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DEPARTMENT OF PARKS
AND COMMUNITY SERVICES

CITY OF SACRAMENTO
CALIFORNIA

1231 I STREET
SUITE 400
SACRAMENTO, CA
95814-2977

ROBERT P. THOMAS
DIRECTOR

December 23, 1986

916-449-5200

G. ERLING LINGGI
ASSISTANT DIRECTOR

DIVISIONS:

CROCKER ART MUSEUM
GOLF
METROPOLITAN ARTS
MUSEUM & HISTORY
PARKS
RECREATION
ZOO

Budget and Finance Committee
Sacramento, California

Honorable Members in Session:

SUBJECT: Haggin Oaks Restaurant and Clubhouse Feasibility Study
Consultant Services Agreement - Budget Amendment

SUMMARY

This report recommends that the City of Sacramento Department of Parks and Community Services enter into a consultant services agreement with Santina and Thompson, Inc. to conduct a feasibility study for development of a restaurant and clubhouse located on 12 acres at Haggin Oaks Golf Course. To conduct this feasibility study, it is necessary to reappropriate funds by transferring \$40,000 from the Golf Fund Contingency to the Fiscal Year 1986-87 Golf Operating Budget.

BACKGROUND INFORMATION

Development of a clubhouse and restaurant on 12 acres within Haggin Oaks South Golf Course is part of the 10-year master plan for the Golf Division. In February 1983 the City Council approved a contract with Economic Research Associates and the Department of Parks and Community Services to determine the potential for generating new sources of revenue for the Department. The Golf Division potential for generating additional income focused on 12 acres of undeveloped land near the entrance to Haggin Oaks Golf Course. Specific goals of the study were to:

1. Increase revenue for the Golf Enterprise Fund by expanding revenue generating capabilities of the concession at the site and;
2. Provide expanded services to golf course visitors.

The study determined that the site is a very desirable area for the major clubhouse facility for banquets as well as food and beverage services. The study also found that due to the unique nature and location of the land, the site may also be desirable for other low density uses. The complexity of determining the best and most cost effective method for developing this site makes it necessary to conduct a Haggin Oaks Restaurant and Clubhouse Feasibility Study. The study would provide information on the best alternatives available to the City for the development of the clubhouse complex, including:

1. Options available to the City for financing;
2. Scenarios on private/public development;
3. Development cost analysis;
4. Long-term revenue projections; and
5. Environmental assessment of the site.

On May 5, 1986, the City Council approved a budget amendment providing \$40,000 to conduct a Haggin Oaks Restaurant and Clubhouse Feasibility Study. The amended budget transfer occurred in mid-June of 1986. These funds were not encumbered and, therefore, reverted back to the Golf Fund Contingency at the close of Fiscal Year 1985-86. It is now necessary to reappropriate the funds by amending the Fiscal Year 1986-87 Golf Operating Budget.

On August 7, 1986, Requests for Proposals were issued to 177 consulting firms. On August 26, 1986, seven (7) proposals were received by the Department of Parks and Community Services. A panel comprised of representatives from the City's Finance, Planning, Public Works and Parks and Community Services Departments received the proposals and interviewed the prospective consultants. The panel selected the firm of Santina and Thompson, Inc. in accordance with the guidelines of policy for retention of professional consultants for City projects adopted by the City Council on February 26, 1980.

FINANCIAL DATA

To conduct the Haggin Oaks Restaurant and Clubhouse Feasibility Study it is necessary to amend the Fiscal Year 1986-87 Golf Operating Budget by transferring \$40,000 from the Golf Fund Contingency to the Golf Operating Budget. The proposed consultant services agreement with Santina and Thompson, Inc. is for the amount of \$32,928; however, authority to execute contract(s) totaling \$40,000 is

requested to give the City the ability to contract for unanticipated needs without additional Council action.

