



# REGULAR MEETING OF THE MADERA CITY COUNCIL

205 W. 4<sup>th</sup> Street, Madera, California 93637

## NOTICE AND AGENDA

Wednesday, August 18, 2021  
6:00 p.m.

Council Chambers  
City Hall

---

This meeting will be conducted pursuant to the provisions of the Governor's Executive Order which suspends certain requirements of the Ralph M. Brown Act. The City Council meeting will be live streamed on the City's website at [www.madera.gov/live](http://www.madera.gov/live). Members of the public may participate in the meeting remotely through an electronic meeting via phone by dialing (669) 900-6833 enter ID: 893 7755 4313 # followed by \*9 on your phone to speak. Comments will also be accepted via email at [citycouncilpubliccomment@madera.gov](mailto:citycouncilpubliccomment@madera.gov) or by regular mail at 205 W. 4<sup>th</sup> Street, Madera, CA 93637.

---

### **CALL TO ORDER:**

**ROLL CALL:** Mayor Santos Garcia  
Mayor Pro Tem Artemio Villegas, District 6  
Councilmember Cece Gallegos, District 1  
Councilmember Jose Rodriguez, District 2  
Councilmember Steve Montes, District 3  
Councilmember Anita Evans, District 4  
Vacant, District 5

### **INVOCATION:**

### **PLEDGE OF ALLEGIANCE:**

### **APPROVAL OF AGENDA:**

### **PUBLIC COMMENT:**

*The first 15 minutes of the meeting are reserved for members of the public to address the Council on items which are within the subject matter jurisdiction of the Council. Speakers shall be limited to three minutes. Speakers will be asked, but are not required, to identify themselves and state the subject of their comments. If the subject is an item on the Agenda, the Mayor has the option of asking the speaker to hold the comment until that item is called. Comments on items listed as a Public Hearing on the Agenda should be held until the hearing is opened. The Council is prohibited by law from taking any action on matters*

*discussed that are not on the Agenda, and no adverse conclusions should be drawn if the Council does not respond to public comment at this time.*

**WRITTEN COMMUNICATIONS:** None

**PRESENTATIONS:** None

**INTRODUCTIONS:** None

**A. WORKSHOP:**

**A-1 Update on Water, Sewer, Storm Drainage and Solid Waste Rate Studies**

**Recommendation:** Information Workshop. No formal action is requested. (Report by Anthony Forestiere)

**B. CONSENT CALENDAR:** None

**C. PUBLIC HEARINGS:** None

**D. PETITIONS, BIDS, RESOLUTIONS, ORDINANCES, AND AGREEMENTS:**

**D-1 Contract Award and Funding Amendment to the Fiscal Year (FY) 2021/22 for the Construction of 2020-21 SB-1 (RMRA) Seals and Overlays, City Project No. R-78**

**Recommendation:**

- 1) Adopt a Resolution Approving the Contract Award for 2020-21 SB-1 Road Maintenance and Rehabilitation Account (RMRA) Seals and Overlays, City Project No. R-78 (Project), in the amount of \$1,364,258.00 to Emmett's Excavation Inc.
- 2) Adopt a Resolution Approving Funding Amendment Appropriating \$250,000.00 to the City of Madera Fiscal Year (FY) 2021/22 Capital Projects Budget for the Construction of the 2020-21 SB-1 (RMRA) Seals and Overlays, City Project No. R-78 (Report by Keith Helmuth)

**D-2 Professional Planning and Environmental Review Services Agreement with QK, Inc.**

**Recommendation:** Adopt a Resolution Approving the Professional Services Agreement between the City of Madera and QK, Inc. for City Planning and Environmental Services and Rescinding Resolution 21-56 (Report by Gary Conte)

**E. ADMINISTRATIVE REPORTS:** None

**F. COUNCILMEMBER REPORTS/ANNOUNCEMENTS/FUTURE AGENDA ITEMS:**

*This portion of the meeting is reserved for the Mayor and Councilmembers (i) to make brief reports on boards, committees, and other public agencies, and at public events, (ii) to request updates, (iii) to initiate future agenda items., and (iv) to take action on matters initiated under this section of the agenda. Under this section the Council may take action only on items specifically agendaized and which meet other requirements for action.*

**G. CLOSED SESSION:**

**G-1 Conference with Legal Counsel – Anticipated Litigation**

Consideration of the Initiation of Litigation Pursuant to Government Code Section §54956.9(d)(4)

**One Case:** City of Madera v. Jesus Lopez

**G-2 Conference with Legal Counsel – Anticipated Litigation**

Consideration of the Initiation of Litigation Pursuant to Government Code Section §54956.9(d)(4)

**One Case:** City of Madera v. Jeffrey Streeter

**ADJOURNMENT:** – Next regular meeting on September 1, 2021

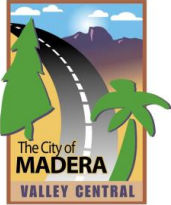
---

- Please silence or turn off cell phones and electronic devices while the meeting is in session.
  - Regular meetings of the Madera City Council are held the 1st and 3rd Wednesday of each month at 6:00 p.m. in the Council Chambers at City Hall.
  - A complete agenda packet is available on the City’s website and in the City Clerk’s Office at least 72 hours prior to a Regular Meeting and 24 hours prior to a Special Meeting. A hard copy of any agenda report may be requested by contacting the City Clerk’s Office at (559) 661-5405 or by email at [cityclerkinfo@madera.gov](mailto:cityclerkinfo@madera.gov).
  - The meeting room is accessible to the physically disabled, and the services of a translator can be made available. Request for additional accommodations for the disabled, signers, assistive listening devices, or translators needed to assist participation in this public meeting should be made at least seventy-two (72) hours prior to the meeting. Please call the Human Resources Office at (559) 661-5401. Those who are hearing impaired may call 711 or 1-800-735-2929 for TTY Relay Service.
  - Questions regarding the meeting agenda or conduct of the meeting, please contact the City Clerk’s Office at (559) 661-5405.
  - Para asistencia en español sobre este aviso, por favor llame al (559) 661-5405.
- 

I, Alicia Gonzales, City Clerk for the City of Madera, declare under penalty of perjury that I posted the above agenda for the Regular Meeting of the Madera City Council for August 18, 2021 near the front entrances of City Hall and on the City’s website [www.madera.gov](http://www.madera.gov) at 6:30 p.m. on August 13, 2021.



Alicia Gonzales, City Clerk



**REPORT TO CITY COUNCIL**

**Council Meeting of:** August 18, 2021

**Agenda Number:** A-1

*Anthony R. Forestiere*

Anthony Forestiere, Finance Department Director

*Arnoldo Rodriguez*

Arnoldo Rodriguez, City Manager

**SUBJECT:**

Update on Water, Sewer, Storm Drainage and Solid Waste Rate Studies

**RECOMMENDATION:**

Information workshop. No formal action is being requested.

**OVERVIEW:**

Madera is a full-service city that provides water, sewer, solid waste, and storm drainage services to its residents. There are approximately 14,200 residential, commercial, and industrial utility customers. The last utility rate study prepared by the City was completed in 2015, which updated the utility rates for water and sewer, taking effect incrementally July 2015 through January 2020. Considering that rates are generally reviewed every five years, the City issued a Request for Proposal (RFP) in August 2020 for a study of the utility rates for water, sewer, storm drainage, and solid waste services. Of the seven proposals received, the City Council (Council) selected NBS Consulting to perform the utility rate studies. Prior to the ongoing study, the last rate study resulted in water and sewer rates taking effect in July 2015 with incremental increases through January 2020. In December 2018, the Council considered a revision to the water conservation portion of the water rates and reduced the planned increase from 10 percent to 6 percent for the fiscal year 2018/19. The storm drainage rates have not been adjusted since 1992. The solid waste services are contracted to a third party, and the fee schedule was updated in March 2017.

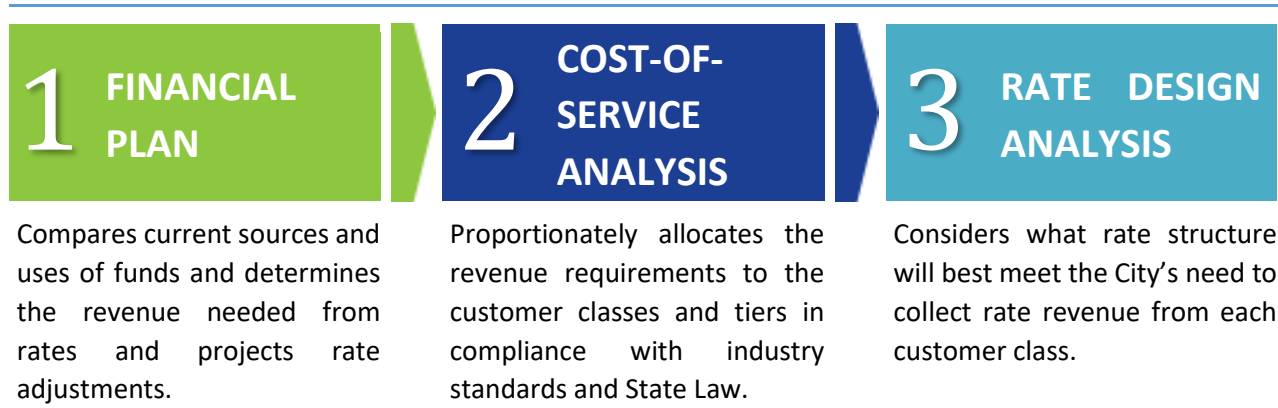
It is worth noting that utilities, including sewer, water, trash collection, and drainage are funded by user fees that provide for the daily operation and maintenance of the various systems. Said fees are viewed as property-related fees for a utility service and are subject to specific requirements of the California Constitution Article XIII D § 6(a), commonly referred to as Proposition (Prop) 218. The requirements include:

- The fees must only cover expenses to provide service to the customer assessed.

- An increase in the fee(s) must be approved by the customers under a protest-ballot procedure, where all affected property owners are notified and given the opportunity to protest the increase in writing or at a public hearing, and a majority protest prohibits the increase.
- A multi-year schedule of fee increases is allowed for up to five years.

The Prop 218 process occurs after the Council approves the rate studies. This process involves mailing a Notice of the Proposed Rate Increases to all affected customers. Any customer opposed to the rate increase would need to send a letter back to the City protesting the rate increases. If more than 50 percent of the customers are opposed to the rate increase, the increase would be blocked. The Prop 218 process also requires having a public hearing no earlier than 45 days before the mailing to receive comments on the proposed increases. At the end of this hearing, the Council would close the period to receive protests, and then count the protest ballots. If the protest failed, the Council could adopt the proposed rate increase.

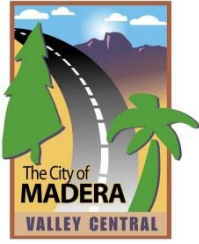
Since the City’s last rate studies, COVID-19 related economic challenges, drought impacts, changes in State guidelines and evolving legal environment present unique challenges to assessing rates. Regardless, comprehensive rate studies such as this one typically includes the following three components, as outlined in Figure 1:



To date, NBS has prepared *draft* reports of the sewer, water, and storm drainage studies. Staff is in the process of reviewing said reports. In addition to these studies, NBS Consulting also prepared alternatives with different expenditures, while in anticipation of rate adjustments, Council directed staff to designate \$23 million from the American Rescue Fund to go towards the City’s sewer and water systems. It is anticipated that the \$23 million will greatly mitigate rate increases.

