



CITY OF MOORPARK

REQUEST FOR PROPOSALS

FOR

DEVELOPMENT OF A

BROADBAND STRATEGIC PLAN

RFP Submittals Due By:

August 16, 2019

AT 4:30 P.M.

City Manager's Office
799 Moorpark Avenue
Moorpark, California 93021
Attn: Brian Chong, Assistant to the City Manager

INTRODUCTION

This Request for Proposals (“RFP”) is for development of a Broadband Strategic Plan for the City of Moorpark (“City” or “Moorpark”). Moorpark recognizes the importance of providing robust broadband infrastructure in both its economic development efforts and deploying future “Smart City” initiatives. The Broadband Strategic Plan is intended to identify specific actions and projects that the City may utilize to best promote the deployment of broadband infrastructure within its commercial and industrial districts, as well as lay the foundation for future Smart City applications to be deployed by the City.

PROJECT DESCRIPTION

Broadband access is an increasingly important factor in advancing the economic development of a community, by lowering business costs, improving productivity, attracting businesses, retaining highly skilled residents, and improving economic vitality. Ready access to broadband also promotes community goals related to quality of life, social justice, and operational efficiency of City government.

With a population of approximately 37,000 people, the City of Moorpark is located in suburban Los Angeles, at the intersection of the 118 and 23 Freeways. The population is characterized by high incomes (median household income of slightly over \$100,000) and high education levels (approximately 40% of adults have completed at least a Bachelor’s Degree). Gigabit download speeds are already made available to residential customers throughout all of Moorpark by Charter Communications (doing business as Spectrum Internet). However, Charter/Spectrum’s network does not expand throughout all of Moorpark’s commercial and industrial districts.

Insofar as high-speed broadband service is not currently available within all of the City’s commercial and industrial districts, the City’s long-term goal is full deployment of broadband Internet service throughout all of the City’s commercial and industrial districts to promote the economic development and well-being of the Moorpark community.

Additionally, the City recognizes that future Smart City applications will be dependent on having a strong broadband infrastructure in place. The City recognizes that Smart City applications are currently in a state of rapid innovation and flux, but the City has not considered specific Smart City applications at this time. However, the City recognizes the value of preparing for their eventual widespread adoption across the City and intends to lay the foundation for their future adoption now.

This Request for Proposals is seeking professional services to develop a Broadband Strategic Plan to guide the City’s efforts to accomplish the following two key goals:

- Speed up the deployment of broadband Internet service within Moorpark’s commercial and industrial districts.

- Position the City to be able to quickly deploy and take advantage of future Smart City applications.

More specifically, the City expects the Strategic Plan to achieve the following objectives:

1. Identify broadband infrastructure currently in place within Moorpark.
2. Identify gaps in the existing broadband infrastructure within Moorpark.
3. Identify assets within Moorpark that can facilitate the deployment of broadband infrastructure within Moorpark.
4. Recommend policies and actions to improve broadband infrastructure, maximize utilization of existing broadband infrastructure, determine future funding needs, evaluate options to obtain funding, and identify any other actions available to facilitate the deployment of broadband infrastructure within Moorpark.
5. Establish a target and metric for successful broadband deployment, which may include Internet connection speeds, coverage areas, and/or other items developed by the preparer of the Strategic Plan.
6. Recommend actions and policies to facilitate 5G deployment within Moorpark.
7. Identify operational areas where the City is best poised to benefit from deployment of Smart City applications, including analysis of planning for connectivity between City facilities and development of the Moorpark Civic Center Plan.
8. Recommend actions to prepare the City for rapid deployment and adoption of Smart City applications as they become commercially available.