RECOMMENDATION

It is recommended that the Budget and Finance Committee approve this report for referral to the full City Council for action. Further, it is recommended that the City Council, by resolution:

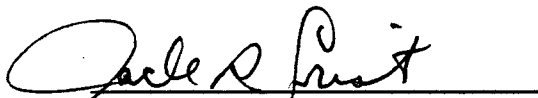
1. Transfer \$40,000 from the Golf Fund Contingency to the Fiscal Year 1986-87 Golf Division Operating Budget to conduct the Haggin Oaks Restaurant and Clubhouse Feasibility Study; and
2. Authorize the City Manager to enter into a contract in the amount of \$32,928 with Santina and Thompson, Inc. for the purpose of preparing the Haggin Oaks Restaurant and Clubhouse Feasibility Study.

Respectfully submitted,



ROBERT P. THOMAS, Director
Parks and Community Service

Recommendation Approved:



JACK R. CRIST
Deputy City ~~Attorney~~
MANAGER

January 13, 1987
Council District 2

RPT:nol

RESOLUTION NO.

ADOPTED BY THE SACRAMENTO CITY COUNCIL ON DATE OF

RESOLUTION AMENDING THE FY 1986-87
CITY BUDGET FOR THE DEPARTMENT OF
PARKS AND COMMUNITY SERVICES, GOLF
DIVISION

BE IT RESOLVED BY THE COUNCIL OF THE CITY OF SACRAMENTO:

1. That the Haggin Oaks Restaurant and Clubhouse Feasibility Study requires a budget amendment.
2. That the FY 1986-87 City Budget be amended by transferring appropriations in the amount of \$40,000 from the Golf Fund Contingency to the Golf Operating Budget for the purpose stated in paragraph one above as follows:

418-710-7012-4999	(\$40,000)
418-450-4610-4258	\$40,000

3. That the City Manager is hereby authorized and directed to execute, on behalf of the City of Sacramento, that certain consultant services agreement between the City of Sacramento and Santina and Thompson, Inc. for the purpose of preparing the Haggin Oaks Restaurant and Clubhouse Feasibility Study.

MAYOR

ATTEST:

CITY CLERK

CONSULTANT SERVICES CONTRACT

THIS AGREEMENT is made at Sacramento, California as of _____, 1986, by and between the CITY OF SACRAMENTO, a municipal corporation ("City") and SANTINA AND THOMPSON, INC., a California corporation ("Consultant"), who agree as follows:

1. Services. Subject to the terms and conditions set forth in Agreement, Consultant shall provide said services described in Exhibit A. Consultant shall provide said services at the time, place, and in the manner specified in Exhibit A.
2. Payment. City shall pay Consultant for services rendered pursuant to this Agreement at the time and in the manner set forth in Exhibit B. The payments specified in Exhibit B shall be the only payments to be made to Consultant for services rendered pursuant to this Agreement. Consultant shall submit all billings for said services to City in the manner specified in Exhibit B; or, if no manner be specified in Exhibit B, then according to the usual and customary procedures and practices which Consultant uses for billing clients similar to City.
3. Facilities and Equipment. Except as set forth in Exhibit C, Consultant shall, at its sole cost and expense, furnish all facilities and equipment which may be required for furnishing services pursuant to this Agreement. City shall furnish to Consultant only the facilities and equipment listed in Exhibit C according to the terms and conditions set forth in Exhibit C.
4. General Provisions. The general provisions set forth in Exhibit D are part of this Agreement. In the event of any inconsistency between said general provision and any other terms or conditions of this Agreement, the other term or condition shall control insofar as it is inconsistent with the general provisions.
5. Exhibits. All exhibits referred to herein are attached hereto and are by this reference incorporated herein.
6. Time for Performance. Time is of the essence and subject to City's compliance with Exhibit C; failure of Consultant to perform any service within the time limits set forth in Exhibit A shall constitute breach of this Contract.

Executed as of the day first above stated.