**PURPOSE OF THIS WORKSHOP**

The purpose of this workshop is to provide background on the rate setting process, eventually leading to the more formal process.



## REPORT TO CITY COUNCIL

A handwritten signature in blue ink, appearing to read "Keith Helmuth".

Keith Helmuth, Department Director

A handwritten signature in blue ink, appearing to read "Arnaldo Rodriguez".

Arnaldo Rodriguez, City Manager

**Council Meeting of:** August 18, 2021

**Agenda Number:** D-1

### **SUBJECT:**

Contract Award and Funding Amendment to the Fiscal Year (FY) 2021/22 for the Construction of 2020-21 SB-1 (RMRA) Seals and Overlays, City Project No. R-78

### **RECOMMENDATION:**

1. Adopt a Resolution Approving the Contract Award for 2020-21 SB-1 Road Maintenance and Rehabilitation Account (RMRA) Seals and Overlays, City Project No. R-78 (Project), in the amount of \$1,364,258.00 to Emmett's Excavation Inc.
2. Adopt a Resolution Approving Funding Amendment Appropriating \$250,000.00 to the City of Madera Fiscal Year (FY) 2021/22 Capital Projects Budget for the Construction of the 2020-21 SB-1 (RMRA) Seals and Overlays, City Project No. R-78

### **SUMMARY:**

On August 5, 2021, the City received three bids for the Project. Emmett's Excavation Inc. submitted the lowest responsive and responsible bid that meets the contract requirements. Funds for the Project were programmed in the Capital Improvement Projects (CIP) Budget FY 2020/21 and will be carried forward to FY 2021/22. Therefore, it is recommended that City Council (Council) award the project to Emmett's Excavation Inc.

### **DISCUSSION:**

The Project consists of grinding asphalt concrete, removal of severely deteriorated sections of asphalt pavement, installation of pavement reinforcing fabric, paving with new asphalt concrete overlay, application of cape seals, Type II and III micro surfacing, chip seals, reclamation, crackfilling, installation of ADA ramps, adjustment of existing manholes/utility covers to final grade, and replacing traffic striping/markings. The project includes a total of 17 different locations as shown on the location map provided in attachment 3.

The “Advertisement for Bids” for the project was duly noticed in the Madera Tribune Newspaper on July 7 and July 14, 2021. The bid documents (plans and specifications) were distributed to Builders Exchanges in Fresno, Modesto, and Visalia. The bid documents were also made available to the Kern-Minority Contractors Association in Bakersfield, and posted on EBidBoard.com, an online listing service for contractors accessible from the City’s website as well as to other contractors that regularly access EBidBoard’s website directly.

On August 5, 2021, the City received three responses. All bids were checked for accuracy against bidding requirements of the bid documents and for validity of licenses and bid security. The bids received are listed in Table 1.

<b>Table 1: Bid Overview</b>	
Bidder	Base Bid
1. Emmett’s Excavation Inc.	\$1,364,258.00
2. Witbro Inc. DBA Seal Rite Paving & Grading	\$1,477,618.00
3. Avison Construction Inc.	\$1,499,999.00
<i>City Engineer’s Opinion of Cost</i>	<i>\$1,422,400.00</i>

Emmett’s Excavation Inc. submitted the lowest, responsive, and responsible bid that meets the contract requirements. It is recommended that the Council award the contract to Emmett’s Excavation Inc. in the amount of \$1,364,258.00 for the Project.

The project budget and funding are outlined in Table 2.

<b>Table 2: Project Budget</b>	
<i>Projected Costs</i>	
Construction Contract – pending approval	\$1,364,258.00
Contingencies (10% of Contract Amount)	\$136,400.00
Construction Engineering, Inspection and Testing	\$104,000.00
<b>Total Costs</b>	<b>\$1,604,658.00</b>
<i>Funds Programmed in FY 20/21 &amp; FY 21/22 CIP Budget</i>	
RMRA Funds	\$1,100,000.00
Additional RMRA funds (pending approval)	\$250,000.00
Measure T	\$300,000.00
<b>Total Budget</b>	<b>\$1,650,000.00</b>

Additionally, removal and installation of new asphalt concrete was added along Adell Street from D Street to Lake Street due to the accelerated rate of deterioration of the existing pavement. An asphalt concrete sidewalk path along the north side of the street was also added for pedestrian access to James Monroe Elementary School.

At the time of bidding, staff was aware that the anticipated construction cost would be higher than the available project budget. However, staff recognized that additional unappropriated RMRA funds that would otherwise be utilized for similar type projects for future years were available to fully fund the project. Staff determined that it would be more appropriate to transfer the additional funds to the project at the award for a true representative figure of the additional funds needed to fully fund the project. As a general rule, larger projects cost less in comparison to smaller projects due to economies of scale.

**FINANCIAL IMPACT:**

There is no fiscal impact to the City's General Fund. Funds for the project are programmed in the in the FY 2021/22 Capital Projects Budget, including the carryover from FY 2020/21, as outlined above.

Exhibit A to the resolution appropriates \$250,000.00 for the cost of construction of the Project from the unprogrammed funds in the RMRA account number 4130-3210.

**CONSISTENCY WITH THE VISION MADERA 2025 PLAN:**

*Strategy 121:* Develop a city-wide multi-modal transportation plan to ensure safe, affordable and convenient transportation modes for residents and businesses within Madera.

**ALTERNATIVES:**

The alternative to awarding the project is to reject all bids. Rebidding the project could result in higher bids.

**ATTACHMENTS:**

1. Contract Award Resolution  
    Exhibit 1: Contract Agreement
2. Budget Amendment Resolution  
    Exhibit A: Budget Amendment Sheet
3. Location Map

**ATTACHMENT 1**

Resolution

**RESOLUTION NO. 21-\_\_\_\_\_**

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MADERA, CALIFORNIA  
APPROVING THE CONTRACT AWARD FOR 2020-21 SB-1 (RMRA) SEALS AND  
OVERLAYS PROJECT, CITY PROJECT NO. R-78 IN THE AMOUNT OF \$1,364,258.00  
TO EMMETT’S EXCAVATION INC AND AUTHORIZING CONSTRUCTION  
CONTINGENCIES RELATING TO THE CONTRACT**

**WHEREAS**, on July 7 and July 14, 2021 the City of Madera (City) Engineering Department advertised a solicitation for bids for Construction of for 2020-21 SB-1 Road Maintenance and Rehabilitation Account (RMRA) Seals and Overlays Project, City Project No. R-78, hereinafter referred to as “the Project”; and

**WHEREAS**, three sealed bids were received on August 5, 2021, and opened by the City Engineer; and

**WHEREAS**, funding for the Project is programmed in the Capital Improvement Projects Budget for Fiscal Year (FY) 2021/22 including carryover from FY 2020/21.

**NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF MADERA HEREBY** finds, orders and resolves as follows:

1. The above recitals are true and correct.
2. The City Council (Council) has reviewed and considered all of the information presented including the report to the Council from the Engineering Department.
3. The City finds that Emmett’s Excavation Inc. is the lowest responsible and responsive bidder.
4. The contract for the Project in the Amount of \$1,364,258.00 to Emmetts Excavation Inc. a copy of which is attached hereto as Exhibit 1 and referred to for particulars, is approved.
5. Council authorizes Construction Contingencies of up to 10 percent as approved by the City Engineer.
6. This Resolution is effective immediately upon adoption.

\*\*\*\*\*

**EXHIBIT 1**

Contract Agreement

## AGREEMENT

**THIS AGREEMENT**, made this 18th day of August, 2021, between the City of Madera, hereinafter called "**OWNER**", and Emmett's Excavation, INC., doing business as (an individual), or (a partnership), or (a corporation), hereinafter called "**CONTRACTOR**".

**WITNESSETH:** That for and in consideration of the payments and agreements hereinafter mentioned:

1. The **CONTRACTOR** shall commence and complete all **WORK** required for the "2020-21 SB-1 (RMRA) SEALS AND OVERLAYS, CITY PROJECT NO. R-78"
2. The **CONTRACTOR** shall furnish all of the material, supplies, tools, equipment, labor and other services necessary for the construction and completion of the **WORK** described herein.
3. The **CONTRACTOR** shall commence the **WORK** required by the **CONTRACT DOCUMENTS** within 10 calendar days after the date of the **NOTICE TO PROCEED** and will complete the same within the time period set forth in the **CONTRACT DOCUMENTS**. The **CONTRACTOR** shall submit a Payment Bond and Performance Bond in the amount of \$1,364,258.00, each and Insurance Certificates as specified in the **CONTRACT DOCUMENTS** prior to commencing any **WORK**.
4. The **CONTRACTOR** agrees to perform all of the **WORK** described in the **DOCUMENTS** for the unit and lump sum prices set forth in the Bid Schedule.
5. The term "**CONTRACT DOCUMENTS**" means and includes the following:
  - (A) Advertisement for Bids
  - (B) Information for Bidders
  - (C) Bid Proposal
  - (D) Bid Bond
  - (E) Agreement
  - (F) Payment Bond
  - (G) Performance Bond
  - (H) Insurance Requirements for Contractors
  - (I) General Conditions
  - (J) Special Conditions
  - (K) City of Madera Standard Specifications and Drawings
  - (L) State Standard Plans and Specifications
  - (M) PLANS and SPECIFICATIONS prepared or issued by CITY OF MADERA, entitled "**2020-21 SB-1 (RMRA) SEALS AND OVERLAYS, CITY PROJECT NO. R-78 dated July, 2021.**"
  - (N) Addenda No.1 date 7/30/2021
6. In the event the **CONTRACTOR** does not complete the **WORK** within the time limit specified herein or within such further time as authorized, the **CONTRACTOR** shall pay to the **OWNER** liquidated damages in the amount of **Four Thousand Dollars (\$4,000.00)** per day for each and every calendar day delay in finishing the **WORK** beyond the completion date so specified.

7. The **OWNER** will pay to the **CONTRACTOR** in the manner and at such times as set forth in the General Conditions such amounts as required by the **CONTRACT DOCUMENTS**. For any moneys earned by the **CONTRACTOR** and withheld by the **OWNER** to ensure the performance of the Contract, the **CONTRACTOR** may, at his request and expense, substitute securities equivalent to the amount withheld in the form and manner and subject to the conditions provided in Division 2, Part 5, Section 22300 of the Public Contract Code of the State of California.

8. In the event of a dispute between the **OWNER** and the **CONTRACTOR** as to an interpretation of any of the specifications or as to the quality or sufficiency of material or workmanship, the decision of the **OWNER** shall for the time being prevail and the **CONTRACTOR**, without delaying the job, shall proceed as directed by the **OWNER** without prejudice to a final determination by negotiation, arbitration by mutual consent or litigation, and should the **CONTRACTOR** be finally determined to be either wholly or partially correct, the **OWNER** shall reimburse him for any added costs he may have incurred by reason of work done or material supplied beyond the terms of the contract as a result of complying with the **OWNER'S** directions as aforesaid. In the event the **CONTRACTOR** shall neglect to prosecute the work properly or fail to perform any provisions of the **CONTRACT**, the **OWNER**, after three days written notice to the **CONTRACTOR**, may, without prejudice to any other remedy it may have, make good such deficiencies and may deduct the cost thereof from the payment then or thereafter due to the **CONTRACTOR**, subject to final settlement between the parties as in this paragraph herein above provided.

