

**MOORPARK CITY COUNCIL  
AGENDA REPORT**

**TO: Honorable City Council**

**FROM: Jessica Sandifer, Management Analyst**



**DATE: March 8, 2013 (CC Meeting of March 20, 2013)**

**SUBJECT: Consider Agreement with BJ Palmer and Associates, Inc. for Analysis of the Relocation of Electrical Utility Facilities for the Essex Site and Coordination of Design and Permitting with Southern California Edison (SCE) and Resolution Amending the Fiscal Year 2012/13 Budget to Fund the Project**

**BACKGROUND**

In March 2009, the City entered into a Real Property Acquisition Agreement (the "Agreement") with Essex Portfolio L.P. to obtain the vehicular access driveway used by the United States Postal Service for their new building on High Street. Essex had previously designed the relocation of the power poles for their 200-unit apartment project to run through the area now occupied by the Post Office parking lot. A condition of the Agreement to purchase the driveway area for the Post Office requires the City to pay for a redesign of the Essex Southern California Edison 66kv Pole Relocation Plan, previously prepared by RJR Engineering for Essex.

Originally, it was thought the power poles would be relocated to the curb line south of High Street. However, upon further review, the area between the Essex project site and the site to be purchased by the City seems to be a better location, both aesthetically for High Street and to avoid conflicts with future civic center improvements. Staff expects that the north-south run of the poles would also be relocated to the western property line of the property planned to be transferred to the City as a part of the Development Agreement, as shown in the attached exhibit, to minimize future development conflicts, as Southern California Edison requires a 50-foot wide easement for these high-voltage power lines. An undergrounding option was also explored by staff but is not recommended, as it was not an obligation of Essex to underground the line as part of their project, and undergrounding could more than double the cost of relocating these power lines.

**DISCUSSION**

The City Council approved an Agreement with BJ Palmer and Associates in September 2010. At that time, in addition to re-designing the Essex power pole plan, staff requested BJ Palmer to also look into options to reroute the electrical utilities that are within the Civic Center site. Since at the time, the Essex project was not moving forward, the project became a low priority. Now that Essex has begun to move forward with their project, and because so much time has elapsed, staff has requested BJ Palmer to prepare a new proposal to prepare options for the relocation of the 66kv poles on the Essex site and to remove analysis of the Civic Center 66kv poles, which will be considered at a later time during discussions about the new civic center. Staff has also requested that BJ Palmer include design and permitting of the selected option in the new proposal. Essex will be responsible for paying for the construction of the selected relocation option.

**FISCAL IMPACT**

The cost of the Agreement will be \$25,650.00 including reimbursable expenses. There are currently no funds budgeted for this work so a budget amendment in the total contract amount will need to be approved.

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

**STAFF RECOMMENDATION (ROLL CALL VOTE)**

1. Approve Agreement with BJ Palmer and Associates, Inc. subject to final language approval of the City Attorney and City Manager; and
2. Adopt Resolution No. 2013-\_\_\_\_\_.

Attachment 1 – Location Map  
Attachment 2 – Agreement  
Attachment 3 - Resolution



## ATTACHMENT 2

### PROFESSIONAL SERVICES AGREEMENT BETWEEN THE CITY OF MOORPARK AND BJ PALMER AND ASSOCIATES, INC. FOR ANALYSIS OF OPTIONS FOR ESSEX 66KV ELECTRICAL FACILITY RELOCATION, DESIGN, AND PERMITTING OF THE SELECTED OPTION

THIS PROFESSIONAL SERVICES AGREEMENT, is made and effective as of this \_\_\_\_\_ day of \_\_\_\_\_, 2013, between the City of Moorpark, a municipal corporation ("City") and BJ Palmer and Associates, a California corporation ("Consultant"). In consideration of the mutual covenants and conditions set forth herein, the parties agree as follows:

WHEREAS, City has the need for analysis of options for Essex 66kv electrical facility relocation, design, and permitting of the selected option; 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 March 9, 2013, which is attached hereto as Exhibit B.

