

**MOORPARK CITY COUNCIL
AGENDA REPORT**

TO: Honorable City Council
FROM: Ron Ahlers, Finance Director 
DATE: December 4, 2015 (City Council Meeting of December 16, 2015)
SUBJECT: Consider Award of Contract for Banking Services to Wells Fargo Bank

BACKGROUND

The City of Moorpark (City) receives banking services from Bank of America (BofA). BofA has been the City's provider since the inception of the City in 1983. In early September 2015, BofA informed the City that they are terminating the banking relationship. Initially, BofA gave us a deadline of 90 days to transfer to another bank. The City requested additional time and BofA stated that they will cease banking services by March 10, 2016.

City staff reviewed recent banking services request for proposal (RFP) that other cities had released and modified a RFP to include Moorpark specifications. Staff issued a Banking Services RFP on October 19, 2015. The deadline for proposal submittal was Friday the 13th of November at 5:00pm. Staff sent the RFP to the following banks: Rabobank, JP Morgan Chase, Wells Fargo, Citibank, US Bank, Union Bank, Bank of the West, BNY Mellon, East West Bank and City National. The RFP was posted to the City's website and the California State Municipal Finance Officer's (CSMFO) website.

DISCUSSION

The City received three proposals by the deadline: Wells Fargo, Rabobank and US Bank. Rabobank submitted their proposal via email on November 13, 2015 at 4:59 pm to the Finance Director's email account. The Rabobank paper proposal arrived on November 16, 2015.

US Bank's proposal is not acceptable to the City. Their proposal limits the total City deposit to \$500,000 at any time. The City requires a limit greater than \$500,000. Page 5 of US Bank proposal states:

"While U.S. Bank is able to accommodate the account structure as requested, **please be aware that we are limited to support City deposits to the extent that they can support operations, up to a**

maximum of \$500,000 for all City accounts combined... Thus, average deposit balance for the City in excess of \$500K cannot be supported by U.S. Bank."

(emphasis is US Bank)

The City considers the proposals from Wells Fargo and Rabobank to be acceptable.

Wells Fargo and Rabobank

Wells Fargo has branches in over forty states and is headquartered in Sioux Falls, SD; with over one thousand branches within the State of California. Most importantly, Wells Fargo has a branch within the City of Moorpark. For the past 20 years, Wells Fargo has had a dedicated Government Banking Group with 794 public entity clients (cities, counties, water districts, school districts, etc.) with deposits over \$2 billion and related collateral in excess of \$2 billion. The proposal states that Wells Fargo is in compliance with the California Government Code relating to public entity deposits. In fiscal year 2014, Wells Fargo had \$84 billion in revenue and net income of \$23 billion. The dividend was \$1.35 per share which was an increase of 17% over the prior year. The core deposits were over \$1 trillion with an 11% equity ratio. Wells Fargo's financial health is strong.

Rabobank is headquartered in Roseville, CA; they are a part of Rabobank Group of the Netherlands. Rabobank only has branches in California; they are not located in any other state. Most importantly, Rabobank has a branch within the City of Moorpark. Their banking history dates back to 1981 when Valley Independent Bank was founded and later acquired in 2002 by Rabobank. They are a California community bank with 120 retail offices and 15 financial service centers, serving the needs of communities from Redding to the Imperial Valley. They have 1,800 employees. They currently have 230 local government clients (cities, counties, water districts, etc.) with deposits in excess of \$1.3 billion. Rabobank did not submit a financial statement since they are wholly owned by Rabobank Group. They did submit a link to the latest report from Rabobank to the FDIC. Total revenue of \$376 million with a net loss of \$590 million; they had "\$Goodwill impairment losses" of \$625 million. Their equity ratio is 11.7%.

Request for Proposal Information

The RFP requested information from the banks to ascertain if they could meet the City's banking needs and requirements. The following table depicts how the two banks performed regarding the information required by the RFP.

<u>Requirement</u>	<u>Wells Fargo</u>	<u>Rabobank</u>
Five year term, fixed pricing	Met requirement	Met requirement
Scope of Services ~ 24 points	Met requirement	Met requirement
Qualifications and Experience	Met requirement	Met requirement
Personnel	Met requirement	Met requirement
Banking Services	Met requirement	Met requirement
Control	Met requirement	Met requirement
Conversion	Met requirement	Met requirement
Reporting	Met requirement	Met requirement
Pricing and Account Analysis	Met requirement	Met requirement
References	Met requirement	Met requirement

With this conversion to a new bank, the City will implement "Positive Pay" and "ACH Fraud Filter" systems. These systems will provide an additional layer of protection against check fraud and ACH fraud (direct deposit). Wells Fargo and Rabobank offer these systems and will implement these services for the City.

Cost

The estimated gross monthly costs for Wells Fargo are about \$1,500. The estimate for Rabobank is about \$1,000 per month. Both banks would provide an earnings credit for the cash balance the City has on deposit: Wells Fargo credit is \$1,000 and Rabobank is \$750. Therefore, Wells Fargo net cost is \$500 monthly while Rabobank is \$250 monthly. Currently, BofA charges about \$2,700 monthly with an earnings credit of \$1,200 monthly. Therefore, a net cost to the City of \$1,500 per month.

