

## **ITEM 10.L.**

### **MOORPARK CITY COUNCIL AGENDA REPORT**

**TO:** The Honorable City Council

**FROM:** Allen Walter, Landscape/Parks Maintenance Superintendent 

**DATE:** October 15, 2012 (CC Meeting of November 7, 2012)

**SUBJECT:** Consider an Agreement with DNA Electric for Electrical Services at Various City Properties

#### **DISCUSSION**

The City requires electrical maintenance and repair services at various City facilities and parks performed by a licensed electrical contractor. Electrical contractor DNA Electric, a Moorpark business owner, has the qualifications, experience, and facilities to properly and timely perform and furnish to the City electrical services. As the City's facilities age, the demand for electrical maintenance and repair services has increased, resulting in an increase to the annual cost to maintain these facilities. City code does not allow the City Manager authority to approve contracts that exceed \$50,000. Therefore, staff is requesting that Council approve a Contract with DNA Electric for \$50,000 annually and authorize the City Manager to execute the Agreement.

Staff is also requesting an Agreement term provision to amend the Agreement term for two (2) additional years with annual compensation of \$50,000 or a total Agreement amount of \$150,000 over three (3) years.

#### **FISCAL IMPACT**

There is no impact to FY 2011/12 budget as funding has been provided in the current Parks, Facilities and Landscape Maintenance Districts operating budgets. Future expenditures in FY 12/13 and FY 13/14 will also be included in the relevant expenditure accounts. Staff will continue to follow City policy and obtain competitive bids as required for electrical repair services that exceed the City's limit of \$5,000.

#### **STAFF RECOMMENDATION:**

Award a contract to DNA Electric for electrical repair services at various City properties and authorize the City Manager to execute an Agreement at a cost of \$50,000 annually, with a total contract cost of \$150,000 over an optional three (3) year term, subject to final language approval by City Manager and City Attorney.

**AGREEMENT BETWEEN THE CITY OF MOORPARK  
AND DNA ELECTRIC, FOR ELECTRICAL SERVICES AT VARIOUS CITY FACILITIES,  
CITY PARKS, LANDSCAPE MAINTENANCE DISTRICT, AND CITY PROPERTIES**

**THIS AGREEMENT**, is made and entered into this \_\_\_\_\_ day of \_\_\_\_\_, 2012, between the City of Moorpark, a municipal corporation ("City") and DNA Electric, a sole proprietorship ("Contractor"). In consideration of the mutual covenants and conditions set forth herein, the parties agree as follows:

**WHEREAS**, the City has the need for electrical repairs and maintenance related services at various City facilities, City Parks, Landscape Maintenance District, and City Properties; and

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

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

1. TERM

The term of the Agreement shall be from the date of execution and will expire on December 31, 2013, unless this Agreement is terminated or suspended as referred to herein.

Upon the mutual consent of both parties, the term of this Agreement may be extended for two (2) additional one (1) year periods.

2. SCOPE OF SERVICES

City does hereby retain Contractor in a contractual capacity to provide electrical services specifically as it pertains to various Moorpark electrical services at City facilities, City Parks, Landscape Maintenance District and City Properties, as set forth in Exhibit A which is attached hereto and incorporated herein by this reference as though set forth in full. Where said Scope of Services is modified by this Agreement, or in the event there is a conflict between the provisions of said Scope of Services and this Agreement, the language contained in this Agreement shall take precedence.

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

Compensation for the services to be performed by Contractor shall be in accordance with Exhibit B, attached hereto and incorporated herein by this reference as though set forth in full. Compensation shall not exceed the rates as stated in Exhibit B or total value of fifty thousand

dollars (\$50,000) annually and one hundred fifty thousand (\$150,000) for the total term of the Agreement, without the written authorization of the City Council. Payment by City to Contractor shall be as referred to in this Agreement.

### 3. PERFORMANCE

Contractor shall at all times faithfully, competently and to the best of his/her ability, experience, and talent, perform all tasks described herein. Contractor shall employ, at a minimum, generally accepted standards and practices utilized by persons engaged in providing similar services as are required of Contractor hereunder in meeting its obligations under this Agreement.

### 4. MANAGEMENT

The individual directly responsible for Contractor's overall performance of the Agreement provisions herein above set forth and to serve as principal liaison between City and Contractor shall be David Iwansky, 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 Contractor and City, shall be the City Manager or the City Manager's designee.

### 5. PAYMENT

The City agrees to pay Contractor monthly, in accordance with the payment rates and terms and the schedule of payment as set forth in Exhibit B, based upon actual time spent on the above tasks. This amount shall not exceed fifty thousand dollars (\$50,000) annually and one hundred fifty thousand (\$150,000) for the total term of the Agreement, unless additional payment is approved as provided in this Agreement.