CITY OF SACRAMENTO
a municipal corporation

CITY

ATTEST:

CITY CLERK

CONSULTANT

APPROVED AS TO FORM:

Diane Ball
DEPUTY CITY ATTORNEY

EXHIBIT A

1. Scope of Work. Subject to the terms and conditions set forth herein, Consultant shall accomplish all work necessary to prepare a Feasibility Study to assess the potential of developing a public recreation facility financed by a private on-site development at the City of Sacramento's Haggin Oaks Municipal Golf Course. The work shall include, but not be limited to, a comprehensive and accurate environmental assessment of the most feasible project description. The purpose of this Environmental Assessment is to provide the City with information to use as the basis for deciding whether to prepare a Negative Declaration or Environmental Impact Report (in addition to an Environmental Assessment). The Feasibility Study shall consist of a detailed Site Evaluation and Economic Analysis to determine the best financing options to the City. The study shall be divided into three (3) phases; 1) Environmental Assessment; 2) Economic Feasibility; 3) Site Plan/Implementation Strategy. Each phase is subject to the City's authorization to proceed.
2. Definition of the Haggin Oaks Municipal Golf Course Feasibility Study Area. As used in this agreement:
 - a. The term "Haggin Oaks" shall mean a vacant 12+ acre site on the City of Sacramento Haggin Oaks Municipal Golf course situated north of Business 80 and west of Fulton Avenue. The study also includes analysis of the existing clubhouse site determine cost and scope of remodeling to make this site compatible with proposed development.
3. Methodologies. The scope of services contained in this Exhibit identifies the Methodologies to be used by the Consultant to complete the tasks. Said Methodologies may be modified or new Methodologies substituted for those identified herein as may be proposed by the Consultant and the City and agreed to by both parties.
4. Scope of Services.
 - Task 1. Consultant shall, as part of the Early Consultation Process, contact all public agencies, private organizations, groups, and individuals which have been identified by the City and which are known by Consultant to have an interest in Haggin Oaks.
 - Task 2. Consultant shall prepare a Feasibility Study based on the Scope of Work, including comments received, to the satisfaction of City staff. The Feasibility Study, as mutually agreed upon by the City and Consultant, shall be utilized by Consultant to determine which issues have been sufficiently addressed in other documents or which need not be assessed.

EXHIBIT A (continued)

Task 3. Consultant shall prepare and make available to the City Department of Parks and Community Services six (6) copies of the Administrative Drafts for each phase no later than 30 days after City authorization to proceed for each phase. While preparing the Administrative Drafts, the Consultant may submit drafts of each chapter of the Administrative Document to the City, Department of Parks and Community Services for review and comment.

The format of the Feasibility Study shall be mutually agreed upon by the City and Consultant to produce a readable and understandable document. The Environmental Assessment shall include a reasonably detailed description of potential significant environmental impacts which have been identified during the Early Consultation process.

The Consultant shall analyze and report on all aspects of Haggin Oaks in accordance with the following work outline and any other environmental parameters necessary to comply with the requirements of CEQA Guidelines, Section 15063.

The Consultant shall refer, wherever possible, to technical documents used for the study in order to describe existing conditions and to analyze environmental impacts. Care should be taken to concentrate work on determining relevant impact and developing reasonable or feasible mitigation measures. In this regard, portions dealing with subjects previously addressed in background technical reports should be short and concise.

The Consultant shall attend the required meeting with the Joint Budget and Finance Committee and the Transportation and Community Development Committee, Planning Commission, and City Council meeting covering this study.

The Consultant's work outline for the preparation of this Feasibility Study shall include, but not be limited to, the following:

PREFACE

Summary of the purpose of the Feasibility Study.

PROJECT DESCRIPTION

Description of the proposed public recreation facilities with the private land uses including adopted goals and objectives of the 1984 Parks Master Plan. The City needs to know the feasibility of a private developer financing the following facilities and improvements for City ownership:

EXHIBIT A (continued)

<u>ITEM</u>	<u>DESCRIPTION</u>	<u>COST ESTIMATE</u>
1	Pro Shop/Snack Bar (5,000 Square Feet)	\$ 350,000
2	Lighted Tennis Court Complex (Nine Courts with one Center Court including 500-1,000 Seats)	300,000
3	Landscaped Parking Lot (200 Spaces)	500,000
4	Access Road (2,700 Feet)	100,000
5	Storage Shed (5,000 Square Feet)	150,000
6	Utility Extensions	90,000
7	Banquet Room-Optional (10-12,000 Sq. Feet) (400 Seat Capacity)	<u>900,000</u>
		\$2,390,000
	2 Percent Art in Public Places	47,000
	15 Percent Contingency	<u>358,500</u>
		\$2,796,300

