

**MOORPARK CITY COUNCIL  
AGENDA REPORT**

**TO:** The Honorable City Council

**FROM:** Jeremy Laurentowski, Parks and Recreation Director

**BY:** Jessica Sandifer, Senior Management Analyst 

**DATE:** December 8, 2015 (CC Meeting of 12/16/2015)

**SUBJECT:** Consider Agreement with Phoenix Civil Engineering, Inc. for Construction Management Services for the Retaining Wall Project at Arroyo Vista Community Park and Resolution Amending the Fiscal Year 2015/16 Budget

**BACKGROUND**

A retaining wall at Arroyo Vista Community Park (AVCP) is in need of replacement. The retaining wall was installed at the top of the slope on the south side of the park, adjacent to three homes at the end of the cul-de-sac on Honeyglen Court and Summerglen Court. The original retaining wall was constructed with wood beams and galvanized steel posts for support, and is approximately 5' in vertical height and 90' in length. Over time, several wood beams have dislodged from the wall and there appears to be a significant amount of outward deformation. The actual construction date of the retaining wall is unknown, but staff suspects that it was constructed around the same time that the homes were constructed in 1985. In December 2013, the City Council authorized a geotechnical investigation of the retaining wall area. The investigation concluded that the movement of the existing wall is due to a combination of factors, which include the initial design and degradation of the existing wall, as well as the creep-type soil movement of the fill soils above the wall. In September 2014, the City Council approved funding to hire a civil engineer to design the retaining wall options recommended by the geotechnical consultant. Staff contracted with Phoenix Civil Engineering (Phoenix) to complete the construction drawings and specifications for the project. In November 2015, the City Council approved the project plans and specifications and authorized staff to go out to bid on the project.

**DISCUSSION**

The project has not yet been released for bids. Staff is awaiting receipt of the signed plans from the Acting City Engineer before advertising the project. In the meantime,

staff has requested a proposal from Phoenix for Construction Management Services for the project. Staff is recommending hiring a construction manager due to the size, type, complexity, and location of the retaining wall and the fact that we have limited City staff to provide daily project oversight and coordination. Phoenix's services will include participation in the pre-construction meeting; review and response to submittals and requests for Information (RFI); project coordination between the General Contractor, the City, and affected homeowners; construction observation and provision and coordination of materials testing as required by the plans and specifications; as well as, completion of the as-built drawings.

### **FISCAL IMPACT**

The Civil Engineer estimates that construction of the retaining wall, including removal and replacement of the wrought iron property line fence, will cost approximately \$110,000. Staff will return to City Council when the bids are received to allocate funding for the construction.

The cost for construction management and materials testing services is \$33,396, which includes the costs for a sub-consultant to provide material testing and a 10% contingency of \$3,306.

Funding was not included in the Fiscal Year 2015/16 budget for construction management services. Staff recommends that General Fund transfers be made as soon as the project cost is known. Therefore, staff is requesting an appropriation from the General Fund (1000) reserve to complete this work.

### **STAFF RECOMMENDATION (ROLL CALL VOTE)**

1. Approve Agreement with Phoenix Civil Engineering, Inc. in the amount of \$33,396, and authorize the City Manager to sign the Agreement, subject to final language approval of the City Manager; and
2. Adopt Resolution No. 2015 - \_\_\_\_\_ amending the FY 2015/16 budget to appropriate \$33,396.00 from the General Fund (1000) Reserve to fund this work.

#### Attachments:

1. Agreement
2. Resolution No. 2015- \_\_\_\_\_

## ATTACHMENT 1

### PROFESSIONAL SERVICES AGREEMENT BETWEEN THE CITY OF MOORPARK AND PHOENIX CIVIL ENGINEERING, INC. FOR CONSTRUCTION MANAGEMENT SERVICES

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

WHEREAS, City has the need for construction management 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 date November 5, 2015, which is attached hereto as Exhibit C.

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

#### 1. TERM

The term of this Agreement shall be from the date of execution to completion of the work identified in the Scope of Services and in conformance with Exhibit C, 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 construction management services, as set forth in Exhibit C. In the event there is a conflict between the provisions of Exhibit C and this Agreement, the language contained in this Agreement shall take precedence.