#### 8A. CLAIMS RESOLUTION PROCESS FOR DISPUTES.

It is the intent of this Contract that disputes regarding the Contract be resolved promptly and fairly between the Contractor and the Owner. However, it is recognized that some disputes will require detailed investigation and review by one or both parties before a determination and resolution can be reached. For the protection of the rights of both the Contractor and the Owner, the following provisions are provided for the resolution of disputes which cannot be resolved by the Owner and the Contractor within three business days after either party gives verbal notice of dispute or potential dispute to the other's attention and prior to the commencement of such work.

The following provisions are intended by Contractor and Owner to comply with Public Contract Code Sections 9204 and 20104 *et. seq.*

##### A. Claims:

The term "claim" refers to a separate demand by Contractor sent by registered mail or certified mail with return receipt requested, for one or more of the following:

- (1) A time extension, including, without limitation, for relief from damages or penalties for delay assessed by Owner under this Contract.
- (2) Payment by the Owner of money or damages arising from work done by, or on behalf of, the Contractor pursuant to the Contract and payment for which is not otherwise expressly provided or to which the Contractor is not otherwise entitled.
- (3) Payment of an amount that is disputed by the Owner.

*B. The Claim Must Be Timely and in Writing:*

For all claims the claim must be in writing and include the documents necessary to substantiate the claim. A notice of potential claim must be filed within five (5) business days of Contractor's completion of work that is a potential claim. Notice of an actual claim must be filed on or before the date of final payment.

*C. Receipt of Claim by Owner:*

Upon receipt of a claim pursuant to this section, the Owner will conduct a reasonable review of the claim and, within a period not to exceed 45 days from the date of receipt, will provide the Contractor with a written statement identifying what portion of the claim is disputed and what portion is undisputed. Upon receipt of a claim, Owner and Contractor may, by mutual agreement, extend the time period provided in this section.

The Contractor shall furnish reasonable documentation to support the claim. If additional information is thereafter required, it shall be requested and provided upon mutual agreement by the Owner and the Contractor. The District's written response to the claim, as further documented, shall be submitted to the claimant within 30 days after receipt of the further documentation, or within a period of time no greater than that taken by the Contractor in producing the additional information or requested documentation.

*D. City Council Approval:*

If the Owner needs approval from the City Council to provide the Contractor a written statement identifying the disputed portion and the undisputed portion of the claim, and the City Council does not meet within the 45 days or within the mutually agreed to extension of time following receipt of a claim sent by registered mail or certified mail, return receipt requested, the Owner shall have up to three days following the next duly publicly noticed regular meeting of the City Council after the 45-day period or extension expires to provide the Contractor a written statement identifying the disputed portion and the undisputed portion.

*E. Payment of Claim:*

Any payment due on an undisputed portion of the claim shall be processed and made within 60 days after the Owner issues its written statement. If the Owner fails to issue a written statement, paragraph F below shall apply.

*F. Meet and Confer:*

If the Contractor disputes the Owner's written response, or if the Owner fails to respond to a claim issued pursuant to this section within the time prescribed, the Contractor may demand in writing an informal conference to meet and confer for settlement of the issues in dispute. Upon receipt of a demand in writing sent by registered mail or certified mail, return receipt requested, the Owner shall schedule a meet and confer conference within 30 days for settlement of the dispute.

Within 10 business days following the conclusion of the meet and confer conference, if the claim or any portion of the claim remains in dispute, the Owner shall provide the Contractor

a written statement identifying the portion of the claim that remains in dispute and the portion that is undisputed. Any payment due on an undisputed portion of the claim shall be processed and made within 60 days after the Owner issues its written statement. Any disputed portion of the claim, as identified by the contractor in writing, shall be submitted to nonbinding mediation, with the Owner and the Contractor sharing the associated costs equally. The Owner and Contractor shall mutually agree to a mediator within 10 business days after the disputed portion of the claim has been identified in writing. If the parties cannot agree upon a mediator, each party shall select a mediator and those mediators shall select a qualified neutral third party to mediate with regard to the disputed portion of the claim. Each party shall bear the fees and costs charged by its respective mediator in connection with the selection of the neutral mediator. If mediation is unsuccessful, the parts of the claim remaining in dispute shall be subject to applicable procedures outside this section.

Under this Contract, mediation includes any nonbinding process, including, but not limited to, neutral evaluation or a dispute review board, in which an independent third party or board assists the parties in dispute resolution through negotiation or by issuance of an evaluation. Any mediation utilized shall conform to the timeframes in this section.

Unless otherwise agreed to by the Owner and the Contractor in writing, the mediation conducted pursuant to this section shall excuse any further obligation under Public Contract Code Section 20104.4 to mediate after litigation has been commenced.

If mediation as set forth above does not resolve the parties' dispute, the parties will proceed to arbitration of disputes under private arbitration or the Public Works Contract Arbitration Program.

*G. Filing a Government Code Written Claim Notice:*

Following the meet and confer conference, if the claim or any portion remains in dispute, the Contractor may file a claim under the Torts Claims Act as provided in Chapter 1 (commencing with Section 900) and Chapter 2 commencing with Section 910) of Part 3 of Division 3.6 of Title 1 of the Government Code Section 900.

*H. Owner's Failure to Respond to Claim:*

Failure by the Owner to respond to a claim from Contractor within the time periods described above or to otherwise meet the time requirements set forth above shall result in the claim being deemed rejected in its entirety. A claim that is denied by reason of the Owner's failure to have responded to a claim, or its failure to otherwise meet the time requirements of this section, shall not constitute an adverse finding with regard to the merits of the claim or the responsibility or qualifications of the Contractor.

*I. Interest:*

Amounts not paid in a timely manner as required by this section shall bear interest at 7 percent per annum.

*J. Subcontractor Claims:*

If a subcontractor or a lower tier subcontractor lacks legal standing to assert a claim against Owner because privity of contract does not exist, the Contractor may present to the Owner a claim on behalf of a subcontractor or lower tier subcontractor. For purposes of this

paragraph, the term "subcontractor" means any type of subcontractor within the meaning of Chapter 9 (commencing with Section 7000) of Division 3 of the Business and Professions Code who either is in direct contract with the Contractor or is a lower tier subcontractor. A subcontractor may request in writing, either on his or her own behalf or on behalf of a lower tier subcontractor, that the Contractor present a claim for work which was performed by the subcontractor or by a lower tier subcontractor on behalf of the subcontractor. The subcontractor requesting that the claim be presented to the Owner shall furnish reasonable documentation to support the claim. Within 45 days of receipt of this written request, the Contractor shall notify the subcontractor in writing as to whether the contractor presented the claim to the Owner and, if the original contractor did not present the claim, provide the subcontractor with a statement of the reasons for not having done so.

K. Filing of Action on Unresolved Claims:

The parties shall follow the procedures set forth in Public Contracts Code Section 20104.4 if an action is filed to resolve claims under the foregoing provisions. Any action shall be filed in Madera County.

9. Attention is directed to Section 1735 of the Labor Code, which reads as follows:

"No discrimination shall be made in the employment of persons upon public works because of the race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical conditions, marital status, or sex of such persons except as provided in Section 12940 of the Government Code, and every contractor for public works violating this section is subject to all the penalties imposed for by violation of this chapter".

10. In accordance with the provisions of Article 5, Chapter 1, Part 7, Division 2 (commencing with Section 1860) and Chapter 4, Part 1, Division 4 (commencing with Section 3700) of the Labor Code of the State of California, the **CONTRACTOR** is required to secure the payment of compensation to his employees and shall for that purpose obtain and keep in effect adequate Worker's Compensation Insurance.

The undersigned **CONTRACTOR** is aware of the provisions of Section 3700 of the Labor Code which requires every employer to be insured against Liability for Worker's Compensation or to undertake self-insurance in accordance with the provisions before commencing the performance of the **WORK** of this Agreement.

11. The **CONTRACTOR** shall comply with Part 7, Chapter 1, Article 2, Section 1775 of the Labor Code of the State of California. The **CONTRACTOR** shall, as a penalty to the **OWNER**, forfeit fifty dollars (\$50.00) for each calendar day, or portion thereof, for each workman paid less than the prevailing rates for such work or craft in which such workman is employed for any public work done under the Contract by him or by any **SUBCONTRACTOR** under him. The difference between such prevailing wage rates and the amount paid to each workman for each calendar day or portion thereof for which each workman was paid less than a prevailing wage rate, shall be paid to each workman by the **CONTRACTOR**.

12. The **CONTRACTOR** shall comply with Part 7, Chapter 1, Article 2, Section 1776 of the Labor Code of the State of California. The **CONTRACTOR** shall keep and require that all **SUBCONTRACTORS** keep accurate payroll records showing the name, address, social security number, work classification, straight time and overtime hours worked each day and week, and the actual per diem wages paid to each journeyman, apprentice worker or other employee employed by him in connection with public work. Such payroll records shall be

certified and shall be available for inspection at all reasonable hours at the principal office of the **CONTRACTOR** by the **OWNER**, its officers and agents and to the representatives of the Division of Labor Law Enforcement of the State Department of Industrial Relations. In the event of non-compliance with the requirements of Section 1776, the **CONTRACTOR** shall have 10 days in which to comply subsequent to receipt of written notice specifying in what respects the **CONTRACTOR** must comply. Should non-compliance still be evident after the ten (10) day period, the **CONTRACTOR** shall, as a penalty to the **OWNER** forfeit twenty-five dollars (\$25.00) for each calendar day, or portion thereof, for each worker until strict compliance is effectuated. Upon the request of the Division of Apprenticeship Standards or the Division of Labor Standards Enforcement, these penalties shall be withheld from progress payments then due.

13. Attention is directed to the provisions in Sections 1777.5 and 1777.6 of the Labor Code concerning the employment of apprentices by the **CONTRACTOR** or any **SUBCONTRACTOR** under him. It is the **CONTRACTOR'S** responsibility to ensure compliance by both itself and all **SUBCONTRACTORS**.

Section 1777.5 provides, in part, as follows:

The **CONTRACTOR** or **SUBCONTRACTOR**, if he is covered by this section, upon the issuance of the approval certificate, or if he has been previously approved in the craft or trade, shall employ the number of apprentices or the ratio of apprentices to journeyman stipulated in the apprenticeship standards. Upon proper showing by the **CONTRACTOR** that he employs apprentices in the craft or trade in the State on all of his/her contracts on an annual average of not less than one hour of apprentice work for every five hours of labor performed by a journeyman, or in the land surveyor classification, one apprentice for each five journeyman, the Division of Apprenticeship Standards may grant a certification exempting the **CONTRACTOR** from the one (1) to five (5) hourly ratio as set forth in this section. This section shall not apply to contracts of general **CONTRACTORS** or to contracts of specialty contractors not bidding for work through a general or prime **CONTRACTOR**, when the contracts of general **CONTRACTORS**, or those specialty **CONTRACTORS** involve less than thirty thousand dollars (\$30,000). Any work performed by a journeyman in excess of eight hours per day or forty (40) hours per week shall not be used to calculate the hourly ratio required by this section.

