and successfully completing moves within the project timeline requirements.

Dave Klotzle
City Engineer/Public Works Director
City of Moorpark
June 29, 2012
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We will also require support and information from the design team in order to complete the Right of Way Certification. The Certification will require information about utility relocation agreements and costs and other data that must be provided by the project engineers.

This proposal assumes no more than two vested owners per parcel and no more than one required monetary lien clearance per acquisition. Multiple owners and multiple liens that require clearance can require additional time. Caltrans and federal funding guidelines will require clear title to the permanent rights acquired for the project since this project is part of the State Highway system.

Please call me with any questions about this proposal. Thank you for the opportunity to provide you with this proposal. We look forward to working with you and the City on this project.

Sincerely,

Heather Johnson

Heather Johnson

cnc: 2012 Time & Materials Fee Schedule (Annual)

HAMNER, JEWELL & ASSOCIATES
a division of BEACON INTEGRATED PROFESSIONAL RESOURCES, INC.

2012

(Same rate for 4 consecutive years – 2009, 2010, 2011, and again for 2012)

TIME AND MATERIALS FEE SCHEDULE
For Annual and Multi-Annual Professional Services Contract Clients

Managing Senior Associate	\$160 an hour
Legal Support	\$160 an hour*
Senior Associate II	\$145 an hour
Senior Associate I	\$120 an hour
Associates II	\$100 an hour
Associates I	\$ 90 an hour
Assistants	\$ 70 an hour

These rates are inclusive of secretarial support and general office expenses, overhead, and profit. Reimbursable costs that may be passed through to the client as additional expenses include travel expenses (based upon the standard IRS mileage reimbursement rate, or actual expenses for travel outside of the tri-county area of Ventura, Santa Barbara, and San Luis Obispo), special handling fees such as certified, express mail, and delivery charges, photography and third party photocopy expenses, certain project/client-specific telephone expenses, and other charges made by third parties in connection with performing the scope of services. Such third party expenses may include, but are not limited to, such costs as moving bid fees, title and escrow company charges, and appraisal fees. Fees charged by insurance companies for issuing insurance certificates for client per contract requirements will also be billed through to client for reimbursement.

All third party expenses will be billed to the client at cost plus 10%, with appropriate invoices or other appropriate documentation provided for reference. Mileage and travel costs will be passed through without mark-up.

Statements for work shall be rendered monthly. Payments are due within 30 days. Payments not received within said period will accrue interest at a rate of 10% per annum.

At all times, by pre-directive, our clients may structure and direct our efforts and general time expenditures so as to maintain control of the course and cost of our services.

If Hamner, Jewell & Associates ("HJA") is called upon or compelled to provide support for litigation or other proceedings, or respond to subpoenas in any way whatsoever related to the work HJA has completed on client's behalf, client shall pay HJA for required time in accordance with the hourly rates and fees specified in this Fee Schedule, except, however, any time for court testimony and depositions shall be paid at a rate of \$250/hour for HJA Senior Associates, \$200/hour for HJA Associates, and \$135/hour for HJA Assistants. HJA shall additionally be reimbursed for all out-of-pocket and overhead expenses in connection with such proceedings. This provision shall survive the term of the contract.

Rates may be adjusted on January 1 of any year, with thirty days advance written notice.

* At the request of several of our clients, this billing rate category has been added specifically in relation to the qualifications and services of Robert McDowell and Cathy Springford who, as licensed attorneys, can provide cost effective support and coordination with client legal counselors. Hamner, Jewell & Associates does not, however, provide legal representation or counsel; we work closely with the legal counsel of our clients to cost effectively assist in resolving any legal matters associated with services we provide.