The Feasibility Study shall be prepared in the following three (3) phases: each subject to the City's authorization to proceed:

PHASE 1 - SITE DEVELOPMENT POTENTIAL/ENVIRONMENTAL ASSESSMENT

- o Address land uses that would be compatible within the applicable McClellan Air Force Base overflight zone(s) and consistent with Comprehensive Land Use Plan (CLUP), Federal Aviation Regulations, (FAR), Air Installation Compatible Use Zone (AICUZ).
- o Assess the potential impacts associated with the proposed access road connecting Fulton Avenue to the project site in terms of roadway capacity, secondary emergency access, traffic generation, and site circulation. This assessment shall include the following:
 1. Establish trip generation rates, City Traffic Engineer's approval prior to traffic analysis. Assumptions subject to distribution, circulation, improvement, roadway capacity and level-of-service criteria.
 2. Evaluate existing traffic data and conditions including traffic counts for am/pm peaks at the following intersections:
 - Fulton Avenue/Auburn Boulevard
 - Howe Avenue/Auburn Boulevard
 - Watt Avenue/Auburn Boulevard

EXHIBIT A (continued)

- Watt Avenue/Auburn Boulevard
 - Edison Avenue/Fulton Avenue
 - Marconi Avenue/Fulton Avenue
3. Estimate traffic generated by potential projects utilizing City approved generation rates.
 4. Quantify levels of service and traffic distribution on existing street system for potential project.
 5. Illustrate the results of each potential project in matrix form and compare these findings with one another in summary table format.
 6. Outline effective mitigation measures including, but not limited to, the following:
 - Modifications to streets, intersections, and interchanges
 - Widening, restriping, parking restrictions, signalizations and access controls
 - City trip reduction ordinance
 - Emergency secondary access
- o Assess noise impacts from McClellan Air Force Base and Business 80 according to the CLUP, FAR, AICUZ criteria.
 - o Evaluate infrastructure availability and requirements for roads, waterlines, sewerlines, electric and gas including their capacity and ability to accommodate such development at the site.
 - o An investigation of the physical and functional attributes of the site, phased development, and overall site evaluation and summation regarding the benefits and drawbacks of the site's environmental characteristics.
 - o Determine the restrictions on development due to height limitations, noise impacts and liability considerations. Height restrictions should be based on the appropriate glide slope ratio as a function of the distance from the end of McClellan runway according to the CLUP, FAR, and AICUZ criteria.
- A comprehensive and accurate environmental assessment of the most feasible project descriptions.

PHASE 2 - DEVELOPMENT PARAMETERS/ECONOMIC FEASIBILITY

- o Conduct land appraisal of the project site based on estimates of development and infrastructure potential.

EXHIBIT A (continued)

o Evaluate at least the following four alternatives:

1. Office Complex
2. Hotel Complex
3. Office/Hotel Complex
4. Restaurant with banquet facility

Note: Other potentially feasible markets and uses that may exist for joint development shall be analyzed.

- o Determine the appropriate scale of development including square footage, height, and uses.
- o Determine risk factor for each type of venture and incorporate in analysis.
- o Assess financing options including land dedication/writedown, long-term ground lease, retention of the land, percentages of long-term profit, and leasing strategies. Identify potential arrangements for ownership and financing including possible risks to the City.
- o Indicate expected return for each alternative based on probable distribution for each range of alternative development schemes.
- o Determine the advantages and disadvantages of each option including the project's financial feasibility in terms of annual cost/revenue, taxation and lease rate(s) over a minimum of 20 years.
- o Analysis of the market potential for other uses including, but not limited to, general commercial, mixed office, light industrial, restaurant with optional banquet facility, hotel/motel, and retail services in conjunction to an inventory and assessment of surrounding land uses/market.
- o For private development, especially hotels, need to factor in turnover of ownership into long term risk analysis.
- o Evaluate the financial feasibility of each alternative or potential development scenario against the financial criteria of typical developers and lenders.