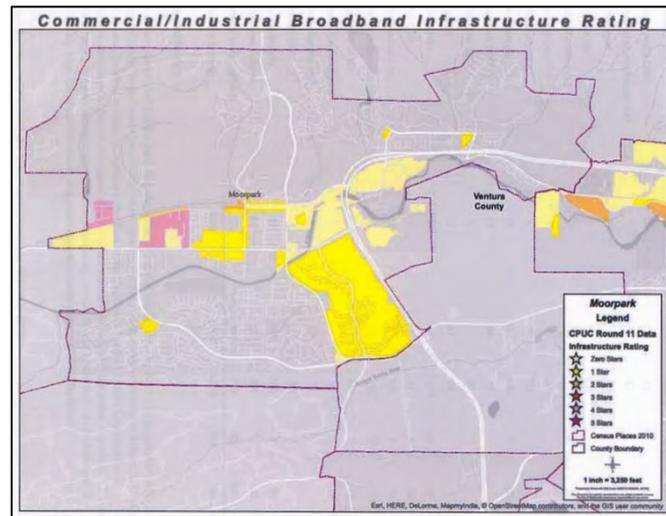
The City Council created a Broadband Ad Hoc Committee to work with City staff to scope out this Request for Proposals. During its deliberations, the Committee directed City staff that the RFP should focus on broadband deployment to the City's commercial and industrial districts, and not focus on deployment to residential areas because of the existing availability of Gigabit service to the City's residential areas by Charter/Spectrum. The Committee also identified the value of having a Study preparer provide input to the City as it plans its future Civic Center design and how to best prepare for future Smart City applications.

The Committee also decided that a business model analysis was not warranted because of the City's lack of existing fiber-optic infrastructure and the high cost of constructing such infrastructure.

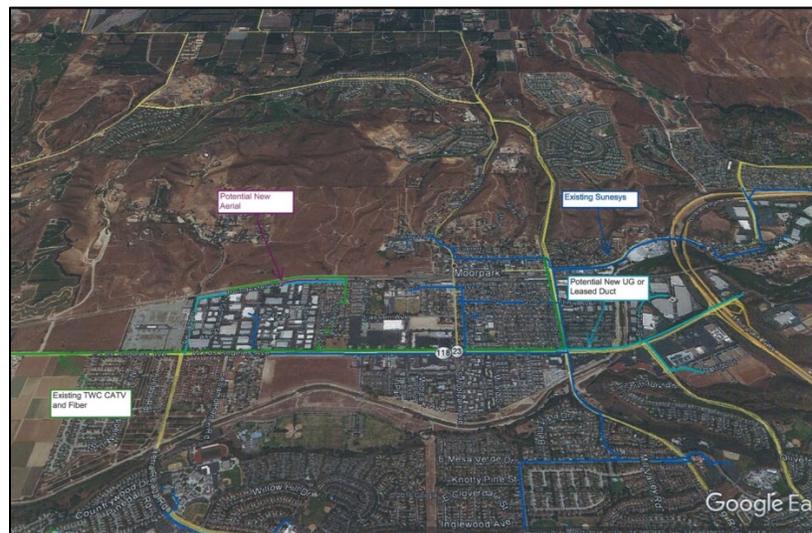
Past Broadband Studies

The City has taken part in some broadband-related studies over the past several years.

In 2016, in coordination with the Broadband Consortium | Pacific Coast, Tellus Venture Associates evaluated the broadband infrastructure within Moorpark (and other communities within the Consortium's jurisdiction), using a 0-5 star scoring system. The analysis generally found good connectivity in the City's westerly business park (east side of Gabbert Road, between Los Angeles Avenue and Poindexter Avenue) and relatively poor connectivity in the rest of the City's business parks. The study map is shown below.



In 2017, Ridge Communications completed a field survey of Moorpark to identify existing and potential fiber-optic paths in the City. The map shows existing paths in dark blue and green, with potential paths shown in purple and light blue.



However, the survey only shows infrastructure owned by Sunesys (which has since been acquired by Crown Castle Fiber) and Time Warner (which has since been acquired by Charter/Spectrum). Other entities, beyond these two, also own fiber-optic infrastructure in Moorpark. A more thorough, subsequent study is expected to yield a more complete gap analysis to determine the City's current underserved and unserved areas.