Contractor 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 through a work order or other form of approval in writing by the City Manager. Contractor shall be compensated for any additional services in the amounts and in the manner as agreed to by City Manager and Contractor at the time City's written authorization is given to Contractor for the performance of said services. The City Manager, if authorized by City Council, may approve additional work not to exceed ten percent (10%) of the amount of the Agreement.

Contractor 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. If the City disputes any of Contractor's fees it shall give written notice to Contractor within thirty (30) days of receipt of any disputed fees set

forth on the invoice. Consultant shall provide appropriate documentation, as determined by the City, for all reimbursable expenses.

#### 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 Contractor at least ten (10) days prior written notice. Upon receipt of said notice, the Contractor 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 Contractor 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 of such termination, Contractor shall be compensated for such services up to the date of termination. Such compensation for work in progress shall be prorated as to the percentage of progress completed at the date of termination.

If the City Manager or the City Manager's designee determines that the Contractor is in default in the performance of any of the terms or conditions of this Agreement, the City may proceed in the manner set forth in Section 6-4 of the Greenbook.

#### 7. DEFAULT OF CONTRACTOR

The Contractor's failure to comply with the provisions of this Agreement shall constitute a default. In the event that Contractor is in default for cause under the terms of this Agreement, City shall have no obligation or duty to continue compensating Contractor for any work performed after the date of default and can terminate this Agreement immediately by written notice to the Contractor. If such failure by the Contractor to make progress in the performance of work hereunder arises out of causes beyond the Contractor's control, and without fault or negligence of the Contractor, it shall not be considered a default.

If the City Manager or the City Manager's designee determines that the Contractor 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 Contractor a written notice of the default. The Contractor shall have five (5) working days after service upon it of said notice in which to cure the default by rendering a satisfactory performance. In the event that the Contractor 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. LIQUIDATED DAMAGES

If the Contractor fails to complete the work, or any portion thereof, within the time period required by this Agreement or as duly extended in writing by the City Manager, he/she shall

forfeit and pay to the City of Moorpark, as liquidated damages, the sum of one hundred fifty dollars (\$150.00) per day for each calendar day the work, or portion thereof, remains uncompleted after the above specified completion date. Liquidated damages shall be deducted from any payments due or to become due to the Contractor under the terms of this contract [Government Code Sec. 53069.85]. Progress payments made by the City after the above specified completion date shall not constitute a waiver of liquidated damages by the City.

#### 9. OWNERSHIP OF DOCUMENTS

Contractor 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. Contractor 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. Contractor shall provide free access to the representatives of City or its designees at reasonable times to such books and records; shall give the City the right to examine and audit said books and records; shall permit City to make transcripts therefrom as necessary; and shall allow inspection of all work, data, documents, proceedings, and activities related to this Agreement. Notification of audit shall be provided at least thirty (30) days before any such audit is conducted. Such records, together with supporting documents, shall be maintained for a period of ten (10) years after receipt of final payment.

Upon completion of, or in the event of termination or suspension 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 Contractor. With respect to computer files, Contractor shall make available to the City, at the Contractor'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.

#### 10. INDEMNIFICATION AND HOLD HARMLESS

Contractor hereby assumes liability for and agrees to defend (at Indemnitees' option), indemnify, protect and hold harmless City and its project contractors, and engineers, officers, agents, and employees ("Indemnitees") from and against any and all claims, charges, damages, demands, actions, proceedings, losses, stop notices, costs, expenses (including attorneys' fees), judgments, civil fines and penalties, liabilities of any kind or nature whatsoever, which may be sustained or suffered by or secured against the Indemnitees arising out of or encountered in connection with this Agreement or the performance of the work including, but not limited to, death of or bodily injury to persons or damage to property, including property owned by or under the care and custody of City, and for civil fines and penalties, that may arise from or be caused, in whole or in part, by any negligent or other act or omission of Contractor, its officers, agents, employees, or subcontractors including but not limited to, liability arising from:

a) Any dangerous, hazardous, unsafe or defective condition of, in or on the premises, of any nature whatsoever, which may exist by reason of any act, omission, neglect, or any use or occupation of the premises by Contractor, its officers, agents, employees, or subcontractor;

b) Any operation conducted upon or any use or occupation of the premises by Contractor, its officers, agents, employees, or subcontractors under or pursuant to the provisions of this Agreement or otherwise;

c) Any act, omission or negligence of Contractor, its officers, agents, employees, or subcontractors;

d) Any failure of Contractor, its officers, agents, or employees to comply with any of the terms or conditions of this Agreement or any applicable federal, state, regional, or municipal law, ordinance, rule, or regulation; and

e) The conditions, operations, uses, occupations, acts, omissions or negligence referred to in Sub-sections a, b, c, and d, existing or conducted upon or arising from the use or occupation by Contractor on any other premises in the care, custody and control of City.