Conclusion

City staff recommends Wells Fargo be the provider of banking services to the City. Wells Fargo has been around since the 1850's and they have survived: Civil War, World War I, Great Depression, World War II and the 2000's recession. Wells Fargo was strong enough to actually acquire a major bank during the 2000's recession: Wachovia (included World Savings Bank) in a deal worth over \$15 billion. They have a large presence in California and they serve over 700 public entities throughout the United States. Most importantly, they can service all of our banking needs. Wells Fargo offers more services in-house than Rabobank. For example, safekeeping services are performed by Wells Fargo staff versus Rabobank uses BNY Mellon bank to provide those services.

Disclosure

The City Treasurer has several personal accounts and a loan with Wells Fargo bank. He also has accounts and relationships with other financial institutions.

FISCAL IMPACT

There is no additional cost to the City since the City currently pays banking service fees to Bank of America. The City shall sign an agreement with Wells Fargo bank for a term of five years.

STAFF RECOMMENDATION **(Roll Call Vote)**

Authorize the City Manager to execute an agreement with Wells Fargo Bank subject to final language approval by the City Manager and City Attorney.

Attachments:

1. Bank of America letter
2. Banking Services Request for Proposal

ATTACHMENT 1

September 10, 2015

City of Moorpark
799 Moorpark Ave
Moorpark, CA 93021
Attention: Ron Ahlers
Finance Director

Bank of America 
Merrill Lynch

RECEIVED

SEP 11 2015

FINANCE / PAYROLL

**Re: Notice of Closure of your Bank of America, N.A. Accounts
and Termination of Treasury Services**

Dear Mr. Ahlers:

As discussed on September 10th, 2015, this letter confirms our communication that Bank of America, N.A. (Bank) will no longer provide deposit, cash management or treasury services for City of Moorpark. Therefore, please close such accounts ending in the following numbers (the "Accounts") by March 10th, 2016, the termination date, which is 182 days from the date of this letter.

0201, 1256, 1257, 6353, 1357

We hope this period gives you sufficient time to rearrange your banking needs before the Accounts are closed and these services are terminated.

Except for the account(s) and cash management services to be closed and terminated as described in this letter, any other contractual arrangement we have with you will remain unaffected, and in full force and effect.

Until the termination date: Until the above termination date, we will continue to accept funds into the Accounts and we will pay checks and release funds from the Accounts upon verification that there are sufficient collected and available funds in the Accounts. We will return any checks or reject funds transfer requests that will result in negative balances in the Accounts.

Please note that if you have not closed the Account(s) by the termination date, we will do so on the termination date, along with terminating all treasury services.

After the termination date: On and after the above termination date, we will no longer provide treasury services or honor any withdrawals, funds transfers, checks or other transactions with respect to the Accounts (with the exception of any checks to which we are a holder in due course and which have not been posted against your Accounts prior to the termination date). We will return any checks or other funds and reject transfer requests received on and after the termination date with a notice that such Account is closed.

Shortly after your Accounts are closed, we will send you a check for the remaining positive - balance, less any accrued service fees and related obligations, unless you and we agree on an

alternative method of payment. You must maintain sufficient funds in the Accounts on the termination date to cover all accrued service fees.

Your obligations under account agreements, the Treasury Management Terms and Conditions Booklet, and any other agreements with us, which are stated to survive the termination of services and closure of accounts, will remain in effect as provided therein.

What you should do: We are giving you this advance notice so that you will have a reasonable opportunity to make other banking arrangements before we close the Accounts and terminate the services. We would like to cooperate with you during this transitional period in order to minimize any inconvenience.

You may need to take specific actions. For instance, if ACH credits and/or debits are received into the Accounts, you may wish to provide new bank account instructions to those sending such ACH transactions. After the Accounts are closed, any ACH transactions received may be returned to the sending bank.

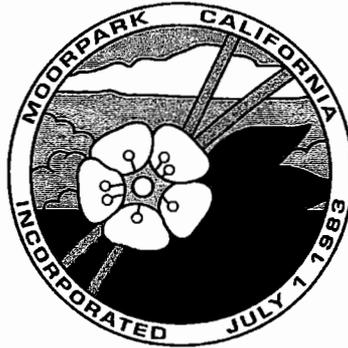
Please contact me at 657.216.5028 if you have any further questions or require assistance. We thank you for the opportunity to serve your business needs in the past and for your prompt attention in this matter.

Sincerely,



R. Patrick Kamachi

Bank of America Merrill Lynch" is the marketing name for the global banking and global markets businesses of Bank of America Corporation. Lending, derivatives, and other commercial banking activities are performed globally by banking affiliates of Bank of America Corporation, including Bank of America, N.A. ("BANA"), member FDIC. Securities, strategic advisory, and other investment banking activities are performed globally by investment banking affiliates of Bank of America Corporation, including, in the United States, Merrill Lynch, Pierce, Fenner & Smith Incorporated ("MLPF&S") and Merrill Lynch Professional Clearing Corp., which are registered broker-dealers and members of FINRA and SIPC, and, in other jurisdictions, by locally registered entities.



REQUEST FOR PROPOSAL (RFP) FOR BANKING SERVICES

I. INTRODUCTION

The City of Moorpark (City) is currently seeking proposals from qualified financial institutions interested in providing comprehensive banking services. The City intends to select one financial institution to deliver the services described herein and detailed in Section III.

A proposer must be a qualified depository of public funds, as defined by Section 53635.2 of the California Government Code to perform its obligation under this proposal in compliance with all applicable federal and state laws, regulations, statutes and policies. The proposer must also be a member of the Federal Reserve System.

The City encourages proposers to submit the most competitive proposal possible, offering the highest quality of service and enhancements to improve our current management of cash flow at a competitive price. While much of the information provided in this RFP is based upon current services, it is the City's desire to maximize the use of automated and electronic technology services to improve our banking, cash management, custodial and customer service capabilities without sacrificing internal controls. Of equal consideration is a service-oriented and responsive relationship with the selected bank.