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

#### 1. TERM

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

#### 2. SCOPE OF SERVICES

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

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

Compensation for the services to be performed by Consultant shall be in accordance with Exhibit B. Compensation shall not exceed the rates or total contract value of twenty-five thousand six hundred and fifty dollars (\$25,650.00) as stated in Exhibit B, without the written authorization of the City Manager. Payment by City to Consultant shall be in accordance with the provisions of this Agreement.

3. PERFORMANCE

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

4. MANAGEMENT

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

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

5. PAYMENT

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

The City agrees to pay Consultant monthly, in accordance with the payment rates and terms and the schedule of payment as set forth in Exhibit B, based upon actual time spent on the above tasks. This amount shall not exceed twenty-five thousand six hundred and fifty dollars (\$25,650.00) for the total term of the Agreement unless additional payment is approved as provided in this Agreement.

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

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

6. TERMINATION OR SUSPENSION WITHOUT CAUSE

The City may at any time, for any reason, with or without cause, suspend, or terminate this Agreement, or any portion hereof, by serving upon the Consultant at least ten (10) days prior written notice. Upon receipt of said notice, the Consultant shall immediately cease all work under this Agreement, unless the notice provides otherwise. If the City suspends or terminates a portion of this Agreement such suspension or termination shall not make void or invalidate the remainder of this Agreement.

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

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

7. DEFAULT OF CONSULTANT

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

If the City Manager or his/her designee determines that the Consultant is in default in the performance of any of the terms or conditions of this Agreement, he/she shall cause to be served upon the Consultant a written notice of the default. The Consultant shall have fourteen (14) days after service upon it of said notice in which to cure the default by rendering a satisfactory performance. In the event that the Consultant fails to cure its default within such period of time, the City shall have the right, notwithstanding any other provision of this Agreement, to terminate this Agreement without further notice and without prejudice to any other remedy to which it may be entitled at law, in equity or under this Agreement.

8. OWNERSHIP OF DOCUMENTS

Consultant shall maintain complete and accurate records with respect to sales, costs, expenses, receipts, and other such information required by City that relate to the performance of services under this Agreement. Consultant shall maintain adequate records of services provided in sufficient detail to permit an evaluation of services. All such records shall be maintained in accordance with generally accepted accounting principles and shall be clearly identified and readily accessible. Consultant shall provide free access to the representatives of City or the City's designees at reasonable times to

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

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

#### 9. INDEMNIFICATION AND HOLD HARMLESS

**Professional Liability:** When the law establishes a professional standard of care for Consultant's Services, to the fullest extent permitted by law, Consultant shall indemnify, protect, defend and hold harmless Agency and any and all of its officials, employees and agents ("Indemnified Parties") from and against any and all losses, liabilities, damages, costs and expenses, including legal counsel's fees and costs to the extent same are caused in whole or in part by any negligent or wrongful act, error or omission of Consultant, its officers, agents, employees, or subconsultants (or any entity or individual that Consultant shall bear the legal liability thereof) in the performance of professional services under this agreement.

**Other than Professional Liability:** Other than in the performance of professional services and to the full extent permitted by law, Consultant shall indemnify, defend and hold harmless Agency, 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 legal counsels 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 any way attributable to, in whole or in part, the performance of this Agreement by Consultant or by any individual or entity for which Consultant is legally liable, including but not limited to officers, agents, employees or subcontractors of Consultant.

Consultant agrees to obtain executed indemnity agreements with provisions identical to those set forth here in this Section from each and every subconsultant, or any other person or entity involved by, for, with, or on behalf of Consultant in the performance of this Agreement. In the event Consultant fails to obtain such indemnity obligations from others as required here, Consultant agrees to be fully responsible according to the terms of this Section. Failure of City to monitor compliance with these requirements imposes no additional obligations on City and will in no way act as a

waiver of any rights hereunder. This obligation to indemnify and defend City as set forth here is binding on the successors, assigns, or heirs of Consultant and shall survive the termination of this Agreement or this Section.

City does not and shall not waive any rights that it may have against Consultant by reason of this Section, because of the acceptance by City, or the deposit with City, of any insurance policy or certificate required pursuant to this Agreement. The hold harmless and indemnification provisions shall apply regardless of whether or not said insurance policies are determined to be applicable to any losses, liabilities, damages, costs, and expenses described in this Section.