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

Compensation for the services to be performed by Consultant shall be in accordance with Exhibit C. Compensation shall not exceed the rates or total contract value of thirty thousand three hundred sixty dollars (\$30,360.00) as stated in Exhibit C, plus a ten percent (10%) contingency of three thousand thirty-six dollars (\$3,036.00) for a total Agreement amount of thirty-three thousand three hundred ninety-six dollars (\$33,396.00), 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 Jon Turner, 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 by Consultant on an IRS W-9 form before payments may be made by City to Consultant.

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 C, based upon actual time spent on the above tasks. This amount shall not exceed thirty thousand three hundred sixty dollars (\$30,360.00), plus a ten percent (10%) contingency of three thousand thirty-six dollars (\$3,036.00), for a total Agreement amount of thirty-three thousand three hundred ninety-six dollars (\$33,396.00) 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 and compensation are authorized, in advance, in a written amendment to this Agreement executed by both parties.

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 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 ten (10) days after service upon it of said notice in which to cure the default by rendering a satisfactory performance. In the event that the Consultant fails to cure its default within such period of time, the City shall have the right, notwithstanding any other provision of this Agreement, to terminate this Agreement without further notice and without prejudice to any other remedy to which it may be entitled at law, in equity or under this Agreement.

## 8. LIQUIDATED DAMAGES

If the Consultant fails to complete the work, or any portion thereof, within the time period required by this Agreement, or as duly extended in writing by the City Manager, Consultant shall forfeit and pay to the City, as liquidated damages, the sum of one hundred twenty-five dollars (\$125.00) per day for each calendar day the work, or portion thereof, remains uncompleted after the above specified completion date. Liquidated damages shall be deducted from any payments due or to become due to the Consultant under the terms of this Agreement. Progress payments made by the City after the

above specified completion date shall not constitute a waiver of liquidated damages by the City.

#### 9. OWNERSHIP OF DOCUMENTS

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

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 subconsultants (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 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 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, including but not limited to the Americans with Disabilities Act and Occupational Safety and Health Administration laws and regulations. The Consultant shall comply with and sign Exhibit B, the Scope of Work Requirement for Professional Services Agreements Compliance with California Government Code Section 7550, when applicable. 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 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 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: Jon Turner, Principal Engineer  
Phoenix Civil Engineering, Inc.  
4532 Telephone Road, Suite 113  
Ventura, California 93003

Either party may, from time to time, by written notice to the other, designate a different address or contact person, which shall be substituted for the one above specified. Notices, payments and other documents shall be deemed delivered upon receipt by personal service or as of the third (3rd) day after deposit in the United States mail.

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

PHOENIX CIVIL ENGINEERING, INC.

By: \_\_\_\_\_

By: \_\_\_\_\_

Steven Kueny, City Manager

Jon Turner, Principal Engineer

Attest:

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

## Exhibit A

### INSURANCE REQUIREMENTS

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

Consultant shall provide the following types and amounts of insurance:

Commercial General Liability Insurance using Insurance Services Office (ISO) "Commercial General Liability" policy form CG 00 01 or the exact equivalent. Defense costs must be paid in addition to limits. There shall be no cross liability exclusion for claims or suits by one insured against another. Limits are subject to review but in no event less than \$1,000,000 per occurrence for all covered losses and no less than \$2,000,000 general aggregate.

Business Auto Coverage on ISO Business Auto Coverage form CA 00 01 including symbol 1 (Any Auto) or the exact equivalent. Limits are subject to review, but in no event to be less than \$1,000,000 per accident. If Consultant owns no vehicles, this requirement may be satisfied by a non-owned auto endorsement to the general liability policy described above. If Consultant or Consultant's employees will use personal autos in any way on this project, Consultant shall provide evidence of personal auto liability for each such person.

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

Professional Liability or Errors and Omissions Insurance as appropriate shall be written on a policy form coverage specifically designed to protect against acts, error or omissions of the Consultant and "Covered Professional Services" as designated in the policy must specifically include work performed under this Agreement. The policy limit shall be no less than \$1,000,000 per claim and in the aggregate. The policy must "pay on behalf of" the insured and must include a provision establishing the insurer's duty to defend. The policy retroactive date shall be on or before the effective date of this Agreement.

