

**MOORPARK CITY COUNCIL
AGENDA REPORT**

TO: Honorable City Council

FROM: Hugh Riley, Assistant City Manager

BY: Jennifer Mellon, Administrative Services Manager 

DATE: May 13, 2013 (CC Meeting of 6/5/13)

SUBJECT: Consider Professional Services Agreement between City of Moorpark and True North Research, Inc. to Conduct a Voter Opinion Survey and Consider Resolution Amending the Fiscal Year 2012-13 Budget Appropriating Funds from the General Fund (1000)

BACKGROUND

The Finance, Administration, and Public Safety (FAPS) Committee met February 6, 2013 and recommended that the City Council take action to retain a consultant to conduct a voter opinion survey to determine the feasibility of increasing taxes or assessments. On February 14, 2013 the City Council approved the staff recommendation to obtain proposals from qualified consulting firms to conduct a voter opinion survey.

DISCUSSION

In March, 2013, staff released a Request for Qualifications (RFQ) for the voter opinion survey and received seven (7) proposals by the deadline of April 26, 2013. Six (6) of the research firms submitted proposals that met the requirements of submission and were evaluated based on numerous criteria including sample size, duration of survey, prior experience, value added services, innovation, and cost. Staff narrowed the field of research firms down to a top two and conducted an interview with each company as well as performed reference checks for the top candidate research firm.

Upon initial interviews and reference checks staff is confident that True North Research, Inc. (True North) will provide the most value for the not to exceed cost of \$20,000.00. Their sample size was the most extensive, their value added services exceeded those of other firms, and their reference check clients gave glowing reviews about their professionalism, quality, research methods, and expertise in those areas which Moorpark wishes to gather information.

True North has vast experience with numerous measures including sales tax, parcel tax, special tax, business incense tax, etc. as well as with Proposition 118 measures.

True North has also worked extensively in Ventura County with City's and Park Districts. Dr. McLarney, President, and Richard Sarles, Principal Researcher will be the exclusive project management team that will provide a full service solution to the City of Moorpark from information gathering and development, through the survey and research analysis, to final outcome scenarios and expertise in communicating the meanings behind the process to stakeholders. They will also provide innovative, value-added services of statistical modeling and advanced targeting analysis on top of their all-inclusive project management approach.

The True North proposal is not to exceed \$20,000. True North understands that the City of Moorpark wishes to gather information used in conducting the survey to measure community priorities as they relate to the services, programs, and facilities provided by the city and produce an unbiased, statistically reliable evaluation of voters' interest in establishing a local revenue measure to fund essential city services/capital projects. True North is confident they can provide the City of Moorpark with the information necessary to make a responsible decision moving forward. The survey shall be completed between the months of August and October of 2013 based upon the recommendation of True North Research and their expertise in determining the best time to conduct the opinion survey.

FISCAL IMPACT

The voter opinion survey shall not exceed \$20,000. A budget amendment is required allocating \$20,000 from the General Fund (1000).

STAFF RECOMMENDATION

(ROLL CALL VOTE)

- 1) Authorize the City Manager to execute an Agreement with True North Research, Inc. to conduct a voter opinion survey subject to final language approval by the City Manager
- 2) Adopt Resolution No. 2012-____, amending the Fiscal Year 2012/13 budget appropriating funds from the General Fund (1000)

Attachment 1: RFQ Matrix

Attachment 2: Resolution

Attachment 3: Draft Professional Services Agreement

Voter Opinion Poll - Vendor Comparisons Summary

	California Survey Research	Darje Binder Research	FM3	Godbe Research	True North Research	Tulchin Research
Rank	6	5	2	Tied for 3rd	1	Tied for 3rd
Basic Criteria	\$20-28K; 400 Sample; 15 min	\$20K; 300 sample; 14 min	\$20K; 350-400 sample; 18 min; 4 week project	\$20K; 400 Sample; 15-18 min; 4 - 6 weeks.	NTE \$20K; 500 sample; 15 mins. Split groups option included. 8-10 week project.	\$19,500; 300 sample; 20 mins;
Notes	Lack experience and comparable clients. No ballot measure experience. Mostly economic development analysis.	Lack experience and comparable clients. Similar clients listed are SF Chamber, Oakland Comm on Jobs & Housing; and SF Bicycle Coalition.	League of CA Cities Primary Firm. Broad experience. Good client base & success rate. Extensive So Cal Experience in various research methods.	Broad experience and relevant projects. Good success rate. Willing to do two split samples of 200 voters each.	Project team are owners of company. Great references & broad experience. Many Ventura County Clients and good success rate. Willing to do a split sample approach. Innovation methods and added services detailed in RFQ will provide added value.	Not an overly robust proposal. Most clients in Northern California or School Districts. Experience relevant. Many ballot measures & propositions.