SCOPE OF WORK

The Scope of Work at a minimum should include the following tasks, which are intended to meet the objectives described above:

- 1) Kick-Off Meeting: Complete a kick-off meeting with City staff to discuss project objectives, goals, and tasks; share information already held by the City, such as existing infrastructure and existing facilities with strong broadband service; and share existing City policies related to broadband.
- 2) Inventory of Existing Providers and Fiber-Optic Paths: Identify current broadband service providers operating in the City and the locations of existing fiber-optic infrastructure in the City.
- 3) Gap Analysis: Identify areas in the City that are well-served, underserved, and unserved. By showing where the gaps are in existing broadband infrastructure on a macro level, such an analysis will enable the City to focus its resources in areas where broadband deployment is most needed.
- 4) Asset Inventory: Identify the City's current assets that may be utilized to promote broadband deployment, such as streetlights and existing conduit. This inventory can then be used to identify some of the tools available to the City in accomplishing its broadband objectives. Conversely, identifying the absence of some sort of asset or asset class may lead to recommendations to acquire that asset or asset class.
- 5) Plan for Engagement of Broadband Providers: Develop a strategy to engage owners/operators of existing fiber-optic and broadband infrastructure in the City to encourage them to deploy service within the City.
- 6) Identification of Obstacles: Identify obstacles to broadband deployment in the City. This may include physical, legal, regulatory, financial, and other obstacles. Identifying obstacles to broadband infrastructure will help advise the City Council as it decides how to best promote broadband deployment within the City.

For example, two of the major streets within the City are state highways under Caltrans jurisdiction, which means the City has limited control over permitting

- and design of broadband infrastructure within those streets. Further, the City does not own utilities, such as a water or sanitation district, so the City has fewer options to directly finance broadband infrastructure than other cities may have.
- 7) Identification of Anchors: Identify potential anchor customers in the City that may individually justify private-sector investment in broadband infrastructure. Anchor customers are critical in attracting private sector investment because a potential Internet Service Provider can sign a multi-year deal with just one customer to ensure it recoups its investment in constructing broadband infrastructure. In the absence of a single anchor customer, potential Internet Service Providers would have to find multiple customers to justify investment, which requires substantially more initial outreach efforts and carries elevated risk of failing to achieve critical mass to justify new investment.
 - 8) Assess the City's 5G Readiness: The City recognizes the importance of 5G wireless cellular networks in advancing the community's economic vitality. While the City has begun efforts to address this, the Strategic Plan should identify additional actions the City may consider to promote 5G deployment if appropriate.
 - 9) Recommend Policies and Actions to Promote Broadband and 5G Deployment: Develop proactive actions for the City to take to promote broadband deployment within the City's commercial and industrial districts. These actions may include regulatory changes, legislative changes, adoption of a "dig once" ordinance, community development and planning process workflow changes, a process to identify potential revenue generation opportunities for the City, and other actions identified in the Strategic Plan.
 - 10) Provide Design Input on City's Civic Center Plan Development: Provide input to the City as it develops its Civic Center Plan, from a broadband deployment and connectivity perspective.
 - 11) Assess the City's Operational Needs for Smart City Applications: Identify operational areas that would most benefit from Smart City applications and operational areas that would not benefit from them.
 - 12) Recommend Actions for the City to Prepare for Smart City Applications: Develop proactive actions for the City to take to position itself to quickly deploy and adopt Smart City applications as they become commercially available.
 - 13) Identify Funding Sources: Identify potential ways the City can obtain funding for its broadband initiatives.

While the City has identified the above tasks to be a part of the development of the Broadband Strategic Plan, respondents to this Request for Proposals should develop a plan of work they believe will most effectively meet the City's objectives outlined above.

In developing this Request for Proposals, the City recognizes the lack of City-owned conduit and fiber-optic cables and that the cost of developing and installing its own network is not financially feasible. As such, the City is not seeking a Business Model Analysis or cost estimate to install fiber-optic cables throughout the City as part of the Strategic Plan.