10. INSURANCE

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

11. INDEPENDENT CONSULTANT

Consultant is and shall at all times remain as to the City a wholly independent Contractor. The personnel performing the services under this Agreement on behalf of Consultant shall at all times be under Consultant's exclusive direction and control. Neither City nor any of its officers, employees, or agents shall have control over the conduct of Consultant or any of Consultant's officers, employees, or agents, except as set forth in this Agreement. Consultant shall not at any time or in any manner represent that it or any of its officers, employees, or agents are in any manner officers or employees, or agents of the City except as set forth in this Agreement. Consultant shall not incur or have the power to incur any debt, obligation, or liability against City, or bind City in any manner.

No employee benefits shall be available to Consultant in connection with the performance of this Agreement. Except for the fees paid to Consultant as provided in the Agreement, City shall not pay salaries, wages, or other compensation to Consultant for performing services hereunder for City. City shall not be liable for compensation or indemnification to Consultant for injury or sickness arising out of performing services hereunder.

12. LEGAL RESPONSIBILITIES

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

13. ANTI DISCRIMINATION

Neither the Consultant, nor any subconsultant under the Consultant, shall discriminate in employment of persons upon the work because of race, religious creed, color, national origin, ancestry, physical handicap, medical condition, marital status or gender of such person, except as provided in Section 12940 of the Government Code. The Consultant shall have responsibility for compliance with this Section [Labor Code Section 1735].

14. UNDUE INFLUENCE

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

15. NO BENEFIT TO ARISE TO LOCAL EMPLOYEES

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

16. CONFLICT OF INTEREST

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

17. NOTICE

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

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

To: Bruce Palmer, President  
BJ Palmer and Associates, Inc.  
1616 Mesa Drive  
Vista, California 92084

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

BJ PALMER AND ASSOCIATE, INC.

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

By: \_\_\_\_\_  
Bruce J. Palmer, 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.

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**

BJ PALMER & ASSOCIATES, INC.

1616 Mesa Verde Drive  
Vista, CA  
92084

O: 760.842.7510  
F: 760.941.2130

March 9, 2013

Jessica Sandifer  
Management Analyst – Sustainability Coordinator  
**CITY OF MOORPARK**  
799 Moorpark Avenue  
Moorpark, CA 93021

JSandifer@ci.moorpark.com

**RE: REVISED PROPOSAL – UTILITY SYSTEMS PLANNING & DESIGN  
ANALYSIS FOR THE RELOCATION/CONVERSION OF EXISTING OVERHEAD FACILITIES  
LOCATION – PROPOSED CIVIC CENTER & ESSEX PROPERTY  
CITY OF MOORPARK**

Dear Jessica:

Thank you for considering us for your upcoming project. Enclosed you will find our revised proposal containing the requested scope of services, with our fee schedule & terms and conditions of the agreement. Please note that this proposal has been compiled based on the proposed development information provided and our initial site evaluation.

Our proposed scope of services and fees are presented in the following categories:

**EXHIBIT “A” – SCOPE OF SERVICES**

- Task I / Relocation Options Evaluation, Routing Study and Estimate of Costs (x 3 Options)
- Task II / Processing, Management & Coordination to Final Design(s) and Documents of Selected Option

**EXHIBIT “B” – FEES AND AGREEMENT**

- Fees for Scope of Services in Exhibit “A”
- Terms & Conditions of Agreement

Upon your review and approval of this proposal, please has a copy signed and returned to my attention. Or, if you prefer, please provide us with your standard Project Consultant Agreement for our review, approval and signature. We look forward to hearing from you soon.

Sincerely,

**BJ PALMER & ASSOCIATES, INC.**

*Bruce J. Palmer*  
\_\_\_\_\_  
Bruce J. Palmer, President

BJP/bj: #6034R

Enclosure

## SCOPE OF SERVICES

Project:	<b>RELOCATION ANALYSIS AND PLANNING</b>	Client:	<b>CITY OF MOORPARK</b>
Location:	City of Moorpark @ Essex Site	Date:	03.09.13
Component:	SCE 66Kv, 12kV and Associated Facilities	Project:	#6034R