Apprenticeable craft or trade, as used in this section, shall mean a craft or trade determined as an apprenticeable occupation in accordance with rules and regulations prescribed by the Apprenticeship Council. The joint apprenticeship committee shall have the discretion to grant a certificate, which shall be subject to the approval of the Administrator of Apprenticeship, exempting a **CONTRACTOR** from the 1 to 5 ratio set forth in this section when it finds that any one of the following conditions is met:

- (a) In the event unemployment for the previous three month period in such area exceeds an average of 15 percent, or
- (b) In the event the number of apprentices in training in such area exceeds a ratio of 1 to 5, or
- (c) If there is a showing that the apprenticeable craft or trade is replacing at least one-thirtieth of its journeymen annually through apprenticeship training, either (1) on a statewide basis, or (2) on a local basis, or
- (d) If assignment of an apprentice to any work performed under a public works contract would create a condition which should jeopardize his life or the life, safety, or property of fellow employees, or the public at large or if the specific task to which the

apprentice is to be assigned is of a nature that training cannot be provided by a journeyman.

When such exemptions are granted to an organization which represents **CONTRACTORS** in a specific trade from the 1 to 5 ratio on a local or statewide basis the member **CONTRACTORS** will not be required to submit individual applications for approval to local joint apprenticeship committees, provided they are already covered by the local apprenticeship standards.

The **CONTRACTOR** is required to make contributions to funds established for the administration of apprenticeship programs if he employs registered apprentices or journeymen in apprenticeable trade on such contracts and if other **CONTRACTORS** on the public work site are making such contributions. The **CONTRACTOR**, and any **SUBCONTRACTOR** under him, shall comply with the requirements of Sections 1777.5 and 1777.6 of the Labor Code in the employment of apprentices. Information relative to number of apprentices, identifications, wages, hours of employment and standards of working conditions shall be obtained from the Division of Apprenticeship Standards. Consult the white pages of your telephone directory under California, State of, Industrial Relations, Apprenticeship Standards, for the telephone number and address of the nearest office. Willful failure by the **CONTRACTOR** to comply with the provisions of Sections 1777.5 will subject the **CONTRACTOR** to the penalties set forth in Section 1777.7 of the Labor Code.

14. Pursuant to California Labor Code Section 1813, eight hours in any one calendar day and forty (40) hours in any calendar week shall be the maximum hours any workman is required or permitted to work, except in cases of extraordinary emergency caused by fires, flood, or danger to life and property. The **CONTRACTOR** doing the work, or his duly authorized agent, shall file with **OWNER** a report, verified by his oath, setting forth the nature of the said emergency, which report shall contain the name of said worker and the hours worked by him on the said day, and the **CONTRACTOR** and each **SUBCONTRACTOR** shall also keep an accurate record showing the names and actual hours worked of all workers employed by him in connection with the work contemplated by this Agreement, which record shall be open at all reasonable hours to the inspection of the **OWNER**, or its officer or agents and to the Chief of all Division of Labor Statistics and Law Enforcement of the Department of Industrial Relations, his deputies or agents; and it is hereby further agreed that said **CONTRACTOR** shall forfeit as a penalty to the **OWNER** the sum of Twenty-Five Dollars (\$25.00) for each laborer, workman or any **SUBCONTRACTOR** under him for each calendar day during which such laborer, workman or mechanic is required or permitted to labor more than eight (8) hours in violation of this stipulation.

Overtime and shift work may be established as a regular procedure by the **CONTRACTOR** with reasonable notice and written permission of the **OWNER**. No work other than overtime and shift work established as a regular procedure shall be performed between the hours of 6:00 P.M. and 7:00 A.M. nor on Saturdays, Sundays or holidays except such work as is necessary for the proper care and protection of the work already performed or in case of an emergency.

**CONTRACTOR** agrees to pay the costs of overtime inspection except those occurring as a result of overtime and shift work established as a regular procedure. Overtime inspection shall include inspection required during holidays, Saturdays, Sundays and weekdays. Costs of overtime inspection will cover engineering, inspection, general supervision and overhead expenses which are directly chargeable to the overtime work. **CONTRACTOR** agrees that **OWNER** shall deduct such charges from payments due the **CONTRACTOR**.

15. The **CONTRACTOR** shall comply with Division 2, Chapter 4, Part 1 of the Public Contract Code relating to subletting and subcontracting, specifically included but not limited to Sections 4104, 4106, and 4110, which by this reference are incorporated into this Agreement as though fully set forth herein.

16. The **CONTRACTOR** and the **OWNER** agree that changes in this Agreement or in the work to be done under this Agreement shall become effective only when written in the form of a supplemental agreement or change order and approved and signed by the **OWNER** and the **CONTRACTOR**. It is specifically agreed that the **OWNER** shall have the right to request any alterations, deviations, reductions or additions to the contract or the plans and specifications or any of them, and the amount of the cost thereof shall be added to or deducted from the amount of the contract price aforesaid by fair and reasonable valuations thereof.

This contract shall be held to be completed when the work is finished in accordance with the original plans and specifications as amended by such changes. No such change or modification shall release or exonerate any surety upon any guaranty or bond given in connection with this contract.

17. **Contractor** shall indemnify, defend with legal counsel approved by City, and hold harmless City, its officers, officials, employees, and volunteers from and against all liability, loss, damage, expense, and cost (including without limitation reasonable legal counsel fees, expert fees and all other costs and fees of litigation) of every nature arising out of or in connection with **Contractor's** negligence, recklessness, or willful misconduct in the performance of work hereunder, or its failure to comply with any of its obligations contained in this AGREEMENT, except such loss or damage caused by the sole active negligence or willful misconduct of the City. Should conflict of interest principles preclude a single legal counsel from representing both City and **Contractor**, or should City otherwise find **Contractor's** legal counsel unacceptable, then **Contractor** shall reimburse the City its costs of defense, including without limitation, reasonable legal counsel fees, expert fees, and all other costs and fees of litigation. The **Contractor** shall promptly pay any final judgment rendered against the City (and its officers, officials, employees and volunteers) with respect to claims determined by a trier of fact to have been the result of the **Contractor's** negligent, reckless, or wrongful performance. It is expressly understood and agreed that the foregoing provisions are intended to be as broad and inclusive as is permitted by the law of the State of California and will survive termination of this Agreement.

**Contractor** obligations under this section apply regardless of whether or not such claim, charge, damage, demand, action, proceeding, loss, stop notice, cost, expense, judgment, civil fine or penalty, or liability was caused in part or contributed to by an Indemnitee. However, without affecting the rights of City under any provision of this agreement, **Contractor** shall not be required to indemnify and hold harmless City for liability attributable to the active negligence of City, provided such active negligence is determined by agreement between the parties or by the findings of a court of competent jurisdiction. In instances where City is shown to have been actively negligent and where City's active negligence accounts for only a percentage of the liability involved, the obligation of **Contractor** will be for that entire portion or percentage of liability not attributable to the active negligence of City.

**Contractor** agrees to obtain or cause to be obtained executed defense and indemnity agreements with provisions identical to those set forth in this Section from each and every Subcontractor and Subconsultant, of every Tier. In the event the **Contractor** fails to do so, **Contractor** agrees to be fully responsible to provide such defense and indemnification according to the terms of this Section.

18. Contractor must comply with the insurance requirements as described in the section "INSURANCE REQUIREMENTS FOR **CONTRACTOR**", pages 41-43 of the Contract Documents.

19. Amendments- Any changes to this Agreement requested by either City or **Emmett's Excavation Inc.** may only be effected if mutually agreed upon in writing by duly authorized representatives of the parties hereto. This Agreement shall not be modified or amended or any rights of a party to it waived except by such writing.

20. Termination.

A. This Agreement may be terminated at any time by either party upon fifteen (15) calendar days written notice. In the event the Agreement is terminated by either party, **Emmett's Excavation Inc.** shall be compensated for services performed to the date of termination based upon the compensation rates and subject to the maximum amounts payable agreed to together with such additional services performed after termination which are authorized in writing by the City representative to wind up the work performed to date of termination.

B. City may immediately suspend or terminate this Agreement in whole or in part by written notice where, if in the determination of City, there is:

1. An illegal use of funds by **Emmett's Excavation Inc.**;
2. A failure by **Emmett's Excavation Inc.** to comply with any material term of this Agreement;
3. A substantially incorrect or incomplete report submitted by **Emmett's Excavation Inc.** to City.

In no event shall any payment by City or acceptance by **Emmett's Excavation Inc.** constitute a waiver by such party of any breach of this Agreement or any default which may then exist on the part of either party. Neither shall such payment impair or prejudice any remedy available to either party with respect to such breach or default. City shall have the right to demand of **Emmett's Excavation Inc.** the repayment to City of any funds disbursed to **Emmett's Excavation Inc.** under this Agreement which, as determined by the appropriate court or arbitrator, were not expended in accordance with the terms of this Agreement.

Notice of termination shall be mailed to the City:

City of Madera  
Engineering Department  
428 E. Yosemite Avenue  
Madera, Ca 93638

To the Contractor **Emmett's Excavation Inc.**

Emmett's Excavation Inc.  
1477 Menlo Avenue  
Clovis, CA 93611

Notices. All notices and communications from the **Emmett's Excavation Inc.** shall be to City's designated Project Manager or Principal-In-Charge. Verbal communications shall be confirmed in writing. All written notices shall be provided and addressed as soon as possible, but not later than thirty (30) days after termination.

21. Compliance With Laws- City shall comply with all Federal, State and local laws, ordinances, regulations and provisions applicable in the performance of City's services.

Wherever reference is made in this Agreement to standards or codes in accordance with which work is to be performed or tested, the edition or revision of the standards or codes current on the effective date of this Agreement shall apply, unless otherwise expressly stated.

22. Attorneys' Fees/Venue- In the event that any action is brought to enforce the terms of this Agreement, the party found by the court to be in default agrees to pay reasonable attorneys' fees to the successful party in an amount to be fixed by the Court. The venue for any claim being brought for breach of this Agreement shall be in Madera County or as appropriate in the U.S. District Court for the Eastern District of California, located in the City of Madera.

23. Governing Law- The laws of the State of California shall govern the rights and obligations of the parties under the Agreement, including the interpretation of the Agreement. If any part of the Agreement is adjudged to be invalid or unenforceable, such invalidity shall not affect the full force and effect of the remainder of the Agreement.

24. City's Authority- Each individual executing or attesting to this Agreement on behalf of the City hereby covenants and represents: (i) that he or she is duly authorized to execute or attest and deliver this Agreement on behalf of such corporation in accordance with a duly adopted resolution of the corporation's articles of incorporation or charter and bylaws; (ii) that this Agreement is binding upon such corporation; and (iii) that Contractor is a duly organized and legally existing municipal corporation in good standing in the State of California.