EXHIBIT A (continued)

- o Project net-present-value for all alternatives and financing ownership options.
- o Consider the possible economic advantages of phased public and private facility development.
- o For projects which the City retains title to the property, need to assess opportunity cost to the extent that the possessory interest tax would be less than that of the land were it sold.
- o Determine each schemes employment potential and provide salary range for each.
- o Provide copies of financial alternatives program on Lotus 1-2-3 or Supercalc on IBM compatible computer.
- o All financial calculations for schemes should assume taxable interest rates

PHASE 3 - IMPLEMENTATION STRATEGY/SITE PLAN

- o Provide a detailed implementation program featuring required public actions with regards to land use plans, zoning, parcel maps, building permits, and other agency approval(s).
- o Prepare a site development plan for the project site reflecting suggested parcelization, infrastructure, and phasing. Schematic site plans for each alternative should be provided based on current land survey.
- o The site plans should show parking and circulation designs for both City and private developments, including the relationship of the structures to surrounding land uses such as the existing Haggin Oaks Golf Course clubhouse and possible development constraints of McClellan Air Force Base overflight zone(s).

Task 4. Consultant shall prepare written responses to all written public comments and to summaries of verbal comments prepared by City staff on the Feasibility Study. Should the nature of the comments require new technical analysis, additional fees may be negotiated. In the process of presenting the Feasibility Study to the City Planning Commission and the City Council, the Consultant shall make such modifications in the documents prepared as directed by the respective decision-making body.

Task 5. The City may, by written request, authorize the Consultant to render additional and unanticipated service beyond the scope of services contained in Exhibit A.

EXHIBIT A (continued)

Additional requested service shall be authorized by amendments to the contract which will identify the scope of work to be performed, cost, manner of payment, and not to exceed charges as identified in Exhibit B of this Contract.

Task 6. Consultant (consisting of the principal in charge (Lee Thompson) and the project manager (Trudi Ryan) of Santina and Thompson, Inc., and any Santina and Thompson, Inc. affiliates and subcontractors as necessary) shall attend and make presentation of the Feasibility Study, answer questions, and perform such other functions as directed by the City with relation to the Feasibility Study at all specified public hearings, the City planning Commission, the City Council, and such other bodies as directed by the City. Consultant shall not be required to attend more than one (1) City Planning Commission hearing, one (1) Joint Budget and Finance Committee and Transportation and Community Development Committee meeting, and one (1) City Council hearing pursuant to this contract, or any combination thereof not to exceed three (3) meetings. The Director of Parks and Community Services shall specify the exact nature and time of the presentation required by the Consultant prior to each meeting or hearing which Consultant shall attend. City may require Consultant to attend additional meetings or hearings, provided that Consultant shall be compensated by the City in accordance with the schedule of billing rates set forth in Exhibit B.

EXHIBIT B

TIME AND MANNER OF PAYMENT

City shall pay Consultant a total sum not to exceed \$32,928 for services pursuant to the Agreement. Consultant shall submit invoices with an itemization of time, material, and other expenditures, and shall also tabulate total staff hours and costs by phase for the current billing period, as well as accumulative totals of hours and costs to date. Each phase is subject to the City's authorization to proceed.

<u>PHASE</u>	<u>DESCRIPTION</u>	<u>ESTIMATED COST</u>
I	Draft Environmental Assessment	\$ 6,000
	Final Environmental Assessment	<u>5,748</u>
	Subtotal	\$11,748
II	Draft Economic Feasibility Report	7,000
	Final Economic Feasibility Report	<u>6,816</u>
	Subtotal	\$13,816
III	Draft Implementation/Site Plan	3,500
	Final Implementation/Site Plan	<u>3,364</u>
	Subtotal	\$ 6,864
	Travel, Printing, Etc. (payable at completion of contract)	500
	Sum Total Not to Exceed	<u>\$32,928</u>

PROFESSIONAL FEES

Compensation for additional labor and expenses mutually agreed to by the City and Consultant as defined in Exhibit A, Task 5 shall be made in accordance with the following:

Santina & Thompson, Inc.

According to the attached Hourly Charge Rate sheet, effective January 1, 1986.

Ward and Associates

\$70 per hour, plus 10% for administration.