### **TASK #1**

#### **RELOCATION ANALYSIS / CONCEPT COMPOSITE & PRELIMINARY BUDGET ESTIMATES (X 3 OPTIONS)**

- Conduct site evaluation of existing dry utility facilities and impact to proposed site improvements.
- Obtain utility facility maps (All utility map & letter fees to be paid by Client).
- Identify utility planners and discuss "preliminary" service requirements and service source locations.
- Prepare dry utility concept composite, reflecting existing utilities and proposed service extensions.
- Prepare estimate of utility relocation fees, refundable and non-refundable advancements.
- Calculate C.I.A.C. & I.T.C.C. tax components, refundable and non-refundable.
- Estimate streetlight costs and advance energy charges.
- Estimate contractor trenching & substructure installation expenses.
- Combine findings into report, budget estimate and concept exhibit.

### **TASK #2**

#### **SUBMITTAL / COORDINATION WITH UTILITY PROVIDERS FOR PRELIMINARY DESIGN GENERATION**

- Conduct initial consultation with Client's representatives, i.e., land planning, engineering, architecture, landscaping and other improvement consultants to implement their requirements.
- Obtain improvement plans, product information and project scheduling, and submit to utility companies.
- Meet with utility representatives to discuss design details, proposed changes, additions and/or revisions.
- Coordinate and monitor design process between utilities to ensure cohesiveness and timely completion.
- Produce a periodic schedule to address pertinent utility issues and make recommendations as to the Client's course of action.
- Monitor scheduling and coordination of utility cable installation lead times.
- Obtain and review preliminary utility design with Client/Team prior to finalizing.
- Coordinate preliminary electric designs with other utility providers to utilize common trench where applicable.
- Provide value engineering to assisting in the identification of potential utility conflicts with the proposed grading, sewer, water and storm drain systems.

#### **UTILITY RELOCATIONS / CONVERSION PLANNING & DESIGN MANAGEMENT**

- Coordinate with Client/Team to determine preferred options for relocations, services and improvement phasing.
- Review with Client/Team to determine preferred options, methods and time frames for adjustments.
- Prepare and submit improvement plan packages to utility companies to initiate relocation design generation.
- Coordinate on-going plan & documents with utility companies, as required, to keep designs moving forward.
- Meet with utility representatives to discuss design details and coordinate common activities.
- Review preliminary designs with Client/Team for evaluation & approvals.
- Coordinate any proposed design modifications with utility companies.
- Process utility agreements, invoices, easements and quitclaim documents, for approval, payment and completion.
- Coordinate temporary or interim service (as necessary) prior to permanent system activation.
- Assist with acquisition of consent to grade letters (as necessary).
- Schedule for relocations based on site improvement & phasing timeframe.
- Coordinate and attend utility pre-construction field meetings (estimated 2).

## SCOPE OF SERVICES

(Continued)

Project:	<b>RELOCATION ANALYSIS AND PLANNING</b>	Client:	<b>CITY OF MOORPARK</b>
Location:	City of Moorpark @ Essex Site	Date:	03.09.13
Component:	SCE 66Kv, 12kV and Associated Facilities	Project:	#6034R

### FINALS / DESIGNS, CONTRACTS, INVOICES & EASEMENTS

- Review final designs for cohesive planning, ensuring systems are adequate to meet project's needs, but not over designed.
- Coordinate requests for allowances and credits prior to utility contract and invoice preparation.
- Coordinate final designs with Client for acceptance.
- Obtain and review contracts and agreements for Client's approval & signature.
- Provide payment option analysis and recommended payment option.
- Coordinate utility provider easement documents for Client's acceptance & notarization.

### CLIENT / TEAM MEETINGS

- Meet with Client, Architects, Civil Engineers and other Team representatives to incorporate utility requirements for proposed improvements.
- Meet with utility representatives to insure utility requirements and specifications are met.