Excess or Umbrella Liability Insurance (Over Primary) if used to meet limit requirements, shall provide coverage at least as broad as specified for the underlying coverages. Coverage shall be provided on a "pay on behalf" basis, with defense costs

payable in addition to policy limits. Policy shall contain a provision obligating insurer at the time insured's liability is determined, not requiring actual payment by the insured first. There shall be no cross liability exclusion precluding coverage for claims or suits by one insured against another. Coverage shall be applicable to the City for injury to employees of Consultant, subconsultants, or others involved in the Work. The scope of coverage provided is subject to approval by the City following receipt of proof of insurance as required herein. Limits are subject to review.

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

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

1. Consultant agrees to have its insurer endorse the third party general liability coverage required herein to include as additional insureds the City, its officials, employees, and agents, using standard ISO endorsement CG 2010 with an edition prior to 2004. Consultant also agrees to require all contractors and subcontractors to do likewise.
2. No liability insurance coverage provided to comply with this Agreement shall prohibit Consultant, or Consultant's employees, or agents, from waiving the right to subrogation prior to a loss. Consultant agrees to waive subrogation rights against the City regardless of the applicability of any insurance proceeds, and to require all contractors and subcontractors to do likewise.
3. All insurance coverage and limits provided by Contractor and available or applicable to this Agreement are intended to apply to the full extent of the policies. Nothing contained in this Agreement or any other agreement relating to the City or its operation limits the application of such insurance coverage.
4. None of the coverages required herein will be in compliance with these requirements if they include limiting endorsement of any kind that has not been first submitted to the City and approved in writing.
5. No liability policy shall contain any provision or definition that would serve to eliminate so-called "third party action over" claims, including any exclusion for bodily injury to an employee of the insured or of any contractor or subcontractor.
6. All coverage types and limits required are subject to approval, modification, and additional requirements by the City, as the need arises. Consultant shall not make any reductions in scope of coverage (e.g. elimination of contractual liability or reduction of discovery period) that may affect the City's protection without the City's prior written consent.

7. Proof of compliance with these insurance requirements, consisting of certificates of insurance evidencing all of the coverages required and an additional insured endorsement to Consultant's general liability policy, shall be delivered to city at or prior to the execution of this Agreement. In the event such proof of any insurance is not delivered as required, or in the event such insurance is canceled or reduced at any time and no replacement coverage is provided, the City has the right, but not the duty, to obtain any insurance it deems necessary to protect its interests under this or any other Agreement and to pay the premium. Any premium so paid by the City shall be charged to and promptly paid by Consultant or deducted from sums due Consultant, at the City's option.
8. Certificate(s) are to reflect that the insurer will provide thirty (30) days notice to the City of any cancellation or reduction of coverage. Consultant agrees to require its insurer to modify such certificates to delete any exculpatory wording stating that failure of the insurer to mail written notice of cancellation or reduction of coverage imposes no obligation, or that any party will "endeavor" (as opposed to being required) to comply with the requirements of the certificate.
9. It is acknowledged by the parties of this Agreement that all insurance coverage required to be provided by Consultant or any subcontractor, is intended to apply first and on a primary, non-contributing basis in relation to any other insurance or self-insurance available to the City.
10. Consultant agrees to ensure that subcontractors, and any other party involved with the Work who is brought onto or involved in the Work by Consultant, provide the same minimum insurance required of Consultant. Consultant agrees to monitor and review all such coverage and assumes all responsibility for ensuring that such coverage is provided in conformity with the requirements of this section. Consultant agrees that upon request, all agreements with subcontractors and others engaged in the Work will be submitted to the City for review.
11. Consultant agrees not to self-insure or to use any self-insured retentions or deductibles on any portion of the insurance required herein and further agrees that it will not allow any contractor, subcontractor, Architect, Engineer, or other entity or person in any way involved in the performance of Work contemplated by this Agreement to self-insure its obligations to the City. If Consultant's existing coverage includes a deductible or self-insured retention, the deductible or self-insured retention must be declared to the City. At that time, the City shall review options with the Consultant, which may include reduction or elimination of the deductible or self-insured retention, substitution of other coverage, or other solutions.
12. The City reserves the right at any time during the term of the Agreement to change the amounts and types of insurance required by giving the Consultant ninety (90) days advance written notice of such change. If such change results in substantial additional cost to the Consultant, the City will negotiate additional compensation proportional to the increased benefit to the City.