25. Contractor's Legal Authority - Each individual executing or attesting this Agreement on behalf of **Emmett's Excavation Inc.** hereby covenants and represents: (i) that he or she is duly authorized to execute or attest and deliver this Agreement on behalf of such corporation in accordance with such corporation's articles of incorporation or charter and by-laws; (ii) that this Agreement is binding upon such corporation; and (iii) that **Emmett's Excavation Inc.** is a duly organized and legally existing corporation in good standing in the State of California.

26. Remedies for Default. Failure by a party to perform any term, condition or covenant required of the party under this Agreement shall constitute a "default" of the offending party under this Agreement. In the event that a default remains uncured for more than ten (10) days following receipt of written notice of default from the other party, a "breach" shall be deemed to have occurred. Any failure or delay by a party in asserting any of its rights and remedies as to any default shall not operate as a waiver of any default or of any rights or remedies associated with a default.

27. Independent Contractor. In performance of the work, duties, and obligations assumed by the Contractor under this Agreement, it is mutually understood and agreed that the City, including any and all of City's officers, agents and employees will, at all times, be acting and performing as an independent contractor, and shall act in an independent capacity and not as an officer, agent, servant, employee, joint venturer, partner, or associate of **City**. Furthermore, **City** shall have no right to control or supervise or direct the manner or method by which City shall perform its work and functions. The City shall comply with all applicable provisions of law and the rules and regulations, if any, of governmental authorities having jurisdiction over the subject matter hereof.

Because of its status as an independent contractor, City shall have absolutely no right to employment rights and benefits available to **City** employees. City shall be solely liable and responsible for providing to, or on behalf of, its employees all legally required employee benefits. In addition, City shall be solely responsible and hold **City** harmless from all matters relating to payment of City's employees, including compliance with Social Security, withholding and all other regulations governing such matters. It is acknowledged that during the term of this Agreement, City may be providing services to others unrelated to **City** or to this Agreement.

28. Sole Agreement- This instrument constitutes the sole and only Agreement between City and **Emmett's Excavation Inc.** in connection to the Project and correctly sets forth the obligations of the City and **Emmett's Excavation Inc.** to each other as of its date. Any Agreements or representations in connection with the Project, not expressly set forth in this instrument are null and void.

27. Assignment-Neither the **Emmett's Excavation Inc.** nor City will assign its interest in this Agreement without the written consent of the other.

28. Caltrans is required by 23 code of Federal Regulations (CFR), part 200, Section 200.9 (b)(7) to conduct reviews of sub-recipients (Local Agencies) of federal-aid to ensure compliance with Title VI of the Civil Rights Act of 1964 and the related statutes (Title VI) through the requirements under the Federal Highway Administration (FHWA), the U.S. Department of Transportation (USDOT), and the U.S. Department of Justice (USDOJ) regulations and guidance materials related to the implementation of Title VI.

The scope of the process reviews conducted by Caltrans focuses on the Local Agency's adherence to the FHWA's Title VI Program (Race, Color and National Origin) and the related statutes protecting additional classes as required under

- Federal-Aid Highway Act of 1973 (Sex)
- The Age Discrimination Act of 1975 (Age), and
- The Americans with Disabilities Act of 1990 (ADA)(Disability) and Section 504 of the Rehabilitation Act of 1973 (Disability).

29 This Agreement shall be binding upon all parties hereto and their respective heirs, executors, administrators, successors, and assigns.

**IN WITNESS WHEREOF** the parties hereto have executed, or caused to be executed by their duly authorized officials, this Agreement in THREE copies, each of which shall be deemed an original on the date first above written.

**City of Madera**  
Herein Called OWNER

By: \_\_\_\_\_  
Santos Garcia, Mayor

APPROVE AS TO FORM:

\_\_\_\_\_  
Hilda Cantú Montoy, City Attorney

ATTEST:

\_\_\_\_\_  
Alicia Gonzales, City Clerk

**Emmett's Excavation Inc.**

BY: \_\_\_\_\_  
CONTRACTOR (Signature)

BY: \_\_\_\_\_  
Name and Title

\_\_\_\_\_  
Federal Tax I.D. No.

\_\_\_\_\_  
Contractor License Number

\_\_\_\_\_  
DIR Registration Number

NOTE: This Notary Acknowledgment on the following page is required for verification of Contractor's signature.

**Acknowledgment**

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California )

County of \_\_\_\_\_ )

On \_\_\_\_\_, 2021 before me, \_\_\_\_\_  
(insert name and title of officer)

Personally appeared \_\_\_\_\_,  
who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature \_\_\_\_\_ (Seal)

**ATTACHMENT 2**

Budget Amendment Resolution

**RESOLUTION NO. 21-\_\_\_\_\_**

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MADERA, APPROVING FUNDING AMENDMENT APPROPRIATING \$250,000 TO THE CITY OF MADERA FISCAL YEAR (FY) 2021/22 CAPITAL PROJECTS BUDGET FOR THE FOR THE CONSTRUCTION OF 2020-21 SB-1 (RMRA) SEALS AND OVERLAYS, CITY PROJECT NO. R-78**

**WHEREAS**, Project comprising of the construction of 2020-21 SB-1 Road Maintenance and Rehabilitation Account (RMRA) Seals and Overlays, City Project No. R-78, hereinafter called “the Project”, is included in the proposed Fiscal Year (FY) 2021/22 including carryover from FY 2020/21 for Capital Projects; and

**WHEREAS**, Additional funds are necessary for the construction phase of the Project in the FY 21/22 Capital Projects Budget; and

**WHEREAS**, Funds are available in the unprogrammed fund balance of the RMRA account No. 4130-3210.

**NOW, THEREFORE, THE COUNCIL OF THE CITY OF MADERA** hereby resolves, finds, determines and orders as follows:

1. The above recitals are true and correct.
2. The FY 2021/22 Capital Projects Budget is hereby amended in accordance with Exhibit A, which is incorporated by reference herein.
3. The City Clerk is authorized and directed to forward a copy of the resolution to the Director of Finance who is authorized to take such action as necessary to implement the terms of this resolution.
4. This resolution is effective immediately.

\*\*\*\*\*

**EXHIBIT A**

Exhibit A: Budget Amendment Sheet

**EXHIBIT A**  
**CITY OF MADERA**  
**Resolution 21 -**

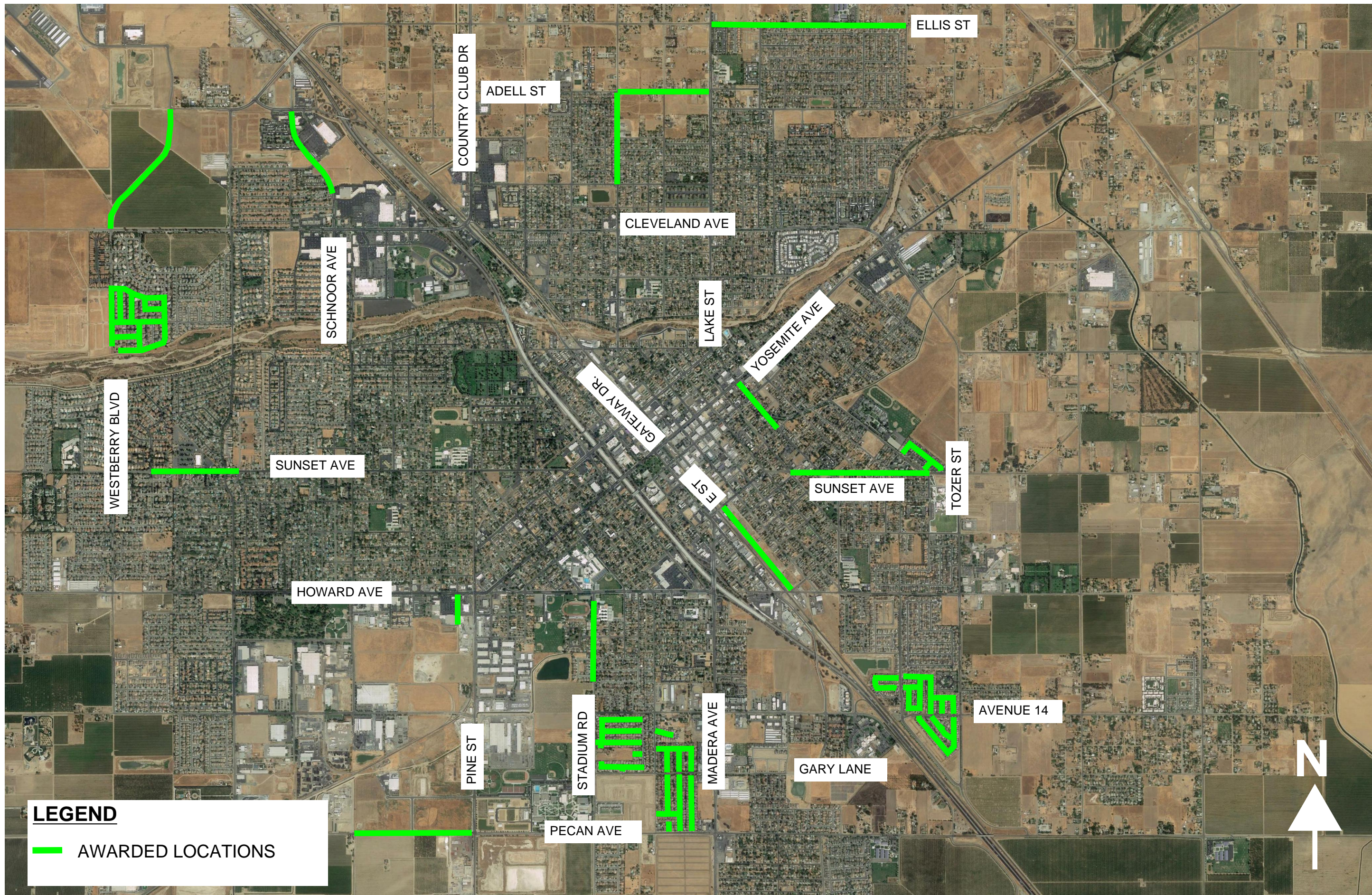
**2020-21 SB-1 (RMRA) Seals and Overlays, City Project No. R-78**

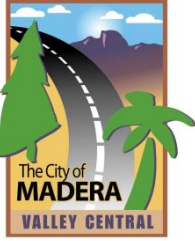
<u>ORG CODE</u>	<u>OBJECT CODE</u>	<u>PROJECT CODE</u>	<u>DESCRIPTION</u>	<b>APPROPRIATED AS PART OF CONSTRUCTION APPROVAL</b>	
				(+)	(-)
<b><u>RMRA</u></b>					
4130-3210	7050	R-000078	2020-21 SB-1 (RMRA) Seals and Overlays, City Project No. R-78	\$250,000.00	
				<u><b>\$250,000.00</b></u>	

**ATTACHMENT 3**

Location Map

# LOCATION MAP





## REPORT TO CITY COUNCIL

**Approved by:**

  
\_\_\_\_\_  
Gary Conte, Planning Manager

  
\_\_\_\_\_  
Arnaldo Rodriguez, City Manager

**Council Meeting of:** August 18, 2021

**Agenda Number:**     D-2    

**SUBJECT:**

Professional Planning and Environmental Review Services Agreement with QK, Inc.

**RECOMMENDATION:**

Adopt a Resolution approving the Professional Services Agreement between the City of Madera and QK, Inc. for City Planning and Environmental Services and Rescinding Resolution 21-56.