EXHIBIT B (continued)

HOURLY CHARGE RATES

PRINCIPAL.....\$100

ENGINEERING:

Director of Engineering..... 95
 Project Manager..... 88
 Project Engineer..... 78
 Senior Engineer..... 70
 Associate Engineer..... 59
 Junior Engineer..... 45

PLANNING:

Director of Planning..... 72
 Senior Planner..... 67
 Associate Planner..... 52
 Junior Planner..... 41

DRAFTING/GRAPHICS:

Senior Draftsman..... 52
 Associate Draftsman..... 46
 Junior Draftsman..... 40
 Graphic Artist..... 35

CLERICAL..... 27

SURVEY:

NO. CALIF.

SO. CALIF.

Survey Manager..... \$ 72 71
 Survey Supervisor..... 65 65
 Office Surveyor..... 61 56
 Associate Office Surveyor..... 48 48
 Junior Office Surveyor..... 34 32

3-Man Party..... 165 153
 2-Man Party..... 120 114
 1-Man Party..... 65 60

Electronic Measuring Device:

HP 3810..... 20
 HP 3820..... 25

EXHIBIT B (continued)

REIMBURSABLE EXPENSES

Mileage (\$.25/mile)

Domestic travel per diem (reimbursable at \$25/day plus lodging)

Project Consultants at cost (plus 25% administration)

Limitation of Liability* Exclusion (3.5% of gross fees billed)

Other direct project expenses at cost + 15%

- Public transportation, charter or rental
- Printing, graphics, photography and reproduction
- Rental or purchase of special equipment and materials
- Long distance telephone or special shipping
- Models, perspectives and renderings

*Limitation of Liability Agreement - Client agrees to limit Consultant's liability to client and to all contractors and subcontractors on the project, due to professional negligence, acts, errors or omissions of Consultant, to the sum of \$50,000 or Consultant's fees, which ever is greater.

The above fees are effective through December 31, 1986 thereafter to be increased on January 1, and every year hence, based on California Inflation Indices for design work and on union increases for survey field work. Overtime will be charged at 135% of standard hourly rates. Sundays and holidays will be charged at 170% of the standard hourly rates. No overtime will be charged without prior authorization by the client.

EXHIBIT C

City shall furnish physical facilities such as desks, filing cabinets, and conference space, as may be reasonably necessary for Consultant's use while consulting with City employees and reviewing records and information in possession of City. The location, quantity and quality, and time of furnishing said physical facilities shall be at the sole discretion of City. In no event shall City be obligated to furnish any facility which may involve incurring any direct expense, including, but not limiting the generality of this exclusion, long-distance telephone or other communication charges, vehicles, and reproduction facilities.

City shall assemble and provide to Consultant City planning and environmental documents and such additional materials as City deems in its sole discretion necessary to enable Consultant to properly assess the existing and proposed land use, environmental, economic, and social impacts of Haggin Oaks.

Consultant shall commence services described in Exhibit A upon receipt of the City materials listed below:

- o Copy of the City's 1984 Parks Master Plan.
- o Copy of the 1984 North Sacramento Community Plan.
- o Copy of the Sacramento City Zoning Ordinance.
- o Copy of the EIR for the adjacent recreation center.
- o Copy of the base map of site.
- o Copy of the EIR prepared for the Parks Master Plan, and North Sacramento Community Plan and City General Plan
- o List of individuals, agencies and organizations known by the City to have an interest in Haggin Oaks.

All other materials mutually agreed upon by the Consultant and the City prior to the execution of this Agreement are set forth in writing.