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

Agreement. Any such provisions are to be deleted with reference to the City. It is not the intent of the City to reimburse any third party for the cost of complying with these requirements. There shall be no recourse against the City for payment of premiums or other amounts with respect thereto.

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

Exhibit B

**CITY OF MOORPARK**  
**Scope of Work Requirement for Professional Services Agreements**  
**Compliance with California Government Code Section 7550**

Consultant shall sign and include this page in any document or written reports prepared by Consultant for the City of Moorpark (City) to which California Government Code Section 7550 (Government Code §7550) applies. Government Code §7550 reads:

“(a) Any document or written report prepared for or under the direction of a state or local agency, that is prepared in whole or in part by nonemployees of the agency, shall contain the numbers and dollar amounts of all contracts and subcontracts relating to the preparation of the document or written report; if the total cost for the work performed by nonemployees of the agency exceeds five thousand dollars (\$5,000). The contract and subcontract numbers and dollar amounts shall be contained in a separate section of the document or written report.

(b) When multiple documents or written reports are the subject or product of the contract, the disclosure section may also contain a statement indicating that the total contract amount represents compensation for multiple documents or written reports.”

For all Professional Services Agreement with a total dollar value in excess of \$5,000, a signed and completed copy of this form must be attached to all documents or completed reports submitted to the City pursuant to the Scope of Work.

Does the dollar value of this Professional Services Agreement exceed \$5,000?

Yes       No

If yes, then the following information must be provided in compliance with Government Code § 7550:

1. Dollar amount of Agreement/Contract: \$ 33,396.00
2. Dollar amount of Subcontract: \$ 13,189.00
3. Does the total contract amount represent compensation for multiple documents or written reports?  Yes  No

I have read the foregoing Code section and will comply with Government Code §7550.

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Consultant Name

---

Signature, Title

---

Date



**EXHIBIT C**  
**Phoenix Civil Engineering, Inc.**

4532 Telephone Road, Ste. 113 Ventura, Ca 93003 805.658.6800  
info@phoenixcivil.com www.phoenixcivil.com

Mr. Jeremy Laurentowski  
City of Moorpark  
799 Moorpark Ave.  
Moorpark, CA 93021

November 5, 2015

**City of Moorpark – Arroyo Vista Park Retaining Wall – Proposal for Construction Management Services**

Dear Mr. Laurentowski-

I am pleased to provide you with this proposal for construction management services associated with the Arroyo Vista Park Retaining Wall project. The proposed improvements include removal of an existing wooden retaining wall and installation of cast in drilled hole piles and reinforced concrete retaining wall, drainage piping, and related work. We also included the services of Fugro Consultants, Inc. as a subconsultant on this project. They will provide geotechnical oversight and materials testing of the concrete and the soil subgrade on the project. Based on our conversations, I have prepared my proposal to include the following:

- Task 101: Preconstruction Meeting
- Task 102: Submittal Review
- Task 103: Response to Requests for Information
- Task 104: Project Coordination/Construction Observation
- Task 105: Record Drawings

I appreciate the opportunity to submit this proposal to assist you with this project. I have attached a scope of work and our professional services rate sheet along with a fee schedule detailed by task. It is assumed that the construction observation will not be full time.

Please let me know if you have any questions or would like to discuss my proposal.

Sincerely,

Jon Turner, PE  
Principal Engineer

## Scope of Services

### Background/Project Understanding

Arroyo Vista Park is located in the City of Moorpark. The City has an existing wooden and metal post retaining wall on the southern end of the park near the tennis courts. The proposed improvements consist of removing the existing retaining wall and installation of cast in drilled hole piles and reinforced concrete retaining wall, drainage piping, and related work. This proposal covers construction management, part time onsite observation and materials testing. Fugro Consultants, Inc. is included as a subconsultant on this project.