**SUMMARY:**

City Council approved Resolution 21-56 authorizing a Professional Services Agreement with QK, Inc. (QK) to provide planning and environmental services related to implementation of the City's adopted plans, policies and zoning regulations. However, due to discrepancies in the Agreement, the Agreement was never fully executed. Staff and QK have resolved the Agreement discrepancies and are prepared to move forward with executing a corrected Agreement. Purpose of this Resolution is to acknowledge the corrections to the discrepancies in original Agreement and to approve a new Agreement benefitting both parties. Funds are available in the Planning Department Fiscal Year 2021/22 Budget to finance the Agreement.

**DISCUSSION:**

The discrepancies in the original Agreement focused on compensation as well as personnel assignment and duties. Staff and QK have worked together to resolve these discrepancies as well as updated the scope of services to respond to present City Planning Department professional planning and environmental review service needs. The Planning Department is in need of professional planning services to assist staff in the analysis, evaluation, and preparation of recommendations pertaining to the development and use of properties in accordance with the City's applicable plans, policies, ordinances, and development standards. The City has and is likely to continue to receive an unprecedented number of land use entitlement applications impacting the Planning Department's ability to process applications in a timely matter based on its current staffing resources. The Planning Department is presently is processing 50 discretionary and ministerial entitlement applications in addition to reviewing building plot plan and construction plan reviews, and environmental reviews for other City Departments. The 50 discretionary

and ministerial applications are down from the 70 applications the Department was processing at the time the City Council approved Resolution 21-56 authorizing a Professional Services Agreement with QK, Inc. (QK).

The City has consistently focused efforts and resources to provide a high level of services to its residents and business. These efforts have resulted in notable development of new housing, expanded commercial opportunities, and job creating industrial growth. The purpose for Resolution 21-56, as is with the present Resolution approving a corrected Professional Services Agreement between the City and QK is to assist the Planning Department in providing an appropriate and desirable level of services to the community, Planning Commission and to the Council. The Agreement will be for planning, zoning and environmental review and report preparation performed as directed by the City's Planning Department. The total budget of the Agreement is not to exceed \$50,000. We note that the City did engaged in a process of soliciting for qualified consultants when originally seeking proposals for planning services.

**FINANCIAL IMPACT:**

There will be no fiscal impact to the Planning Department Fiscal Year 2021/22 Budget. The Department's Fiscal Year 2021/22 Budget anticipated entering into an Agreement with QK for Professional Services and includes a budget of \$50,000 for the Agreement based on the approval of Resolution 21-56.

**CONSISTENCY WITH THE VISION MADERA 2025 PLAN:**

The recommend Professional Services Agreement with QK is integral to the review and approval process for development project. As such, approval of the Professional Services Agreement with QK is consistent with the City's vision statements for "a well-planned city" and "good jobs and economic opportunity."

**ALTERNATIVES:**

As an alternative to staff's recommendation, the City may:

1. Authorize a lesser budget increase to the Professional Services Agreement with QK Consultants, Inc.
2. Direct staff to solicit additional proposals for professional planning services. Such action will represent a delay of approximately 3 to 4 months due to the advertisement period, review of proposals, and selecting a consultant.

**ATTACHMENTS:**

1. Resolution
2. Consultant Services Agreement Between City of Madera and QK, Inc.

**RESOLUTION NO. \_\_\_\_\_**

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MADERA APPROVING AN AGREEMENT BETWEEN THE CITY OF MADERA AND QK, INC. FOR PROFESSIONAL PLANNING AND ENVIRONMENTAL REVIEW SERVICES AND RESCINDING RESOLUTION 21-56**

**WHEREAS**, the City is in need of land use planning and environmental review services in connection with its efforts to assure compliance with applicable State regulations, City municipal codes and standards; and

**WHEREAS**, QK, Inc. has been identified as a firm having the professional competence, experience, and qualifications to provide professional planning and environmental services; and

**WHEREAS**, the City adopted Resolution No. 21-56 approving the City to enter into an agreement with QK, Inc. for the purpose of providing professional planning and environmental services; and

**WHEREAS**, the original agreement made a part of Resolution No. 21-56 included compensation, as well as personnel assignment and duty discrepancies; and

**WHEREAS**, the City and QK, Inc. have worked together to resolve the compensation, and personnel assignment and duty discrepancies, and have updated the scope of services to respond to present City Planning Department planning and environmental review service needs; and

**WHEREAS**, the City has prepared a Professional Services Agreement with QK, Inc. which is in the best interests of both parties; and

**WHEREAS**, the Professional Services Agreement with QK, Inc. includes a not-to-exceed compensation of \$50,000; and

**WHEREAS**, funds for the Professional Services Agreement is available in the Planning Department's 2021/22 Fiscal Budget for Contract Planning Services; and

**WHEREAS**, the City Council authorizes the Planning Manager to spend the Planning Department's 2021/22 Fiscal Budget for Contract Planning Services in the amount of \$50,000 for Professional Planning and Environmental Review Services performed by QK, Inc.

**NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF MADERA DOES HERBY RESOLVE, FIND AND ORDER AS FOLLOWS:**

1. The recitals listed above are true and correct.
2. The City approves the Professional Services Agreement with QK, Inc. for not-to-exceed compensation fee of \$50,000, a copy of which is attached hereto and incorporated by reference.
3. Resolution 21-56 is rescinded and null and void.
4. The Resolution is effective immediately upon adoption.

\*\*\*\*\*

## **CONSULTANT SERVICES AGREEMENT BETWEEN THE CITY OF MADERA AND QK, INC**

This Consultant Services Agreement ("Agreement") is entered into between the CITY OF MADERA, a California general law city ("City") and QK, Inc. ("Consultant"). This Agreement shall be effective on the date signed by City which shall occur after execution by Consultant ("Effective Date").

### **RECITALS**

A. City has sought, by a Request for Proposals, to select a consultant to provide professional planning and environmental review services.

B. Consultant submitted a proposal for performing the requested Services and is engaged in the business of furnishing such services as a consultant and hereby warrants and represents that it is qualified, licensed, and professionally capable of performing the Services called for in the Request for Proposals and this Agreement.

C. City has selected Consultant to perform the requested Services on the basis of Consultant's demonstrated competence and professional qualifications.

D. City desires to retain Consultant, and Consultant desires to provide City with the Services, on the terms and conditions as set forth in this Agreement.

**NOW, THEREFORE**, in consideration of the promises and mutual agreements herein, City and Consultant agree as follows:

### **AGREEMENT**

1. Scope of Services. Consultant shall perform, to the satisfaction of City in accordance with this Agreement, the Services described in the "Scope of Services" attached hereto as **Exhibit A** and incorporated by herein by this reference. Consultant shall at all times faithfully, competently and to the best of its ability, experience, and talent, perform all services described herein.

2. Commencement of Services; Term of Agreement. Consultant shall commence the Services upon City's issuance of a written "Notice to Proceed" and shall continue with the Services until Consultant, as determined by City, has satisfactorily performed and completed the Services, or until such time as the Agreement is terminated by either party in accordance with this Agreement, whichever is earlier.

(a) Continuity of Personnel. Consultant shall make every reasonable effort to maintain the stability and continuity of Consultant's staff and subcontractors assigned to perform the Services under this Agreement. Consultant shall notify City of any changes in

Consultant's staff and subcontractors assigned to perform the Services under this Agreement.

(b) Additional Services. Consultant shall not be compensated for any services rendered in connection with its performance of this Agreement which are in addition to or outside of those set forth in this Agreement or listed in **Exhibit A** unless such additional services are authorized in advance and in writing by the Planning Manager of City. Consultant shall be compensated for any such additional services in the amounts and in the manner agreed to by the City and Consultant.

3. Compensation for Services. City shall compensate Consultant for rendering the Services as follows:

(a) Subject to any limitations set forth in this Agreement, City agrees to pay Consultant by the amounts specified in the Hourly Billing Rates, Direct Expenses and Charge Rate Schedule listed in **Exhibit A**. Both parties agree that Consultant's total compensation under this Agreement shall not exceed \$50,000.

(b) Each month Consultant shall invoice City for all work performed and expenses incurred during the preceding month. The invoice shall detail charges by the following categories: labor (by subcategory), travel, materials, equipment, supplies, and sub-consultant contracts.

(c) City shall independently review each invoice submitted by the Consultant to determine whether the work performed and expenses incurred are in compliance with the provisions of this Agreement. The invoiced amount shall be paid within 30 calendar days unless City disputes any charges or expenses. If any charges or expenses are disputed, City shall pay the undisputed amount, and notify Consultant of the nature and amount of the disputed charge or expense. The parties shall seek to resolve the disputed items(s) by mutual agreement.

(d) Payment to Consultant for work performed under this Agreement shall not be deemed to waive any defects in work performed by Consultant.

4. Independent Contractor Status. Consultant and its subcontractors shall perform the Services as independent contractors and not as officers, employees, agents, or volunteers of City. Nothing contained in this Agreement shall be deemed to create any contractual relationship between City and Consultant's employees or subcontractors, nor shall anything contained in this Agreement be deemed to give any third party, including but not limited to Consultant's employees or subcontractors, any claim or right of action against City. Neither the City nor any of its employees shall have any control over the manner, mode, or means by which Consultant or its agents or employees perform the services under this Agreement.

5. Qualifications, and Professional Standards. Consultant represents and warrants that it has the qualifications, experience, and facilities necessary to properly perform the services required under this Agreement in a thorough, competent, and professional manner. In meeting its obligations under this Agreement, Consultant shall employ, at a minimum, generally accepted standards and practices utilized by persons engaged in providing services similar to those required of Consultant under this Agreement. Consultant represents that to the extent Consultant utilizes subcontractors, such subcontractors are, and will be, qualified in their fields. Consultant also expressly represents that both Consultant and its subcontractors, if any, are now, and will be throughout their performance of the Services under this Agreement, properly licensed or otherwise qualified and authorized to perform the Services required and contemplated by this Agreement. Consultant and its subcontractors, if any, shall utilize the standard of care and skill customarily exercised by members of their profession, shall use reasonable diligence and best judgment while performing the Services, and shall comply with and keep themselves informed of all applicable laws and regulations.

6. Identity of Subcontractors and Sub-Consultants. Consultant shall before commencing any work under this Agreement provide to City in writing: (a) the identity of all subcontractors and sub-consultants (collectively referred to as "subcontractors"), if any, which Consultant intends to utilize in Consultant's performance of this Agreement; and (b) a detailed description of the full scope of work to be provided by such subcontractors. Consultant shall only employ subcontractors pre-approved by City and in no event shall Consultant replace an approved subcontractor without the advance written permission of City, with the understanding that City's permission will not be unreasonably withheld. Notwithstanding any other provisions in this Agreement, Consultant shall be liable to City for the performance of Consultant's subcontractors.

7. Subcontractor Provisions. Consultant shall include in its written agreements with its subcontractors, if any, provisions which: (a) impose upon the subcontractors the obligation to provide to City the same insurance and indemnity obligations that Consultant owes to City; (b) make clear that City intends to rely upon the reports, opinions, conclusions, and other work product prepared and performed by subcontractors for Consultant; and (c) compliance with all laws and certifications as required under this Agreement.