ATTACHMENT 1

RESOLUTION NO. 2013- _____

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MOORPARK, CALIFORNIA, AMENDING THE FISCAL YEAR 2012/13 BUDGET TO APPROPRIATE \$20,000 FROM THE GENERAL FUND (1000) TO CONDUCT A VOTER OPINION SURVEY

WHEREAS, on February 6, 2013 the Finance, Administration and Public Safety (FAPS) Committee met and recommended that City Council take action to retain a consultant to conduct a voter opinion survey to determine the feasibility of increasing taxes or assessments; and

WHEREAS, on February 14, 2013 City Council approved staff recommendation to obtain proposals from qualified consulting firms to conduct a voter opinion survey; and

WHEREAS, a staff report has been presented to the City Council summarizing the results of the Request for Qualification and the recommendation to award the agreement to True North Research Inc; and

WHEREAS, on June 20, 2012, the City Council adopted the Operating and Capital Improvement Budget for Fiscal Year 2012/13, which does not include any appropriation to fund this professional agreement; and

WHEREAS, an appropriation increase of \$20,000 is requested from the General Fund (1000); and

WHEREAS, Exhibit "A" hereof describes said budget amendment and its 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 allocating \$20,000 from the General Fund (1000) to finance the professional services agreement to conduct a voter opinion survey, 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 5th day of June, 2013.

Janice S. Parvin, Mayor

ATTEST:

Maureen Benson, City Clerk

Attachment: Exhibit A – Budget Amendment

**BUDGET AMENDMENT FOR
GENERAL FUND (1000) TO FINANCE THE
PROFESSIONAL SERVICES AGREEMENT TO CONDUCT
A VOTER OPINION SURVEY**

FY 2012/13

FUND BALANCE ALLOCATION:

Fund Title	Fund-Account Number	Amount
General Fund	1000-5500	\$ 20,000.00
Total		\$ 20,000.00

EXPENDITURE APPROPRIATION:

Account Number	Current Budget	Revision	Amended Budget
1000-1100-0000-9103	\$ -	\$ 20,000.00	\$ 20,000.00
	\$ -	\$ -	\$ -
	\$ -	\$ -	\$ -
	\$ -	\$ -	\$ -
	\$ -	\$ -	\$ -
Total	\$ -	\$ 20,000.00	\$ 20,000.00

Finance Approval:  _____

ATTACHMENT 3

AGREEMENT BETWEEN THE CITY OF MOORPARK AND TRUE NORTH RESEARCH, INC. TO COMPLETE A VOTER OPINION SURVEY

THIS AGREEMENT, is made and effective as of this _____ day of _____, 2013, between the City of Moorpark, a municipal corporation ("City") and True North Research, a corporation ("Consultant"). In consideration of the mutual covenants and conditions set forth herein, the parties agree as follows:

WHEREAS, City has the need to complete a Voter Opinion Survey in the City of Moorpark; 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 April 24, 2013, which is attached hereto as Exhibit A.

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 A, 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 Voter Opinion Survey services, as set forth in Exhibit A. In the event there is a conflict between the provisions of Exhibit A and this Agreement, the language contained in this Agreement shall take precedence.

Consultant shall perform the tasks described and set forth in Exhibit A. Consultant 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 Consultant shall be in accordance with Exhibit A. Compensation shall not exceed the rates or total contract value not to exceed twenty thousand dollars (\$20,000.00) as stated in Exhibit A, 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 Timothy McLarney, Ph.D., President, 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 A, based upon actual time spent on the above tasks. This amount shall not exceed twenty thousand dollars (\$20,000.00) 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 or the City Manager's designee. 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 invoice for completion of services performed. 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 or the City Manager's designee. If the City disputes any of Consultant's fees or expenses, City 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 thirty (30) 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. LIQUIDATED DAMAGES

This section left intentionally blank.