### Construction Services

As part of this task, the construction manager will provide construction management support to the City for the project. The project specifications indicate that it will take 45 working days (approximately 2 months) to complete the project. The schedule is assumed to be as follows:

- Shop drawing review – Two weeks
- Improvement Installation – Six weeks
- Project final punchlist items – One week

For a total of approximately 9 weeks of construction. It is anticipated that construction management and onsite observation will be provided on a part time basis (approximately 20 hours a week during active construction activities and approximately 6 hours a week performing management activities. In order to manage costs, it is assumed that during times of minimized construction activity, the onsite construction observation will be handled by City staff.

The construction phase services include review of the project shop drawings. It is estimated that 6 project shop drawing submittals will be provided by the Contractor. For purposes of this proposal it is assumed that one initial review and one subsequent review will be conducted by the construction manager for approval. The construction phase support will also include providing the City with project coordination and communication between the contractor and City staff. The construction manager will be the primary point of contact and all correspondence will be handled by Phoenix Civil Engineering. In addition, the construction manager will conduct the weekly project progress meetings and prepare the project weekly reports outlining the daily observations, photographs, potential construction changes, and schedule updates. The City supplied construction observer when the construction manager is not onsite will also be required to provide daily observation reports. The construction manager will also review the monthly progress payment requests from the contractor and provide a recommendation packet to the City in an agreed upon format. If necessary, the construction manager will review any project change order requests from the contractor and provide a recommendation letter to the City. Lastly, the contractor prepared construction red line markups of the design plans will be provided to the construction manager and the changes will be incorporated into the design plans to create a set of project record drawings. The record drawings will be provided to the City at the end of the construction. Once the contractor has been selected, the project duration is anticipated to be 45 working days.

The following efforts are included in this task:

- **Task 101** Prepare for and conduct the project construction kick off meeting with the contractor and City staff. The meeting will be held at the City offices and/or the proposed construction site. A summary of discussion topics and project deliverables will be provided to the City.

- **Task 102** Review and coordinate the project shop drawing submittals. It is anticipated that 6 submittals will be reviewed. In preparing this proposal, it was estimated that two reviews of the submittals will be conducted for approval.
- **Task 103** Respond to contractor’s requests for information (RFIs). It is anticipated that up to 3 requests for information will be prepared during the construction phase. The responses will originate and be distributed from Phoenix Civil Engineering.
- **Task 104** Provide project coordination between the selected contractor and the City as well as weekly construction observations. Monitor and document the contractor’s submitted project schedule. The schedule will be reviewed at the weekly meetings. Submit weekly project update reports to the City. The report will address the schedule, shop drawing status, construction progress, potential issues/changes, upcoming activities, project photographs, and meeting summaries. Provide progress payment review and recommendation for approval packages to the City. Prepare and provide recommendation for approval of any project change orders to the City in the approved format. For purposes of this proposal, it is anticipated that one change order package may be prepared. Provide the City with a compilation of the daily construction observation reports on a weekly basis. In addition, this task includes construction materials testing and reporting efforts from the geotechnical subconsultant during the times when they are present. Their scope of work includes periodic materials testing services and special inspection during critical phases of the project. The anticipated material inspection/testing activities include: cast in drill hole (CIDH) installation, in place density testing of construction materials, sampling and compressive strength testing of Portland cement concrete materials, and laboratory testing of sampled materials. A summary report will be provided of the project and laboratory testing.
- **Task 105** Record drawing preparation at the completion of the construction phase based on the redline markups provided by the contractor.

**Deliverable:** Two copies of all preliminary and final shop drawings that have been reviewed for conformance will be provided to the City. Weekly project reports detailing the previous week’s activities (meeting summary, project schedule update, potential construction issues, daily observation reports, coordination issues, photographs, etc.) will be provided. Any change order submittal will be reviewed and discussed with the City. At the completion of the project construction phase a complete copy of all construction related correspondence as well as the final record drawings will be provided to the City on mylar for their files.