Please provide options that may create efficiencies, process improvements, and/or take advantage of new, applicable technologies.

The investment activities of the City will, in no way, be affected by the appointment of a banking institution to handle the City's regular depository and custodial accounts. All investment activities will continue to be handled at the direction of the City Treasurer.

The City will endeavor to administer the proposal process in accordance with the terms and dates outlined in this RFP, however, the City reserves the right to modify the activities, time line and any other aspect of the process at any time as deemed necessary by City Staff. By requesting proposals, the City is in no way obligated to

with the preparation or submission of a proposal. The awarding of any contract shall be contingent on the availability of funds and required City Council approval. The decision to award any contract to a particular financial institution will be based on a variety of factors; no single one of which will determine the final award decision.

The City truly appreciates the effort all the proposers and their respective staffs will put forth in responding to the Banking Services Request for Proposal for the City.

II. PROPOSAL PROCEDURES

2.1. SCHEDULE OF PROPOSAL

Issue RFP	October 19, 2015
Proposals Due	November 13, 2015, 5:00 pm (PST)
Proposer's Presentation/ Oral Interview	By invitation only
Selection Made	Council Meeting on December 2, 2015
Contract Signed	No later than December 31, 2015
Conversion Date	No later than February 1, 2016

2.2. QUESTIONS

In lieu of a pre-proposal conference, the City will accept questions regarding this RFP until November 10, 2015. All questions should only be directed to Ron Ahlers, Finance Director via e-mail at rahlers@MoorparkCA.gov. City Staff will prepare responses to the questions and post them on the City website. Potential proposers should include contact information with their question(s) in the event City Staff needs to obtain additional information or clarification in order to respond to the question(s).

2.3. PREPARATION OF PROPOSAL

Each proposal shall be prepared simply and economically avoiding the use of elaborate promotional materials beyond those sufficient to provide a complete, accurate and reliable presentation.

2.4. NUMBER and SUBMISSION OF PROPOSAL COPIES

Five (5) copies of the proposal should be submitted to the City attention:

City of Moorpark
Ron Ahlers, Finance Director
799 Moorpark Avenue
Moorpark, CA 93021

All proposals must be delivered to the above offices on or before November 13, 2015, at 5:00 pm (PST). **Proposals received after the above date and time will not be considered.**

2.5. TIME AND LOCATION OF PROPOSER'S PRESENTATION/INTERVIEW

After City Staff have reviewed the proposals received, at the discretion of the City, financial institutions submitting proposals may be requested to make oral presentations as part of the evaluation process.

2.6. EFFECTIVE PERIOD OF PROPOSALS

All proposals must state the period for which the proposal shall remain in effect. Such period shall not be less than 120 days from the proposal date.

2.7. RIGHT OF REJECTION BY THE CITY

Notwithstanding any other provisions of this RFP, the City reserves the right to award this contract to the financial institution that best meets the requirements of the RFP, and not necessarily, to the lowest bidder. Further, the City reserves the right to reject any or all proposals prior to execution of the contract, to waive any non-material irregularities or information in any proposal and to accept or reject any items or combination of items, with no penalty to the City.

2.8. CONTRACT NEGOTIATIONS

After a review of the proposals, and possible oral presentations, the City intends to enter into contract negotiations with the selected financial institution. These negotiations could include all aspects of services and fees. If a contract is not finalized in a reasonable period of time, the City will open negotiations with the next ranked firm.

2.9. AWARD OF CONTRACT

The proposer to whom a contract is awarded shall be required to enter into a written contract with the City in a form approved by legal counsel for the City. This RFP and the proposal, or any part thereof, may be incorporated into and made a part of the final contract. The City reserves the right to negotiate the terms and conditions of the contract with the selected proposer.

2.10. CONTRACT TERM

It is the intent of the City to award a contract for an initial five (5) year period, beginning February 1, 2016, with the option to renew it for additional one five-year period at the sole discretion of the City. The City desires fixed pricing for the five-year contract period. Prices in subsequent years shall be negotiated based on satisfactory customer service.

III. SCOPE OF SERVICES

Describe the financial institution's ability to provide the general banking services listed below:

1. Maintain a branch office in the City or near vicinity.
2. Maintain minimum capitalization requirements of \$200 million to insure the safety of funds.
3. Establish demand deposit accounts as necessary to meet the banking requirements of the City. At present, six (6) separate accounts are used; including two (2) zero balance accounts (ZBA). One receives the deposits (the Deposit account) and sweeps funds to the other two checking accounts (Payables and Payroll). The City also has a separate regular checking account for flexible spending, where checks are written by a third party administrator. There is a separate checking account for the *Successor Agency to the Redevelopment Agency of the City of Moorpark* with minimal monthly activity. One separate deposit only account for use by a company in New York who processes City parking tickets. The City may add other account in the future and requests similar pricing.
4. Provide an overnight investment service (sweep) for excess cash balances in the demand deposit accounts, after minimum concentration account balance requirements are met. The concentration account will fund disbursements from these accounts automatically on a daily basis. Typically, \$1-\$3 million is available for overnight investment.
5. Process approximately 350 disbursement checks per month through payables and payroll valued at approximately \$1.5 to \$4.0 million. Of this number, approximately 120 are direct deposit payroll checks.
6. Monthly deposits average \$4-\$5 million with the majority being: wire transfer, ACH or EFT. Twice weekly deposits from an armored carrier.
7. Disburse funds via repetitive wire transfer upon on-line request of an authorized person.
8. Accept and send ACH transactions and provide on-line notification of ACH deposits within 24-hours.
9. Provide on-line payment processing. Can your system accommodate internet and telephone transactions that are processed on-line? Describe your capabilities and outline the security measures in place for the protection of sensitive information.
10. Provide stop payment services. Can stop payments be placed on-line? What is the deadline for same day action? How long will a stop payment