9. 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 five (5) 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.

10. INDEMNIFICATION AND HOLD HARMLESS

Indemnity for 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 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 legal counsel 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 agency 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 sub-consultant, 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.

11. INSURANCE

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

12. 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.

13. 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.

14. ANTI DISCRIMINATION

Neither the Consultant, nor any sub-consultant 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].

15. 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.

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 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.

17. 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 sub-consultant. 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 sub-consultants 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.

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: Timothy McLarney, Ph.D.
True North Research, Inc.
741 Garden View Court, Suite 208
Encinitas, California 92024

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 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.

20. 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.

21. 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.

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 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.

23. 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.

24. 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.

25. 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.

26. 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.

27. 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.

28. 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.

29. 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.

30. 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.

31. 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

TRUE NORTH RESEARCH, INC.

By: _____
Steven Kueny
City Manager

By: _____
Timothy McLarney, Ph.D.
President

Attest:

Maureen Benson, City Clerk

Exhibit A

True North Research, Inc. Proposal for City of Moorpark

Revenue Measure Feasibility Survey

Proposal for Research & Consulting

April 24, 2013

**(Proposal totaling 16 Pages to be included with
Executed Agreement but not attached to draft Agreement)**

Exhibit B

INSURANCE REQUIREMENTS

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

Consultant shall provide the following types and amounts of insurance:

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

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, sub-consultants, 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 aggregate.

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

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

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

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

8. Certificate(s) are to reflect that the insurer will provide thirty (30) days notice to the City of any cancellation or reduction of coverage. Consultant agrees to require its insurer to modify such certificates to delete any exculpatory wording stating that failure of the insurer to mail written notice of cancellation or reduction of coverage imposes no obligation, or that any party will "endeavor" (as opposed to being required) to comply with the requirements of the certificate.
9. It is acknowledged by the parties of this Agreement that all insurance coverage required to be provided by Consultant or any subcontractor, is intended to apply first and on a primary, non-contributing basis in relation to any other insurance or self-insurance available to the City.
10. Consultant agrees to ensure that subcontractors, and any other party involved with the Work who is brought onto or involved in the Work by Consultant, provide the same minimum insurance required of Consultant. Consultant agrees to monitor and review all such coverage and assumes all responsibility for ensuring that such coverage is provided in conformity with the requirements of this section. Consultant agrees that upon request, all agreements with subcontractors and others engaged in the Work will be submitted to the City for review.
11. Consultant agrees not to self-insure or to use any self-insured retentions or deductibles on any portion of the insurance required herein and further agrees that it will not allow any contractor, subcontractor, Architect, Engineer, or other entity or person in any way involved in the performance of Work contemplated by this Agreement to self-insure its obligations to the City. If Consultant's existing coverage includes a deductible or self-insured retention, the deductible or self-insured retention must be declared to the City. At that time, the City shall review options with the Consultant, which may include reduction or elimination of the deductible or self-insured retention, substitution of other coverage, or other solutions.
12. The City reserves the right at any time during the term of the Agreement to change the amounts and types of insurance required by giving the Consultant ninety (90) days advance written notice of such change. If such change results in substantial additional cost to the Consultant, the City will negotiate additional compensation proportional to the increased benefit to the City.
13. For purposes of applying insurance coverage only, this Agreement will be deemed to have been executed immediately upon any party hereto taking any steps that can be deemed to be in furtherance of or towards performance of this Agreement.
14. Consultant acknowledges and agrees that any actual or alleged failure on the part of the City to inform Consultant of non-compliance with an insurance requirement in no way imposes any additional obligations to the City nor does it waive any rights hereunder in this or any other regard.

15. Consultant will renew the required coverage annually as long as the City, or its employees or agents face an exposure from operations of any type pursuant to this Agreement. This obligation applies whether or not the Agreement is canceled or terminated for any reason. Termination of this obligation is not effective until the City executes a written statement to that effect.
16. Consultant shall provide proof that policies of insurance required herein expiring during the term of this Agreement have been renewed or replaced with other policies providing at least the same coverage. Proof that such coverage has been ordered shall be submitted prior to expiration. 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.