EXHIBIT D

1. Independent Contractor. At all times during the term of this Agreement, Consultant shall be an independent contractor and shall not be an employee of the City. City shall have the right to control Consultant only insofar as the results Consultant's services rendered pursuant to this Agreement; however, City shall not have the right to control the means by which Consultant accomplishes services rendered pursuant to this Agreement.
2. Licenses; Permits; Etc. Consultant represents and warrants to City that he has all licenses, permits, qualifications, and approvals of whatsoever nature which are legally required for Consultant to practice his profession. Consultant represents and warrants to City that Consultant shall, at his sole cost and expense, keep in effect or obtain at all times during the term of this Agreement any licenses, permits, and approvals which are legally required for Consultant to practice his profession at the time the services are performed.
3. Time. Consultant shall devote such time to the performance of services pursuant to this Agreement as may be reasonably necessary for satisfactory performance of Consultant's obligations pursuant to this Agreement. Neither party shall be considered in default of this agreement to the extent performance is prevented or delayed by any cause, present or future, which is beyond the reasonable control of the party.
4. Insurance. Consultant shall provide evidence of all required insurance prior to commencing any activities under this contract.
 - a. Public Liability. During the term of this Agreement, Consultant shall maintain in full force and effect a policy of public liability insurance with minimum coverage as follows: \$1 million for injury to one person in any one occurrence; \$1 million for injury to more than one person in any one occurrence; and \$200,000 for property damage. \$1,000,000 (one million combined single limit, bodily injury and property damage aggregate. Consultant shall cause City to be named as an additional assured on said policy and shall obtain a waiver of the insurer's right of subrogation against City.
 - b. Worker's Compensation During the term of this Agreement, Consultant shall fully comply with the terms of the law of California concerning worker's compensation. Said compliance shall include, but not be limited to, maintaining in full force and effect one or more policies of insurance insuring against any liability Consultant may have for worker's compensation.

5. Indemnify and Hold Harmless. Consultant shall assume the defense of and indemnify and save harmless, the City, its officer, employees, and agents, and each and every one of them from and against all actions, damages, costs, liability, claims losses, and expenses of every type and description to which any or all of them may be subjected, by reason, of or resulting from, directly or indirectly, the negligent performance of this contract by Consultant whether within or the scope of this contract. The foregoing shall include, but not be limited to, any attorney fees reasonably incurred by City.
6. Consultant Not Agent. Except as City may specify in writing, Consultant shall have no authority, express or implied, to act on behalf of City in any capacity whatsoever as an agent. Consultant shall have no authority, express or implied, pursuant to this Agreement to bind City to any obligation whatsoever.
7. Assignment Prohibited. No party to this Agreement may assign any right or obligation pursuant to this Agreement. Any attempt or purported assignment or any right or obligation pursuant to this Agreement shall be void and of no effect.
8. Personnel. Consultant shall assign only competent personnel to perform services pursuant to this Agreement. In the event that City, in its sole discretion, at any time during the term of this Agreement, desires the removal of any person or persons assigned by Consultant shall remove any such person immediately upon receiving notice from City of the desire of City for removal of such person or persons.
9. Standard of Performance. Consultant shall perform all services required pursuant to this Agreement in the manner and according to the standards observed by a competent practitioner of the profession in which Consultant is engaged in the geographical area in which Consultant practices his profession. All products implements of service whatsoever nature which Consultant delivers to City pursuant to this Agreement shall be prepared conducted in a substantial, first class and workmanlike manner and conform to the standards of quality normally observed by a person practicing in Consultant's profession.

EXHIBIT D (continued)

delivers to City pursuant to this Agreement shall be prepared in a substantial, first class and workmanlike manner and conform to the standards of quality normally observed by a person practicing in Consultant's profession.

10. City Representative. The Director of Parks and Community Services is the representative of the City and will administer this Agreement for the City.
11. Termination. City shall have the right to terminate this Agreement at any time by giving notice of such termination to Consultant. In the event City shall give such notice of termination, Consultant shall immediately cease rendering services pursuant to this Agreement.

Upon termination of this Agreement:

- a. Consultant shall deliver copies of all writings prepared by it pursuant to this Agreement. The term "writings" shall be construed to mean and include: handwriting, typewriting, printing, photostating, photographing, and every other means of recording upon any tangible thing any form of communication or representation, including letters, words, pictures, sounds, or symbols, or combinations thereof.
- b. City shall pay Consultant the reasonable value of services rendered by Consultant pursuant to this Agreement; provided, however, City shall not in any manner be liable for lost profits which might have been made by Consultant had Consultant completed the services required by this Agreement. In this regard, Consultant shall furnish to City such financial information as, in judgement of the Director of Parks and Community Services, is necessary to determine the reasonable value of the services rendered by Consultant. In the event of a dispute as to the reasonable value of the services rendered by the Consultant, the decisions of the Director of Parks and Community Services shall be final. The foregoing is cumulative and does not affect any right or remedy which City may have in law or equity.