8. Power to Act on Behalf of City. Consultant shall not have any right, power, or authority to create any obligation, express or implied, or make representations on behalf of City except as may be expressly authorized in advance in writing from time to time by City and then only to the extent of such authorization.

9. Record Keeping; Reports. Consultant shall keep complete records showing the type of Services performed. Consultant shall be responsible and shall require its subcontractors to keep similar records. City shall be given reasonable access to the records of Consultant and its subcontractors for inspection and audit purposes. Consultant shall provide City with a working draft of all reports and a copy of all final reports prepared by Consultant under this Agreement.

10. Ownership and Inspection of Documents. All data, tests, reports, documents, conclusions, opinions, recommendations, and other work product generated by or produced for Consultant or its subcontractors in connection with the Services, regardless of the medium, including physical drawings and materials recorded on computer discs (“Work Product”), shall be and remain the property of City. City shall have the right to use, copy, modify, and reuse the Work Product as it sees fit. Upon City’s request, Consultant shall make available for inspection and copying all such Work Product and all Work Product shall be turned over to City promptly at City’s request or upon termination of this Agreement, whichever occurs first. Consultant shall not release any Work Product to third parties without prior written approval of the City Manager. This obligation shall survive termination of this Agreement and shall survive for four (4) years from the date of expiration or termination of this Agreement.

11. Confidentiality. All data, reports, conclusions, opinions, recommendations, and other work product prepared and performed by and on behalf of Consultant in connection with the Services performed pursuant to this Agreement shall be kept confidential and shall be disclosed only to City, unless otherwise provided by law or expressly authorized by City. Consultant shall not disclose or permit the disclosure of any confidential information acquired during performance of the Services, except to its agents, employees, affiliates, and subcontractors who need such confidential information in order to properly perform their duties relative to this Agreement. Consultant shall also require its subcontractors to be bound to these confidentiality provisions.

12. City Name and Logo. Consultant shall not use City’s name or insignia, photographs relating to the City projects for which Consultant’s services are rendered, or any publicity pertaining to the Consultant’s services under this Agreement in any magazine, trade paper, newspaper, television or radio production or other similar medium without the prior written consent of City.

13. Conflicts of Interest. Consultant warrants that neither Consultant nor any of its employees have an interest, present or contemplated, which would conflict in any manner with the interests of the City, or which would in any way hinder Consultant’s performance of services under this Agreement. Consultant covenants that no person having any such interest, whether an employee or subcontractor shall perform the Services under this Agreement. During the performance of the Services, Consultant shall not employ or retain the services of any person who is employed by the City or a member of any City Board or Commission. City understands and acknowledges that Consultant is, as of the date of execution of this Agreement, independently involved in the performance of non-related services for other governmental agencies and private parties. Consultant is unaware of any stated position of City relative to such projects. Any future position of City on such projects shall not be considered a conflict of interest for purposes of this section. City understands and acknowledges that Consultant will, perform non-related services for other governmental agencies and private parties following the completion of the Services under this Agreement, and any such future service shall not be considered a conflict of interest for purposes of this section.

14. Non-liability of Officers and Employees. No officer or employee of City shall be personally liable to Consultant, or any successors in interest, in the event of a default or breach by City for any amount which may become due Consultant or its successor, or for any breach of any obligation under the terms of this Agreement.

15. City Right to Employ Other Consultants. This Agreement is non-exclusive with Consultant. City reserves the right to employ other consultants in connection with the Services.

16. Termination of Agreement. This Agreement shall terminate upon completion of the Services, or earlier pursuant to the following.

a. For Convenience of City. This Agreement may be terminated by City at its discretion upon thirty (30) days prior written notice to Consultant.

b. For Breach of Either Party. If for any cause either party fails to fulfill in a timely and proper manner its obligations under this Agreement (the "breaching party"), the other party (the "terminating party") shall have the right to terminate the Agreement by giving not less than five (5) working days' written notice to the breaching party of the intent to terminate and specifying the effective date thereof. The terminating party shall, however, provide the breaching party with a detailed statement of the grounds for termination. This statement shall include, as appropriate, references to specific provisions of this Agreement, dates, dollar amounts and other information relevant to the decision to terminate for cause.

c. Compensation to Consultant Upon Termination. In the event termination is not due to fault attributable to Consultant and provided all other conditions for payment have been met, Consultant shall be paid compensation for services performed prior to notice of termination. As to any phase partially performed but for which the applicable portion of Consultant's compensation has not become due, Consultant shall be paid the reasonable value of its services provided. However, in no event shall such payment when added to any other payment due under the applicable part of the work exceed the total compensation of such part as specified in Section 3 herein. In the event of termination due to Consultant's failure to perform in accordance with the terms of this Agreement through no fault of City, City may withhold an amount that would otherwise be payable as an offset to City's damages caused by such failure.

d. Effect of Termination. Upon receipt of a termination notice (or completion of this Agreement), Consultant shall: (i) promptly discontinue all Services affected (unless the notice directs otherwise); and (ii) deliver or otherwise make available to the City, without additional compensation, all data, documents, procedures, reports, estimates, summaries, and such other information and materials as may have been accumulated by the Consultant in performing this Agreement, whether completed or in process. Following the termination of this Agreement for any reason whatsoever, City shall have the right to utilize such information and other documents, or any other works of authorship fixed in any tangible medium of expression, including but not limited to physical drawings, data magnetically or otherwise recorded on computer disks, or other

writings prepared or caused to be prepared under this Agreement by Consultant. Consultant may not refuse to provide such writings or materials for any reason whatsoever.

17. Insurance. Consultant shall obtain and maintain in full force and effect during the term of this Agreement the insurance policies set forth in **Exhibit "B"** attached hereto and incorporated herein by this reference. All insurance policies shall be subject to City approval as to form and content. Consultant shall provide City with copies of required certificates of insurance upon request.

18. Indemnity and Defense. Consultant shall indemnify, defend, and hold harmless the City, its officers, employees, agents and volunteers ("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, 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.

19. Compliance with All Laws. Consultant shall be familiar with and shall comply with all City, State, and Federal laws and regulations applicable to the work to be performed under this Agreement. In providing the services required under this Agreement, Consultant shall at all times comply with all applicable laws, regulations, and resolutions of the United States, the State of California, and the City of Madera now in force and as they may be enacted, issued, or amended during the term of this Agreement.

20. Assignment. Neither this Agreement nor any duties or obligations hereunder shall be assignable by Consultant without the prior written consent of City. In the event of an assignment to which City has consented, the assignee shall agree in writing to personally assume and perform the covenants, obligations, and agreements herein contained. In addition, Consultant shall not assign the payment of any monies due Consultant from City under the terms of this Agreement to any other individual, corporation or entity. City retains the right to pay any and all monies due Consultant directly to Consultant.

21. Form and Service of Notices. All notices required or permitted to be given under this Agreement shall be in writing and shall be personally delivered, or sent by certified mail, postage prepaid and return receipt requested, addressed as follows:

To City: Gary Conte, AICP, Planning Manager  
City of Madera  
205 W. Fourth  
Madera, CA 93637  
Email: gconte@madera.gov

To Consultant: Steve Brandt, AICP  
QK, Inc.  
601 Pollasky Avenue, Suite 301  
Clovis, CA 93612  
Email: Steve.Brandt@qkinc.com

Notice shall be deemed effective on the date personally delivered or transmitted by facsimile, or if mailed, three (3) days after deposit of the same in the custody of the United States Postal Service.

22. Entire Agreement. This Agreement, including the attachments and exhibits, represents the entire Agreement between City and Consultant, and supersedes all prior negotiations, representations, or agreements, either written or oral with respect to the subject matter herein. This Agreement may be amended only by written instrument signed by both City and Consultant.

23. Successors and Assigns. This Agreement shall be binding upon and shall inure to the benefit of the parties hereto and their respective successors and assigns.

24. Authority. The signatories to this Agreement warrant and represent that they have the legal right, power, and authority to execute this Agreement and bind their respective entities.

25. Severability. In the event any term or provision of this Agreement is declared to be invalid or illegal for any reason, this Agreement will remain in full force and effect and will be interpreted as though such invalid or illegal provision were not a part of this Agreement. The remaining provisions will be construed to preserve the intent and purpose of this Agreement and the parties will negotiate in good faith to modify any invalidated provisions to preserve each party's anticipated benefits.

26. Applicable Law and Interpretation and Venue. This Agreement shall be interpreted in accordance with the laws of the State of California. The language of all parts of this Agreement shall, in all cases, be construed as a whole, according to its fair meaning, and not strictly for or against either party. This Agreement is entered into by City and Consultant in the County of Madera, California. Thus, in the event of litigation, venue shall only lie with the appropriate state or federal court in Fresno County.

27. Attorneys Fees. If either party is required to commence any proceeding or legal action to enforce or interpret any term, covenant, or condition of this Agreement, the prevailing party in such proceeding or action shall be entitled to recover from the other party its reasonable attorneys' fees and legal expenses.

28. Amendments and Waiver. This Agreement shall not be modified or amended in any way, and no provision shall be waived, except in writing signed by the parties hereto. 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. Failure of either party to enforce any provision of this Agreement shall not constitute a waiver of the right to compel enforcement of the remaining provisions of this Agreement.

29. Third Party Beneficiaries. Nothing in this Agreement shall be construed to confer any rights upon any party not a signatory to this Agreement.

30. Execution in Counterparts. This Agreement may be executed in counterparts such that the signatures may appear on separate signature pages. A copy or an original, with all signatures appended together, shall be deemed a fully executed Agreement.

31. Non-Discrimination. Consultant shall not discriminate on the basis of any protected class under federal or State law in the provision of the Services or with respect to any Consultant employees or applicants for employment. Consultant shall ensure that any subcontractors are bound to this provision. A protected class includes, but is not necessarily limited to race, color, national origin, ancestry, religion, age, sex, sexual orientation, marital status, and disability.

**[SIGNATURES ON FOLLOWING PAGE]**

**IN WITNESS WHEREOF**, the City and Consultant have executed this Agreement on the date(s) set forth below.

**QK, INC.**

**CITY OF MADERA**

By: \_\_\_\_\_  
Amber Aguayo  
Vice President, Business and Operations

By: \_\_\_\_\_  
Santos Garcia, Mayor

Date: \_\_\_\_\_

Date: \_\_\_\_\_

APPROVE AS TO FORM:

\_\_\_\_\_  
Hilda Cantú Montoy, City Attorney

ATTEST:

\_\_\_\_\_  
Alicia Gonzales, City Clerk

**EXHIBIT A**

**SCOPE OF SERVICES AND FEE SCHEDULE**



April 14, 2021

Gary Conte  
Planning Manager  
City of Madera  
205 W 4<sup>th</sup> Street  
Madera, CA 93637

**Subject: City of Madera Extension of Staff On-Call Planning Services**

Dear Mr. Conte:

QK is excited for the opportunity to support the City of Madera's Planning Department as an extension of staff. We have extensive experience helping Central Valley cities address application backlogs so that they can be responsive to the community and generate the time to invest in other capacities. We will augment your existing staff by assisting with project entitlement processing and environmental review. Timely entitlement processing, with a focus on achieving objectives as well as compliance with local, state, and federal codes are key to delivering public services. QK has extensive experience with both California Environmental Quality Act (CEQA) and National Environmental Policy Act (NEPA) compliance, including Part 58 environmental review forms, to deliver projects that are compliant with applicable environmental law.