REQUIRED PROPOSAL INFORMATION

A. Technical Proposal

1. **Cover Letter:** This letter should introduce your firm and team and should be limited to two (2) pages.
2. **Statement of Qualifications:** Include a statement of your firm's qualifications to perform the work associated with broadband-related studies and strategic planning. The statement should include information describing three (3) completed projects of a similar size and complexity finished within the past five (5) years. Provide client contact personnel and telephone numbers for each project. Similar material should be provided for each sub-consultant participating in the project. This material should be limited to three (3) pages.
3. **Organization and Staffing:** Include an organizational chart showing your firm's project management team and their organizational relationship. Provide resumes for the project team, including a resume for the Project Manager and for each proposed sub-consultant, if applicable. Each resume should be no more than one (1) page in length.
4. **Scope of Work:** Provide a scope of work that describes task-by-task how you plan to accomplish the required work, which may vary from task list included above. Said scope should include tasks for review of work products by City staff. Effort should be made to keep the length of this section to under three (3) pages.
5. **Person Hours by Task:** Provide a table that shows your planned person hours by classification and task for all work you plan to perform.
6. **Project Schedule:** Provide a timeline that shows the planned starting time and duration of each task in your scope of work.

B. Cost Proposal: To be provided in a separate sealed envelope.

1. **Cover Letter:** This letter should point out any conditions which could affect your firm's costs.

- 2. **Cost of Services:** Provide a table that shows your firm’s estimated cost for the services, listed by task.
- 3. **Hourly Rates by Classification:** Provide a listing of your firm’s hourly rates by classification, as well as any other cost factors which you would need to price extra work.

PROPOSAL EVALUATION CRITERIA

The City of Moorpark intends to evaluate and rank the technical proposals received by utilizing the following criteria:

<u>Criteria</u>	<u>Points</u>
Qualifications of the Firm: Based on experience and projects similar to this project	15
References: Based on quality of references	15
Staffing: Based on background and experience of proposed staffing on similar projects with the proposing firm	20
Schedule: Based on thoroughness and reasonableness of the proposed schedule	10
Scope of Work: Based on the understanding of work, approach, methods, procedures, etc.	40

The proposal submitted by each firm will be ranked using the evaluation method described above. The highest ranked firm(s) will be interviewed by City staff and the City Council’s Broadband Ad Hoc Committee. The technical ranking may be adjusted subsequent to the completion of the interview(s).

The final evaluation and ranking of the proposals will consider the scores from the technical review and interviews, with the final selection being based upon qualification, experience, resources, understanding of the City’s requirements, approach, methods and procedures, and schedule. The highest ranked firm will be selected to negotiate an Agreement utilizing the submitted cost proposal as a starting point.

The City is not bound to select any of the firms submitting proposals, may waive any irregularities in proposals and their submittal which may be advantageous to the City, and is not liable for any costs of preparation and submittal of proposals, including any presentations made to the City.

GENERAL INFORMATION

- The City reserves the right to reject any and all submittals.
- The Consultant shall provide the City with any exceptions, additions, or suggestions that will aide in the selection process.

- The proposal and this RFP shall jointly become part of the Agreement for Professional Services for this project when said agreement is fully executed by the Consultant and City.
- Consultant is obligated to provide evidence of insurance liability as outlined in Exhibit A to the Agreement, which is Attachment 1 to this RFP.
- Consultant shall obtain a City of Moorpark Business Registration prior to commencing any work.
- Subcontractors/subconsultants (subcontractors): The Proposer may utilize the services of subcontractors on those parts of the work which, under normal contracting practices, are performed by specialty subcontractors. Unless a specific subcontractor is listed by the Proposer, Proposer is representing to City that Proposer has all appropriate licenses, certifications, and registrations to perform the work hereunder.

After submission of the proposal, the Proposer shall not award work to any unlisted subcontractor without prior written approval of the City. The proposer shall be fully responsible to the City for the performance of his/her subcontractors, and of persons either directly or indirectly employed by them.

Nothing contained herein shall create any contractual relation between any subcontractor and the City.