**Fee Estimate Summary**

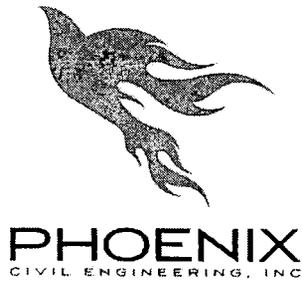
Work associated with Tasks 101 through 105 is estimated to cost \$30,360 (\$13,189 subconsultants with markup and \$17,171 Phoenix Civil Engineering). A breakdown of the level of effort is listed below:

• Task 301: Preconstruction Meeting	\$908
• Task 302: Submittal Review	\$1,831
• Task 303: Response to Requests for Information	\$1,477
• Task 304: Project Coordination/Construction Observation	\$24,291
• Task 305: Record Drawings	\$1,853

## Assumptions

In preparing the proposal, the following was assumed:

- The project construction timeframe is 45 working days or 9 weeks.
- Construction observation will be performed for approximately 20 hours a week during active periods (up to two) and 6 hours a week at other times (management coordination) up to three weeks.
- The City will provide support inspection services during times when construction is minimized.
- CIDH inspection is anticipated to be 6 days at 8 hours a day. In place density testing includes 6 site visits at 4 hours a visit. Three concrete samples will be tested of the concrete drainage ditch and eight sets of four concrete cylinders will be tested.
- Costs associated with printing are calculated in our rates. Large quantities and/or large format printing in addition to those specified in the scope will be billed at cost.
- All Public agency or project permit fees to be paid by the client.



## Professional Services Hourly Rate Sheet

### Engineering

Principal Engineer	\$155
Resident Engineer	\$135
Professional Engineer	\$130
Staff Engineer	\$120
Assistant Engineer	\$96

### CADD

Senior Designer	\$116
Assistant Designer	\$85

### General

Construction Manager	\$145
Construction Observer	\$100
Technical Assistant	\$68
Clerical/Administrative Assistant	\$48

Costs associated with printing and computer time are calculated in the rates. Large quantities of printing (multiple sets of specifications, reports, etc.) will be billed at an agreed upon rate.

RESOLUTION NO. 2015-\_\_\_\_\_

A RESOLUTION OF CITY COUNCIL OF THE CITY OF MOORPARK, CALIFORNIA, AMENDING THE FISCAL YEAR 2015/2016 BUDGET BY APPROPRIATING \$33,396.00 FROM THE GENERAL FUND (1000) FOR CONSTRUCTION MANAGEMENT SERVICES FOR THE ARROYO VISTA COMMUNITY PARK RETAINING WALL PROJECT (CIP 7803)

WHEREAS on December 18, 2013, the City Council adopted Resolution No. 2013-3256, which allocated \$15,800 from the General Fund to obtain a geotechnical evaluation of a retaining wall at Arroyo Vista Community Park (AVCP); and

WHEREAS, on September 17, 2014, the City Council adopted Resolution No. 2014-3321, which allocated \$26,610 from the General Fund for additional geotechnical and civil engineering services to prepare plans and specifications for the CIP 7803; and

WHEREAS, on June 17, 2015, the City of Moorpark adopted the Operating and Capital Improvement Projects budget for Fiscal Year (FY) 2015/16; and

WHEREAS, a staff report has been presented to the City Council requesting funding for construction management services for the project; and

WHEREAS, an aggregate budget amendment of \$33,396.00 is requested to fund the construction management services from the General Fund (1000); and

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

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

SECTION 1. A budget amendment in the amount \$33,396,000 from the General Fund (1000) , 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 16th day of December, 2015.

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

ATTEST:

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

Exhibit A – Budget Amendment

**EXHIBIT A**

**BUDGET AMENDMENT FOR  
GENERAL FUND (1000)  
FOR CONSTRUCTION MANAGEMENT SERVICES FOR AVRC RETAINING WALL PROJECT  
FY 2015/16**

**FUND BALANCE ALLOCATION:**

Fund Title	Fund-Account Number	Amount
GENERAL FUND	1000-5500	\$ 33,396.00
Total		\$ 33,396.00

**EXPENDITURE APPROPRIATION:**

Account Number	Current Budget*	Revision	Amended Budget
1000.7800.7803.9601	\$ 9,321.00		\$ 9,321.00
1000.7800.7803.9613	\$ 30,859.18		\$ 30,859.18
1000.7800.7803.9650	\$ 1,584.00	\$ 33,396.00	\$ 34,980.00
			\$ -
			\$ -
			\$ -
Total	\$ 41,764.18	\$ 33,396.00	\$ 75,160.18

*\*current budget numbers do not reflect final adjustments of FY 2014/15 continuing appropriations*

Finance Approval: 