- remain in effect? Do you have different duration options, such as 6 months, 1 year, or 2 years, without the need to implement extensions? Can stop payments be automatically renewed? If so, for how long and is there an additional charge?
11. In the case of stale dated checks, will the bank agree to not honor any checks that have been outstanding (based on the dated date of the check) for six months or more? Is there a cost to the City for reviewing and returning stale dated checks?
 12. How does the bank compensate the City for checks that are cashed after a stop payment is placed or if a stale dated check is cashed? How many days does it take for the bank to reimburse the City?
 13. Provide armored carrier collection of twice-weekly vault deposits from City at 799 Moorpark Avenue, Moorpark after 1:00 pm. Will the bank interface directly with, and assume full responsibility for, any and all third party service providers, such as armored carriers and couriers?
 14. Provide automated balance reporting services for all the City accounts. Available information should include: closing ledger, closing collected, opening ledger, opening collected, float, previous day debit and credit detail (including bankcard deposits, and ZBA), and ACH credit and debit detail. Automated balance reporting should be available at the City Finance Department for multiple authorized users with multiple levels of approval authority.
 15. Provide remote bankcard processing terminals at up to four locations for Visa, MasterCard and Discover. Bankcard deposits range from \$100 to \$10,000 per day. Please provide a detailed description of the entire merchant card process within your institution. Is your program housed through a third party vendor? If so, please explain. Provide a detailed rate and fee structure with a breakdown of all fees, including bank and association charges.
 16. Does the bank provide electronic payment services? The City currently does not use electronic payment services.
 17. Collateralize all collected balances, in excess of balances insured by the FDIC, at 110%, pursuant to California Government Code Section 53652(a).
 18. Provide monthly activity statements and reports for all accounts. The statement cutoff should be the last day of the month. Statements must be sent by no later than the 6th business day of the following month.
 19. Provide monthly CD-ROM imaging, or equivalent, of disbursement checks (front and back) and statements, to meet City's records retention needs.

20. Provide an electronic file in the City's specified format (csv) to include the following fields (to be used for automatic check reconciliation with our current financial software):
 - Cleared Date
 - Check Number
 - Amount
 - Type of Transaction (ie, Check or EFT)

21. Provide safekeeping services. The City desires the financial institution to take custody of securities owned by the City and accept complete responsibility for their safekeeping from the moment of delivery to the financial institution until the securities' safe return and delivery to the City or appropriate agency upon expiration or termination of this Agreement.

22. Provide positive-pay for checks and ACH debit. The City does not currently utilize positive-pay; however, we are considering this as a safeguard against check fraud. Briefly describe the process involved with positive-pay and the costs associated with it.

23. Please provide how the bank deals with check fraud.

24. Provide one person as the single point of contact between the City and the bank.

IV. INFORMATION REQUESTED

4.1. QUALIFICATIONS AND EXPERIENCE

1. Describe the organization, date founded, ownership, and other business affiliations (please provide number and location of affiliated offices).
2. Provide the address of the office location that will service the City's account.
3. List the addresses of all branch offices in the City.
4. Describe the experience of the financial institution in providing similar services for other public clients
5. Include copies of the most recent audited financial statement with the proposal.
6. Provide documentation that your financial institution has been evaluated by an independent bank rating agency and been found "Outstanding" or "Satisfactory" for the most recent four consecutive quarters.

7. Provide documentation that your financial institution is in compliance and good standing with the Community Reinvestment Act (CRA).

4.2. PERSONNEL

1. Provide biographical information on financial institution officers that will be directly involved in the management of the City account, to include how long they have been with your financial establishment; who the primary contact will be; and what, if any, experience these officers have in working with public (municipal government) clients.
2. Provide an organization chart for the personnel who will be associated with the City account, including the roles of each person, and illustrating the relationship among the personnel.

4.3. BANKING SERVICES

1. Describe the financial institution's ability to provide the banking services described in Section III, Scope of Services above, and to what extent, if any, the service is automated.
2. Describe how interest will be calculated and credited on all accounts. Be specific.
3. Provide return history for overnight repurchase agreements or other appropriate sweep facility for the latest 12 month period available.
4. What is the ledger cutoff time for deposits? What time would the financial institution propose to schedule the twice-weekly armored car collection to ensure that deposits meet this deadline?
5. Provide a copy of the availability schedule that would apply to deposits into the City accounts.
6. Provide a list of the bank's holidays.
7. What fees are charged for "cashier's checks" and "wires"?
8. Describe how the financial institution will collateralize the City deposits. What types of securities are used as collateral? Who will be the Custodian of collateral (ie, Federal Reserve)?
9. Describe Payment Card Industry (PCI) data security standard compliance and liability (provide documentation).

4.4 CONTROL

1. Describe the EDP and/or manual system used to provide banking services along with backup and recovery capabilities.

2. Provide a detailed description of the controls in place to insure the integrity of the funds transfer system.
3. Describe the types of insurance and bonding carried (see Section 4.9 Insurance and Bond Requirements).
4. Include a copy of the Statement of Auditing Standards (SAS) 70 covering operational controls.