## FEES FOR EXHIBIT "A" & FEE SCHEDULES

Project: <b>RELOCATION ANALYSIS AND PLANNING</b>	Client: <b>CITY OF MOORPARK</b>
Location: City of Moorpark @ Essex Site	Date: 03.09.13
Component: SCE 66Kv, 12kV and Associated Facilities	Project: #6034R

### TASK #1

#### RELOCATION ANALYSIS / CONCEPT COMPOSITE & PRELIMINARY BUDGET ESTIMATES (X 3)

\$ 9,500 @ Completion of Site Evaluation, Facility Map Acquisition, Concept Composites, Preliminary Budget Estimate and Utility Report

### TASK #2

#### PROCESSING, MANAGEMENT & COORDINATION OF SELECTED OPTION

\$ 2,950 @ Plan Preparation & Submittal to Utility Providers  
 \$ 1,800 @ Prepare Processing Schedule and Coordinate Engineering Advancements  
 \$ 3,550 @ Coordination during Preliminary Design Generation  
 \$ 2,500 @ Coordination for Final Design(s)  
 \$ 1,950 @ Coordination for Consent Letters  
 \$ 1,400 @ Process to Final Documents / Utility Required Contracts, Agreements, Invoices & Easements  
**\$14,150 - Sub-Total**

\$ 2,000 - Estimated Reimbursable Expenses (See Items Below)

<b>\$25,650 - TOTAL</b>
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*(Payable according to the above "milestone" schedule)*

*NOTE: Proposal includes planning to final designs, documents and invoices. The proposal does not include the processing/coordination of final documents and invoicing. These tasks will be by others. Additionally, the proposal does not include any construction coordination items including, but not limited to, bid packages, quantities, permit acquisitions, construction crew scheduling, or pre-trench or pre-construction meetings.*

#### **FEE SCHEDULE**

The following Fee Schedule reflects the BJ Palmer & Associates, Inc. (Consultant) hourly compensation for dry utility planning, design and management services requested on a time and material basis.

Principal	\$160.00	Assistant Project Manager	\$ 85.00
Senior Project Manager	\$120.00	Project Coordinator	\$ 75.00
Project Manager	\$100.00	CAD/Design-Drafting	\$ 65.00

Reimbursables: Reproduction Expenses, Internal Plotting, Messenger & Overnight Packages requested by Client are not included and will be provided by Client's account or billed to Client at cost +10%.
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ATTACHMENT 3

RESOLUTION NO. 2013 - \_\_\_\_\_

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MOORPARK, CALIFORNIA, AMENDING THE FISCAL YEAR 2012/13 BUDGET BY APPROPRIATING \$25,650.00 FROM THE ENDOWMENT FUND (2800) FOR THE ESSEX SITE ELECTRICAL UTILITY FACILITY RELOCATION ANALYSIS, AND COORDINATION OF THE DESIGN AND PERMITTING OF THE SELECTED OPTION

WHEREAS, on June 20, 2012, the City Council adopted the Operating and Capital Improvement budget for Fiscal Year 2012/13; and

WHEREAS, a staff report has been presented to the City Council recommending hiring BJ Palmer and Associates, Inc. to conduct an analysis of the electrical utilities on the Essex site and to prepare relocation options for the facilities, and coordinate design and permitting of the selected option; and

WHEREAS, a budget adjustment in the aggregate amount of \$25,650.00 is requested from the Endowment Fund (2800) for this work; and

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

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

SECTION 1. A budget amendment in the amount of \$25,650.00 from the Endowment Fund (2800), as more particularly described in Exhibit "A", attached hereto, is hereby approved.

SECTION 2. The City Clerk shall certify to the adoption of this resolution and shall cause a certified resolution to be filed in the book of original Resolutions.

PASSED AND ADOPTED this 20<sup>TH</sup> day of March, 2013.

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

ATTEST:

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

Exhibit A – Budget Amendment

**EXHIBIT A**  
**FY 2012/13**  
**BUDGET AMENDMENT FOR**  
**ENDOWMENT FUND**  
**FOR ELECTRICAL UTILITY REROUTE AND/OR RELOCATION ANALYSIS, DESIGN, AND**  
**PERMITTING OF SELECTED OPTION**

**FUND ALLOCATION FROM:**

Fund	Account Number	Amount
Endowment Fund	2800-5500	\$ 25,650.00
Total		\$ 25,650.00

**DISTRIBUTION OF APPROPRIATION TO EXPENSE ACCOUNTS:**

Account Number	Current Budget	Revision	Amended Budget
2800.6100.0000.9102	\$ -	\$ 25,650.00	\$ 25,650.00
Total	\$ -	\$ 25,650.00	\$ 25,650.00

Approved as to Form: 