Contractor's obligations under this Section apply regardless of whether or not such claim, charge, damage, demand, action, proceeding, loss, stop notice, cost, expense, judgment, civil fine or penalty, or liability was caused in part or contributed to by an Indemnitee. However, without affecting the rights of City under any provision of this Agreement, Contractor shall not be required to indemnify and hold harmless City for liability attributable to the active negligence of City, provided such active negligence is determined by agreement between the parties or by the findings of a court of competent jurisdiction. In instances where City is shown to have been actively negligent and where City's active negligence accounts for only a percentage of the liability involved, the obligation of Contractor will be for that entire portion or percentage of liability not attributable to the active negligence of City.

Contractor agrees to obtain executed indemnity agreements with provisions identical to those set forth here in this section from each and every subcontractor or any other person or entity involved by, for, with or on behalf of Contractor in the performance of this Agreement. In the event Contractor fails to obtain such indemnity obligations from others as required here, Contractor agrees to be fully responsible according to the terms of this Section.

Failure of City to monitor compliance with these requirements imposes no additional obligations on City and will in no way act as a waiver of any rights hereunder. This obligation to indemnify and defend City as set forth here is binding on the successors, assigns or heirs of Contractor and shall survive the termination of this Agreement or Section.

This Indemnity shall survive termination of the Agreement or Final Payment hereunder. This Indemnity is in addition to any other rights or remedies that the Indemnitees may have under the law or under any other Contract Documents or Agreements. In the event of any claim

or demand made against any party which is entitled to be indemnified hereunder, City may, in its sole discretion, reserve, retain, or apply any monies to the Contractor under this Agreement for the purpose of resolving such claims; provided, however, City may release such funds if the Contractor provides City with reasonable assurance of protection of the Indemnitees' interests. City shall, in its sole discretion, determine whether such assurances are reasonable.

#### 11. INSURANCE

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

#### 12. INDEPENDENT CONTRACTOR

Contractor 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 Contractor shall at all times be under Contractor's exclusive direction and control. Neither City nor any of its officers, employees, or agents shall have control over the conduct of Contractor or any of Contractor's officers, employees, or agents, except as set forth in this Agreement. Contractor shall not at any time or in any manner represent that it or any of its officers, employees, or agents are in any manner officers, employees, or agents of the City. Contractor 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 Contractor in connection with the performance of this Agreement. Except for the fees paid to Contractor as provided in the Agreement, City shall not pay salaries, wages, or other compensation to Contractor for performing services hereunder for City. City shall not be liable for compensation or indemnification to Contractor for injury or sickness arising out of performing services hereunder.

#### 13. LEGAL RESPONSIBILITIES

The Contractor 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 Contractor 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 Contractor to comply with this Section.

#### 14. ANTI DISCRIMINATION

Neither the Contractor, nor any subcontractor under the Contractor, 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 Contractor shall have responsibility for compliance with this Section [Labor Code Sec. 1735].

15. UNDUE INFLUENCE

Contractor 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 Contractor, or any officer, employee, or agent of Contractor, 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.

16. 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 Project 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 Project performed under this Agreement.

17. CONFLICT OF INTEREST

Contractor 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. Contractor further covenants that in the performance of this Agreement, they shall employ no person having such interest as an officer, employee, agent, or subcontractor. Contractor further covenants that Contractor has not contracted with nor is performing any services directly or indirectly, with the developer(s) and/or property owner(s) and/or firm(s) and/or partnership(s) and/or public agency(ies) owning property and/or processing an entitlement application for property in the City or its Area of Interest, now or within the past one (1) year, and further covenants and agrees that Contractor and/or its subcontractors shall provide no service or enter into any contract with any developer(s) and/or property owner(s) and/or firm(s) and/or partnership(s) and/or public agency(ies) owning property and/or processing an entitlement application for property in the City or its Area of Interest, while under contract with the City and for a one-year time period following termination of this Agreement.

18. 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: David Iwansky  
DNA Electric  
182 Wicks Road  
Moorpark, California 93021

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.

19. CHANGE IN NAME

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

20. ASSIGNMENT

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

21. LICENSES

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

22. 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 Contractor 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.

23. ENTIRE AGREEMENT

This Agreement contains 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.

24. CAPTIONS OR HEADINGS

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

25. 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.

26. TIME OF COMPLETION

City and Contractor agree that time is of the essence in this Agreement. City and Contractor further agree that Contractor's failure to perform on or at the times set forth in this Agreement will damage and injure City, but the extent of such damage and injury is difficult or speculative to ascertain. Consequently, City and Contractor agree that any failure to perform by Contractor at or within the times set forth herein shall result in liquidated damages as defined in Section 8 for each and every day such performance is late. City and Contractor agree that such sum is reasonable and fair. Furthermore, City and Contractor agree that this Agreement is subject to Government Code Section 53069.85 and that each party hereto is familiar with and understands the obligations of said Section of the Government Code.