4.5. CONVERSION

1. Describe a conversion plan to transition the City's use of this service to your financial institution.
2. What lead-time do you expect will be necessary before the conversion begins?
3. Indicate your plans for educating and training the City employees in the use of your systems.

4.6. REPORTING

1. Describe the frequency and format of reports that you would provide to the City.
2. Include sample reports and records, including an account analysis statement (with TMA codes), credit card processing statement, monthly bank statement and any other reports that we could expect to receive.

Is the financial institution willing/able to develop customized reports? If so, please provide specific pricing information.

4.7. PRICING AND ACCOUNT ANALYSIS

1. Provide a complete fee schedule for all of the services described in your proposal. A list of the City's estimated monthly transactions is provided at the end of this proposal for pricing purposes. Fees related to all services described in the proposal must be listed, even if the service is not show on the schedule. Also, include any one-time or set-up charges, research fees, minimum fees, and all other fees that will be charged. Prices must be guaranteed for the initial, five-year, term of the contract.
 - Account Maintenance (Demand, ZBA, Controlled Disbursement)
 - Wire Transfer (Incoming, Outgoing, Outgoing-Repetitive)
 - Intra-Bank Transfers
 - Deposit Ticket (Branch and Operation's Center)
 - Item Deposit (Check and ACH)
 - Cash Deposit
 - Item Paid (Paper, ACH)

- Direct Deposit of Payroll
- Stop Payment (Manual and On-Line)
- FDIC Insurance Charge (or percentage)
- Return Item Processing and Resubmitting Item
- Uncollected Funds Charges
- Balance Reporting Fees (fixed and per item)
- Set Up Charges (if any)
- Bankcard Processing (list all related charges)
- Check Retention/Microfilming
- Twice-weekly Armored Carrier Service
- Sweep Fees
- Internet Payments (IP) via Internet and Phone
- Electronic Payments (EP)
- Positive Pay
- Cashier's checks

List any additional services for which the proposer intends to charge, along with the price per item (use additional page(s), if necessary). Any costs associated with the requested services not listed on the Fee Schedule at the end of this proposal will be assumed to be free of charge.

2. Does the City have the option of compensating your financial institution through either direct fees or compensating balances? Is the price the same for either option? If not, what is the difference? If on a fee basis, can excess balances be used to partially offset activity charges? Will earnings credit on collected balances in excess of those required to pay charges incurred in any month be carried forward to offset future bank charges? Provide the bank's earnings credit rate (ECR) for compensating balance method of payment.
3. If there is a discrepancy between the City and the bank, please describe the procedures used to correct the difference and to ensure an adjustment is made. What time period does the City have to report the discrepancy?
4. Please provide a sample analysis statement for the City account. How soon after month-end is the analysis statement mailed? Does the bank offer electronic analysis and bank statements?
5. How is your earnings credit determined, adjusted, and applied? Please include in your explanation the impact of your reserve requirement, your formula for converting service charges to balance requirements, and a listing of your earnings credits and reserve requirements for the most recent 12-month period.
6. Describe the financial institution's policies concerning daylight overdrafts and what, if any, impact these policies may have on the management of the City's accounts.

4.8. REFERENCES

1. Provide five references of public agencies, including the length of time you have provided services, client name, contact personnel, address, and phone number (local governments and public agency references, if possible), which are currently using the services for which you are proposing.
2. Provide a list of clients where similar services were provided who have terminated services in the last three years.

4.9. BOND REQUIREMENTS

1. **CONTRACTOR'S BOND:** Contractor shall provide proof of a bankers blanket bond on a form that is at least as broad as the Financial Institution Bond, Standard Form No. 24 with limits of at least \$1,000,000 any one loss and \$2,000,000 aggregate. Coverage shall include, but not be limited to:

Coverage A – Fidelity

Coverage B – On Premises

Coverage C – In Transit

Coverage D – Forgery and Alteration

The bond shall be extended to apply to computer system fraud and fraudulent transfer instructions.

4.10. INDEMNIFICATION AND HOLD HARMLESS

Indemnity for 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 City 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 counsels' 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 sub consultants (or any agency or individual that Consultant shall bear the legal liability thereof) in the performance of professional services under this Agreement.

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 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 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.

4.11. SAMPLE CONTRACT

Attachment I is a sample City contract.

4.12. SAMPLE CERTIFICATE AND ENDORSEMENT

Attachment 2 is a sample certificate and endorsement.

V. EVALUATION AND AWARD CRITERIA

This RFP seeks a financial institution to provide comprehensive banking services to the City. Selection will be made from a short list of proposers deemed to be fully qualified and best suited among those submitting proposals on the basis of the evaluation factors listed below:

- Understanding of the needs and operational requirements of the City
- The experience, resources, and qualifications of the financial institution and individuals assigned to this account
- Relevant experience managing similar account relationships with public institutions and agency clients

- Financial institution location (i.e. availability for personal service and consultation)
- Scope of services offered including degree of automation
- Financial strength of proposing institution
- Adequacy of financial controls and protection against loss
- Quality and scope of conversion plan
- The value of any new product or service suggestions or other new ideas and enhancements
 - Quality and conciseness of proposals
- Proposed fees and compensation. (Although fees and compensation will be an important factor in the evaluation of proposals, the City is not required to choose the lowest bidder).