The following is the City's tentative schedule for selection of the Consultant:

1. Issuance of RFP:	July 19, 2019
2. Deadline for RFP Submittal:	August 16, 2019
3. City Review of Qualifications:	August-September 2019
4. Consultant Interviews (if Necessary):	September 2019
5. Award of Agreement:	October 2, 2019

Two (2) copies of each proposal must be received by 4:30 p.m. on August 16, 2019 at:

City of Moorpark
City Manager's Office
799 Moorpark Avenue
Moorpark, CA 93021
Attn: Brian Chong, Assistant to the City Manager

Please clearly mark the envelope as follows:

RFP – Broadband Strategic Plan

The consultant's cost proposal shall be submitted in a separate sealed envelope from the submittal documents and clearly marked "COST PROPOSAL".

Attachment 1 – Sample Professional Services Agreement with Insurance Requirements

SAMPLE AGREEMENT BETWEEN THE CITY OF MOORPARK AND
FOR DEVELOPMENT OF A BROADBAND STRATEGIC PLAN

THIS AGREEMENT, made and effective as of this ____ day of _____, 2019, 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 development of a Broadband Strategic Plan to guide the City’s economic development and “Smart City” initiatives; 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 B.

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

1. TERM

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

2. SCOPE OF SERVICES

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

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

Compensation for the services to be performed by Consultant shall be in accordance with Exhibit B. Compensation shall not exceed the rates or total contract value of _____ dollars (\$_____), as stated in Exhibit B, 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 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 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 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. 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 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 seven (7) days after service upon it of said notice in which to cure the default by rendering a satisfactory performance. In the event that the Consultant fails to cure its default within such period of time, the City shall have the right, notwithstanding any other provision of this Agreement, to terminate this Agreement without further notice and without prejudice to any other remedy to which it may be entitled at law, in equity or under this Agreement.

8. LIQUIDATED DAMAGES

[This section intentionally left blank.]

9. OWNERSHIP OF DOCUMENTS

Consultant shall maintain complete and accurate records with respect to sales, costs, expenses, receipts, and other such information required by City that relate to the performance of services under this Agreement. Consultant shall maintain adequate

records of services provided in sufficient detail to permit an evaluation of services. All such records shall be maintained in accordance with generally accepted accounting principles and shall be clearly identified and readily accessible. Consultant shall provide free access to the representatives of City or the City's designees at reasonable times to such books and records; shall give the City the right to examine and audit said books and records; shall permit City to make transcripts therefrom as necessary; and shall allow inspection of all work, data, documents, proceedings, and activities related to this Agreement. Notification of audit shall be provided at least thirty (30) days before any such audit is conducted. Such records, together with supporting documents, shall be maintained for a period of five (5) years after receipt of final payment.

Upon completion, 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 subcontractor, 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 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 disability, mental disability, medical condition,

genetic information, marital status, sex, gender, gender identity, gender expression, age, sexual orientation, or military and veteran status; or any other basis protected by applicable federal, state, or local law, except as provided in Section 12940 of the Government Code. Consultant shall have responsibility for compliance with this Section.

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

The Contractor covenants and agrees that if Contractor and/or its subcontractors intends to provide service or enter into any contract with any developer(s) and/or public agency(ies) owning property and/or processing an entitlement application for property in the City or its Area of Interest, during the Term of this Agreement, Contractor shall immediately notify the City, in writing, informing the City of the nature of the contract, prior to commencing with any work or entering into such contract. The City Manager shall determine whether a potential conflict of interest exists, and if his/her determination is that a conflict of interest is applicable, he/she will either deny the Contractor's request to provide service or enter into any contract in violation of this Agreement, or will assign any work related to the conflict to an alternate contractor.

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 Ave.
Moorpark, CA 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, 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

CONSULTANT

Troy Brown, City Manager

Name, Title

Attest:

Ky Spangler, 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, errors 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 but in no event less than \$1,000,000 aggregate.

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

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

1. Consultant agrees to have its insurer endorse the third party general liability coverage required herein to include as additional insureds the City, its officials, employees, and agents, using standard ISO endorsement CG 2010 and CG 2037 with edition acceptable to the City. 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.