27. PRECEDENCE

Contractor is bound by the contents of the Exhibit A and B. In the event of conflict, the requirements of this Agreement shall take precedence over those contained in Exhibit A and B.

28. INTERPRETATION OF AGREEMENT

Contractor is bound by the contents of Exhibit A and B attached hereto and incorporated herein by this reference as though set forth in full. In the event of conflict, the requirements of the Exhibit A, B, and this Agreement shall take precedence over those contained in the Proposal.

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 Contractor warrants and represents that he/she has the authority to execute this Agreement on behalf of the Contractor and has the authority to bind Contractor 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

DNA ELECTRIC

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

By \_\_\_\_\_  
Dave Iwansky, Owner

ATTEST:

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

## EXHIBIT A

### SCOPE OF SERVICES

For each job requested by City representatives, contractor must respond and provide an initial assessment of the project.

Contractor will provide an estimate to City representative and only start work upon authorization from proper City representatives.

#### **ROUTINE ELECTRICAL SERVICES (One (1) to three (3) working day response)**

Provide electrical services requiring a licensed electrical contractor.

Trouble-shoot undetermined electrical failures.

Provide construction and installation of new or updated electrical service or lighting project.

Purchase and install lighting ballast.

Groundwater well electrical problems.

Sewer pump lift station electrical problems.

Softball field light electrical problems.

Football field light electrical problems.

Sport field lighting high-rise pole bulb replacement.

Gymnasium lighting electrical problems.

Snack-bar electrical problems.

City Park security lighting electrical problems and repairs.

Electrical timer repair or installation.

Electrical repair to City tennis court and basketball court lighting and timers.

Electrical service to City marquee signs.

SCE electrical meter replacement.

#### **EMERGENCY ELECTRICAL SERVICES (One (1) to three (3) hour response)**

Any electrical problem or service the City requests as an emergency response.

#### **EQUIPMENT RESPONSIBILITY**

Contractor is responsible for all equipment (bucket-truck, hi-lift, etc.) and materials to complete all services or repairs.

**EXHIBIT B**

**SERVICE RATES FOR DNA ELECTRICAL SERVICES**

ROUTINE WORK - One (1) to three (3) working day response

Monday thru Friday 7:00 am to 5:30 pm     \$65     per hour

Monday thru Friday 5:30 pm to 7:00 am     \$95     per hour

Weekend and Holiday     \$95     per hour

EMERGENCY WORK - One (1) to three (3) hour response

Monday thru Friday 7:00 am to 5:30 pm     \$65     per hour

Monday thru Friday 5:30 pm to 7:00 am     \$95     per hour

Weekend and Holiday     \$95     per hour

## Exhibit C

### INSURANCE REQUIREMENTS

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

Contractor shall provide the following types and amounts of insurance:

Commercial General Liability Insurance using Insurance Services Office (ISO) "Commercial General Liability" policy form CG 00 01 or the exact equivalent. Defense costs must be paid in addition to limits. There shall be no cross liability exclusion for claims or suits by one insured against another. Limits are subject to review but in no event less than \$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 Contractor owns no vehicles, this requirement may be satisfied by a non-owned auto endorsement to the general liability policy described above. If Contractor or Contractor's employees will use personal autos, or autos rented from a Car Rental Agency, in any way on this project, Contractor shall provide evidence of personal auto liability for each such person.

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

Excess or Umbrella Liability Insurance (Over Primary) if used to meet limit requirements, shall provide coverage at least as broad as specified for the underlying coverages. Any such coverage provided under an umbrella liability policy shall include a drop down provision providing primary coverage above a maximum of \$25,000 self-insured retention for liability not covered by primary but covered by umbrella. Coverage shall be provided on a "pay on behalf" basis, with defense costs payable in addition to policy limits. Policy shall contain a provision obligating insurer at the time insured's liability is determined, not requiring actual payment by the insured first. There shall be no cross liability exclusion precluding coverage for claims or suits by one insured against another. Coverage shall be applicable to the City for injury to employees of Contractor, sub-Contractors 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.

Insurance procured pursuant to these requirements shall be written by insurers that are admitted carriers in the State of California and with an A.M. Bests rating of A- or better and a minimum financial size of VII.

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

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

and to pay the premium. Any premium so paid by the City shall be charged to and promptly paid by Contractor or deducted from sums due Contractor, at the City's option.

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

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

22. Contractor agrees to provide immediate notice to City of any claim or loss against Contractor arising out of the work performed under this Agreement. The City assumes no obligation or liability by such notice, but has the right (but not the duty) to monitor the handling of any such claim or claims if they are likely to involve the City.