BANK FEES AND COMPENSATION WORKSHEET

SERVICE DESCRIPTION		Unit Price	Estimated Monthly Volume	Total Monthly Price
BALANCE & COMPENSATION INFO				
	Deposit Insurance Charge			
	Ledger Overdraft per day			
GENERAL ACCOUNT SERVICES				
	Account Maintenance		6	
	ZBA Maintenance-Master		1	
	ZBA Maintenance-Sub Account		2	
DEPOSITORY SERVICES				
	Vault Deposit		10	
	Currency/Coin Deposit Std			
	Currency/Coin Deposit Non-Std		10	
	Checks Deposit Un-encoded		856	
	Mail Notify Receipt		20	
PAPER DISBURSEMENT SERVICES				
	Controlled Disburse Maint.		1	
	Gen Disbursement Checks Paid		19	
	Control Disburse Checks Paid		193	
	Image Maintenance PC		2	
	Image Archive 90 days		212	

SERVICE DESCRIPTION		Unit Price	Estimated Monthly Volume	Total Monthly Price
ACH SERVICES				
	ACH Monthly Maint.		2	
	PC Tax payment		4	
	ACH Corp on US Credits		1	
	ACH Consumer on US Credits		33	
	ACH Consumer OFF US Credits		191	
	ACH Corp OFF US Credits		1	
	ACH Orig Addenda		1	
	ACH Debit Received Item		31	
	ACH Credit Received Item		69	
	ACH Input File		3	
	ACH Optional Reports FAX		2	
	ACH Optional Reports Electronic		4	
WIRE TRANSFER SERVICES				
	Monthly Maintenance		1	
	Electronic Wire Out		13	
	Electronic Wire In		3	
	Incoming Domestic Wire		2	
	Intra/Company book credit		2	
	Wire Payee Advising		1	
	Wire Advice-Mail		2	
INFORMATION SERVICES				
	Scheduled Emails		1	
	Item Stored		1754	
	Research item			

SERVICE DESCRIPTION	Unit Price	Estimated Monthly Volume	Total Monthly Price
EARNINGS ALLOWANCE to offset account analysis charges			
Amount allowance is based on (threshold):			
Float (if any):			
Legal Reserve (if any):			
Earnings offset current interest rate and what it's tied to:			
Please describe briefly how earnings allowance is calculated, including average ledger balance:			
CREDIT CARD SERVICES			
TERMINALS		4	
# of Monthly Transactions (Visa, Mastercard & Discover) Includes Internet		2,500 trans. (approx.)	
Dollar Amount of Monthly Transactions		\$ 70,000 (approx.)	
Internet Accounts (part of above terminals)		2 (included in above)	
ADDITIONAL Services (not listed above)			
FDIC Insurance (if any)			
Set Up Charges (if any)			
Positive Pay			
Sweep Interest Rate			

SERVICE DESCRIPTION	Unit Price	Estimated Monthly Volume	Total Monthly Price
OTHER Services/Fees			

GRAND MONTHLY TOTAL \$ _____

AGREEMENT BETWEEN THE CITY OF MOORPARK AND _____, FOR _____

THIS AGREEMENT, is made and effective as of this _____ day of _____, 2015, between the City of Moorpark, a municipal corporation ("City") and _____, a _____ ("Consultant"). In consideration of the mutual covenants and conditions set forth herein, the parties agree as follows:

WHEREAS, City has the need for _____ services; and

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

WHEREAS, Consultant has submitted to City a Proposal dated _____, which is attached hereto as Exhibit _____.

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 _____ to _____, 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 banking services, as set forth in Exhibits B (Proposal) and C (Request for Proposal or RFP). In the event there is a conflict between the provisions of Exhibits B, C and this Agreement, the language contained in this Agreement shall take precedence, followed by Exhibit C, then Exhibit B.

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

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 _____ dollars (\$_____) as stated in _____, without a written amendment to the Agreement executed by both parties. 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 _____, 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 W-9 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 _____ dollars (\$_____) for the total term of the Agreement unless additional payment is approved as provided in this Agreement.

Consultant shall not be compensated for additional services rendered in connection with its performance of this Agreement, unless such additional services and compensation are authorized, in advance, in a written amendment to the agreement executed by both parties. The City Manager, if authorized by City Council, may approve additional work not to exceed ten percent (10%) of the amount of the Agreement.

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 the City Manager's designee determines that the Consultant is in default in the performance of any of the terms or conditions of this Agreement, designee shall cause to be served upon the Consultant a written notice of the default. The Consultant shall have five (5) days after service upon it of said notice in which to cure the default by rendering a satisfactory performance. In the event that the Consultant fails to cure its default within such period of time, the City shall have the right, notwithstanding any other provision of this Agreement, to terminate this Agreement without further notice and without prejudice to any other remedy to which it may be entitled at law, in equity or under this Agreement.

8. PRIVACY

Consultant agrees to pay City for all costs required to comply with California Civil Code Sections 1798.29 and 1798.82, if Consultant releases privacy information, personal information or any other information associated with those security breaches protected by California Civil Code Sections 1798.29 and 1798.82. This includes reimbursing City for all costs associated with noticing and remediation such cyber security breaches.

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 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.

10. INDEMNIFICATION AND HOLD HARMLESS

Consultant shall indemnify, defend and hold harmless City, and any and all of its officers, employees, and agents ("City Indemnitees") from and against any and all causes of action, claims, liabilities, obligations, judgments, or damages, including reasonable legal counsels' fees and costs of litigation ("claims"), arising out of the Consultant's performance of its obligations under this Agreement or out of the operations conducted by Consultant, including the City's active or passive negligence, except for such loss or damage arising from the sole negligence or willful misconduct of the City. In the event the City Indemnitees are made a party to any action, lawsuit, or other adversarial proceeding arising from Consultant's performance of this Agreement, the Consultant shall provide a defense to the City Indemnitees or at the City's option reimburse the City Indemnitees their costs of defense, including reasonable legal counsels' fees incurred in defense of such claims.

Consultant agrees to obtain executed indemnity agreements with provisions identical to those set forth 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.

11. 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.

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, employees, or agents of the City. 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, including but not limited to the Americans with Disabilities Act and Occupational Health and Safety Administration 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 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 Sec. 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 (1) 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 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.

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: _____

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 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

CONSULTANT NAME HERE

By: _____
Steven Kueny, City Manager

By: _____
_____(Signatory)_____ (Title)_

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.

Crime (fidelity) Insurance coverage on a blanket fidelity bond or other acceptable form. Limits shall be no less than \$1,000,000 per occurrence.

Consultant/Contractor shall procure and maintain Cyber Liability insurance with limits of \$1,000,000 per occurrence/loss which shall include the following coverage: a. Liability arising from the theft, dissemination and/or use of confidential or personally identifiable information; including credit monitoring and regulatory fines arising from such theft, dissemination or use of the confidential information; b. Network security liability arising from the unauthorized use of, access to, or tampering with computer systems; c. Liability arising from the failure of technology products (software) required under the contract for Consultant to properly perform the services intended; d. Electronic Media Liability arising from personal injury, plagiarism or misappropriation of ideas, domain

name infringement or improper deep-linking or framing, and infringement or violation of intellectual property rights; and e. Liability arising from the failure to render professional services.

If coverage is maintained on a claims-made basis, Consultant/Contractor shall maintain such coverage for an additional period of three (3) years following termination of the Agreement.

Excess or Umbrella Liability Insurance (Over Primary) if used to meet limit requirements, shall provide coverage at least as broad as specified for the underlying coverages. Coverage shall be provided on a "pay on behalf" basis, with defense costs payable in addition to policy limits. Policy shall contain a provision obligating insurer at the time insured's liability is determined, not requiring actual payment by the insured first. There shall be no cross liability exclusion precluding coverage for claims or suits by one insured against another. Coverage shall be applicable to the City for injury to employees of Consultant, subconsultants or others involved in the Work. The scope of coverage provided is subject to approval by the City following receipt of proof of insurance as required herein. Limits are subject to review but in no event less than \$10,000,000 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 Consultant 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 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 90 days advance written notice of such change. If such change results in substantial additional cost to the Consultant, the City will negotiate additional compensation proportional to the increased benefit to the City.
13. For purposes of applying insurance coverage only, this Agreement will be deemed to have been executed immediately upon any party hereto taking any steps that can be deemed to be in furtherance of or towards performance of this Agreement.
14. Consultant acknowledges and agrees that any actual or alleged failure on the part of the City to inform Consultant of non-compliance with an insurance requirement in no way imposes any additional obligations to the City nor does it waive any rights hereunder in this or any other regard.
15. Consultant will renew the required coverage annually as long as the City, or its employees or agents face an exposure from operations of any type pursuant to this Agreement. This obligation applies whether or not the Agreement is canceled or terminated for any reason. Termination of this obligation is not effective until the City executes a written statement to that effect.
16. Consultant shall provide proof that policies of insurance required herein expiring during the term of this Agreement have been renewed or replaced with other policies providing at least the same coverage. Proof that such coverage has been ordered shall be submitted prior to expiration. As coverage binder or letter from Consultant's insurance agent to this effect is acceptable. A certificate of insurance and/or additional insured endorsement as required in these specifications applicable to the renewing or new coverage must be provided to the City within five days of the expiration of coverage.
17. The provisions of any Workers' Compensation or similar act will not limit the obligations of Consultant under this Agreement. Consultant expressly agrees not to use any statutory immunity defenses under such laws with respect to the City, its employees, officials, and agents.
18. Requirements of specific coverage features or limits contained in this section are not intended as limitations on coverage, limits, or other requirements nor as a waiver of any coverage normally provided by any given policy. Specific reference to a given coverage feature is for purposes of clarification only as it pertains to a given issue, and is not intended by any party or insured to be limiting or all-inclusive.

19. These insurance requirements are intended to be separate and distinct from any other provision in this Agreement and are intended by the parties here to be interpreted as such.
20. The requirements in this section supersede all other sections and provisions of this Agreement to the extent that any other section or provision conflicts or impairs the provisions of this section.
21. Consultant agrees to be responsible for ensuring that no contract used by any party involved in any way with the Work reserves the right to charge the City or Consultant for the cost of additional insurance coverage required by this Agreement. Any such provisions are to be deleted with reference to the City. It is not the intent of the City to reimburse any third party for the cost of complying with these requirements. There shall be no recourse against the City for payment of premiums or other amounts with respect thereto.
22. Consultant agrees to provide immediate notice to City of any claim or loss against Consultant arising out of the work performed under this Agreement. The City assumes no obligation or liability by such notice, but has the right (but not the duty) to monitor the handling of any such claim or claims if they are likely to involve the City.

ACORDTM CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)

PRODUCER	THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW.	
	INSURERS AFFORDING COVERAGE	NAIC #
INSURED	INSURER A:	
	INSURER B:	
	INSURER C:	
	INSURER D:	
	INSURER E:	

COVERAGES

THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. AGGREGATE LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR ADD'L LTR	INSRD	TYPE OF INSURANCE	POLICY NUMBER	POLICY EFFECTIVE DATE (MM/DD/YY)	POLICY EXPIRATION DATE (MM/DD/YY)	LIMITS								
		GENERAL LIABILITY <input type="checkbox"/> COMMERCIAL GENERAL LIABILITY <input type="checkbox"/> CLAIMS MADE <input type="checkbox"/> OCCUR GEN'L AGGREGATE LIMIT APPLIES PER: <input type="checkbox"/> POLICY <input type="checkbox"/> PRO-JECT <input type="checkbox"/> LOC				EACH OCCURRENCE \$ DAMAGE TO RENTED PREMISES (Ea occurrence) \$ MED EXP (Any one person) \$ PERSONAL & ADV INJURY \$ GENERAL AGGREGATE \$ PRODUCTS - COMP/OP AGG \$								
		AUTOMOBILE LIABILITY <input type="checkbox"/> ANY AUTO <input type="checkbox"/> ALL OWNED AUTOS <input type="checkbox"/> SCHEDULED AUTOS <input type="checkbox"/> HIRED AUTOS <input type="checkbox"/> NON-OWNED AUTOS				COMBINED SINGLE LIMIT (Ea accident) \$ BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE (Per accident) \$								
		GARAGE LIABILITY <input type="checkbox"/> ANY AUTO				AUTO ONLY - EA ACCIDENT \$ OTHER THAN AUTO ONLY: EA ACC \$ AGG \$								
		EXCESS/UMBRELLA LIABILITY <input type="checkbox"/> OCCUR <input type="checkbox"/> CLAIMS MADE DEDUCTIBLE RETENTION \$				EACH OCCURRENCE \$ AGGREGATE \$ \$ \$								
		WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? If yes, describe under SPECIAL PROVISIONS below				<table border="1"> <tr> <td>WC STATU-TORY LIMITS</td> <td>OTH-ER</td> </tr> <tr> <td>E.L. EACH ACCIDENT</td> <td>\$</td> </tr> <tr> <td>E.L. DISEASE - EA EMPLOYEE</td> <td>\$</td> </tr> <tr> <td>E.L. DISEASE - POLICY LIMIT</td> <td>\$</td> </tr> </table>	WC STATU-TORY LIMITS	OTH-ER	E.L. EACH ACCIDENT	\$	E.L. DISEASE - EA EMPLOYEE	\$	E.L. DISEASE - POLICY LIMIT	\$
WC STATU-TORY LIMITS	OTH-ER													
E.L. EACH ACCIDENT	\$													
E.L. DISEASE - EA EMPLOYEE	\$													
E.L. DISEASE - POLICY LIMIT	\$													
		OTHER												

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES / EXCLUSIONS ADDED BY ENDORSEMENT / SPECIAL PROVISIONS

CERTIFICATE HOLDER	CANCELLATION
	SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, THE ISSUING INSURER WILL ENDEAVOR TO MAIL _____ DAYS WRITTEN NOTICE TO THE CERTIFICATE HOLDER NAMED TO THE LEFT, BUT FAILURE TO DO SO SHALL IMPOSE NO OBLIGATION OR LIABILITY OF ANY KIND UPON THE INSURER, ITS AGENTS OR REPRESENTATIVES. AUTHORIZED REPRESENTATIVE

POLICY NUMBER:

COMMERCIAL GENERAL LIABILITY
CG 20 10 07 04

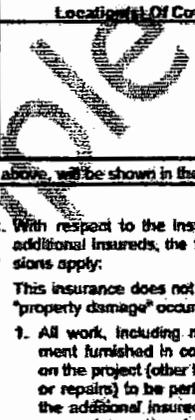
THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

**ADDITIONAL INSURED – OWNERS, LESSEES OR
CONTRACTORS – SCHEDULED PERSON OR
ORGANIZATION**

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART

SCHEDULE

Name Of Additional Insured Person(s) Or Organization(s):	Location(s) Of Covered Operations
	
Information required to complete this Schedule, if not shown above, will be shown in the Declarations.	

A. Section II – Who Is An Insured is amended to include as an additional insured the person(s) or organization(s) shown in the Schedule, but only with respect to liability for "bodily injury", "property damage" or "personal and advertising injury" caused, in whole or in part, by:

1. Your acts or omissions, or
2. The acts or omissions of those acting on your behalf,

in the performance of your ongoing operations for the additional insured(s) at the location(s) designated above.

B. With respect to the insurance afforded to these additional insureds, the following additional exclusions apply:

This insurance does not apply to "bodily injury" or "property damage" occurring after:

1. All work, including materials, parts or equipment furnished in connection with such work, on the project (other than service, maintenance or repairs) to be performed by or on behalf of the additional insured(a) at the location of the covered operations has been completed; or
2. That portion of "your work" out of which the injury or damage arises has been put to its intended use by any person or organization other than another contractor or subcontractor engaged in performing operations for a principal as a part of the same project.

POLICY NUMBER:

COMMERCIAL GENERAL LIABILITY
CG 20 37 10 01

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

**ADDITIONAL INSURED – OWNERS, LESSEES OR
CONTRACTORS – COMPLETED OPERATIONS**

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART

SCHEDULE

Name of Person or Organization:
Location And Description of Completed Operations:
Additional Premium:

(If no entry appears above, information required to complete this endorsement will be shown in the Declarations as applicable to this endorsement.)

Section II – Who Is An Insured is amended to include as an insured the person or organization shown in the Schedule, but only with respect to liability arising out of "your work" at the location designated and described in the schedule of this endorsement and for that insured and included in the "products-completed operations hazard".