At QK, we pride ourselves on providing excellent customer service to the community. We understand the City's overarching goal to be "business friendly", and therefore, make it our mission to be responsive as inquires and applications are submitted.

Thank you for the opportunity to partner with the City of Madera Planning Department to assist your team by providing planning and environmental services. We look forward to working with you. If you have any questions about this proposal, please contact Steve Brandt, AICP, at 733-0440 or at [steve.brandt@qkinc.com](mailto:steve.brandt@qkinc.com).

Sincerely,

Steve Brandt, AICP  
Principal-in-Charge

Amber Aguayo  
Vice President Business and Operations

Enclosure

P210342  
ap/sb/aa

# Professional Services

## Technical Capabilities

### ***On-call Planning Department Support/Extension of City Staff***

QK has provided contract planning services to a number of Central Valley cities. Serving as an extension of City staff, our services have included interacting with the public and applicants at the front counter, by telephone, and through electronic communications; evaluation and review of submittals and requests for permits/approvals; preparation of staff reports; making recommendations to staff; legislative review; and presentations to Planning Commissions and City Councils at public hearings.

Our planning staff is accustomed to policy planning consulting services for both the public and private sectors. Many of our staff have experience in public sector planning, working for cities and counties.

Our planning staff has a successful track record of leaders' and residents' support for their community's plans. QK's planners benefit our clients by understanding the interests of stakeholders and residents. Our experience includes:

- On-site and On-call Planning Department Support/Extension of City Staff
- Entitlement Review and Processing
- CEQA/NEPA Preparation and Review
- General Plan Updates
- Zoning Ordinances
- Master Planning
- Site Planning
- Specific Plans
- Community Plans
- Development Agreements
- Design Guidelines and Development Standards
- LAFCo Annexations and Municipal Service Reviews/Sphere of Influence Evaluations

### ***Planning/Environmental (CEQA and NEPA)***

QK's skilled planning professionals help our public and private sector clients balance environmental protection with the social, technical, and economic benefits of each project. Our planners have the capabilities and experience to offer the advantages of a full range of professional and technical expertise, while at the same time offering the direct and personal attention typically associated with smaller companies. This results in QK's ability to offer clients a greater level of interaction and involvement with key personnel – enabling us to meet and be aligned with client expectations.

QK's environmental planning staff are experienced with National Environmental Policy Act (NEPA) and California Environmental Quality Act (CEQA) compliance. We have prepared thousands of CEQA and NEPA environmental documents that successfully met project objectives and schedules while complying with ever changing environmental regulations.

We advocate on behalf of our clients to **help bring about the best possible outcome**. We firmly believe that our partnership **helps** produce a better quality of life. QK's team of environmental planners is well versed in the preparation of the following:

- Environmental Impact Reports (EIR)
- Initial Studies (IS)

- Negative Declarations/Mitigated Negative Declarations (ND/MND)
- Categorical Exemptions
- Environmental Impact Statements (EIS)
- Environmental Assessments (EA)/Findings of No Significant Impacts (FONSI)
- Categorical Exclusions
- Mitigation Monitoring & Reporting Plans and Programs
- Water Supply Assessments
- Technical Documents in Support of NEPA Compliance

QK's environmental planners have a track record of success in devising practical approaches to mitigating potential environmental concerns. We have also developed and maintained strong relationships with federal and State regulatory agencies and their staff to help navigate the regulatory environment.

### **Geographic Information Systems (GIS)**

A picture is worth more than a thousand words and a geographic information system (GIS) helps to visualize, analyze, interpret, integrate, and map data that has a spatial component. QK can provide data to assist Madera in many industry standard formats: geodatabases, shapefiles, map packages, layer packages, on-line websites, and display maps.

We can provide project specific mapping or city-wide mapping services. QK is an ESRI Partner and can use new or existing data to build web-based GIS services using ArcGIS Online. This service can be customized to present data either publicly or privately over the internet. Since this is a subscription service, the client has full access to the site without the need for additional software, hardware, or personnel.

**QK offers the following geospatial analysis services:**

- GIS Webmap Development for Public and/or Staff-only Access
- ArcGIS Online Website Development
- Viewshed and Line-of-Site Analysis
- Citywide Land Use Capacity Analysis

# Approach and Methodology

## Building a Healthy Foundation

QK believes that solid working relationships with our small cities are the most important factor in our ability to successfully deliver the planning services required to move the community forward. Establishing a healthy dialogue, as well as setting expectations before we begin work, are vital components in building a foundation of trust upon which the City of Madera can rely.

In order to help us build this trust from the very beginning, the Project Manager and proposed project team will meet with the Planning Manager and planning staff to discuss the City's scope and expectations. We'll also establish periodic meetings where the Planning Manager and QK's Project Manager can discuss the overall performance of the team, as well as communication protocols.

Under your direction, we will provide clear communication with City Council members and Planning Commissioners so that they view QK as an extension of City staff and can trust our technical expertise and City/QK recommendations.

## Implementation Plan

Our typical procedure for processing land development applications that require Planning Commission or City Council approval follows these steps:

1. Receive the application materials from the City;
2. Determine if the application is complete. If it is not, call/email the applicant and describe what additional information or materials are needed. Follow up with a letter to the applicant;
3. Once the application is deemed complete, determine the staff that will process the project and contact the applicant to inform them that the application is complete. Follow up with a letter;
4. Determine the type of CEQA document that will be required. Inform City staff of the determination and discuss, if needed;
5. Agree upon a timeline and planned public hearing date;
6. Assist the City staff as needed to send appropriate notices of the application to outside agencies and internal departments, in accordance with City guidelines;
7. Analyze the project and prepare a staff report and draft resolution for review by City staff;
8. Revise the staff report as needed;
9. Assist with public hearing noticing as needed;
10. Present the staff report and recommendation to the Planning Commission and/or City Council and answer any questions they have about the application or our recommendation.

We can discuss this typical procedure beforehand with City staff and adjust as needed to conform to Madera's ordinances, support needs of the City, and typical practices.

## Delivering Client and Scope Satisfaction

### ***QK's Quality Management Program***

QK's Quality Management Program (QMP) outlines the **key mandatory quality assurance and quality control procedures** required for all projects undertaken by the company. A project management plan is prepared by the Project Manager for every project. This plan includes the quality control and quality assurance process to be utilized for that project.

Key elements of our QMP process include:

- **Independent Third Party Required:** Reviews must be made by a third party who was not directly involved in the design or preparation of the reports being reviewed.
- **Qualified Reviewer:** The person responsible for the technical review must be, at a minimum, peer level or higher (experience) than the person responsible for the preparation of the original work, and other review categories must be conducted by a team member possessing skills appropriate for the area being reviewed.
- **Accountability:** The person providing the QMP review must sign off on the final deliverable before it leaves the office.
- **No Exceptions:** The QMP review process takes priority over all other project considerations.
- **Individual Quality Pledge:** A meeting is conducted with every staff member on an annual basis to review the firm's QMP manual. Each team member is required to sign a Quality Pledge, agreeing to uphold the company's QMP process and values.

## What We Need from the City of Madera

We've found, especially when first starting out as on-call or on-site contract planners for cities, that a clear understanding of the application process is key to avoiding misunderstandings. Each city has their own way of processing projects based on their interpretation of State law and their own ordinances and adopted policies. QK will meet with City staff ahead of project review to learn and understand the processes that Madera uses to bring applications forward. After we have processed a few projects, we may see areas where we can suggest modifications if we think that they will make the overall process more efficient. We prefer discussion and debate to be about the project itself, not about the process of how to approve the project. To do that, the process must be clear and acceptable to all parties.

Communication on the status of new applications is key to starting the process effectively. We would want to receive a full copy of all the application materials in a timely fashion. We can help set up a clearly understood method of transmitting those applications to us with City staff.

When we are responsible for evaluating proposals and preparing staff reports for applications, we would want to be informed of all communications between City staff and applicants, citizens, council members, etc. regarding that particular application. Conversely, if we ever receive a call directly and discuss the application with someone, we will report the conversation to City staff at the earliest possible time.

Sometimes projects have "backstories". If a project has a particular political wrinkle, we would like to be informed of this so that we can be involved in the strategy to help you have a successful public review process and also so that we don't inadvertently say or write something that results in controversy.

We would like access to all applicable maps, ordinances, design guidelines, or other adopted policies that can assist in the processing of projects.

# Team Staffing

Recognizing the importance of providing comprehensive on-site and on-call municipal planning service to the City of Madera, QK has selected a team of talented professionals to provide services to the City of Madera. A brief introduction to each team member is provided below.

## **Steve Brandt, AICP**

Principal-in-Charge

Years planning in public sector: 15 (25 overall professional)

- Certified Planner, American Institute of Certified Planners (AICP)
- BA, Marketing/Management, Fresno Pacific University

Mr. Brandt is an experienced planning professional who specializes in development entitlement processing to allow projects and proposals to move forward. Prior to joining QK, Mr. Brandt served in both current and advanced planning functions with the City of Visalia, where he took on all planning roles from front counter staff to manager and was ultimately appointed Planning Manager of the Planning Division. Previous to that he served as Tulare County LAFCo staff analyst and has a firm understanding of annexation procedures. In addition, Mr. Brandt served as Entitlements Manager at Centex Homes Central Valley Division, where his primary responsibility consisted of obtaining land use approvals and resolving entitlement issues. **Mr. Brandt is currently providing planning services to the City of Lemoore.**

## **Kira Noguera**

Lead Technical Planner

Years planning in public sector: 13

- BS, Environmental Policy Analysis and Planning, University of California, Davis

Ms. Noguera is a graduate in the field of environmental policy and planning with a strong understanding of the planning process. She has worked in a number of municipalities and specializes in entitlement processing. **Ms. Noguera is currently providing on-site and on-call planning services to the City of Selma and the City of Lindsay. She has previously worked as a planner at the Cities of Madera and Fresno, and while at QK, previously provided on-site contract planning services for the City of Rocklin and the County of Calaveras.**

## **Annalisa Perea, AICP, LEED-AP ND**

Lead Technical Planner

Years planning in public sector: 10

- Certified Planner, American Institute of Certified Planners (AICP)
- BS, City and Regional Planning, Cal Poly, San Luis Obispo, 2010
- Architecture & Urbanism Study Abroad, Universidade Federal do Rio de Janeiro, Brazil, 2008

Ms. Perea brings experience in community design and planning, where she provides a comprehensive and interdisciplinary approach to design that makes her versatile and diverse in her skills. Ms. Perea conducts environmental analysis and prepares documentation in compliance with CEQA on a variety of environmental issue areas (e.g., agricultural resources, biology, geology and soils, hazards and hazardous waste, hydrology and water quality, land use and planning, mineral resources, population and housing, public services, recreation, and utilities and service systems). **While at QK, Ms. Perea has provided on-site contract planning services for the City of Sanger and is currently the direct contact for planning services to the City of Chowchilla.**

## **Jessica Bispels**

Project Coordinator

Years planning in public sector: 3

- BA, Urban Studies: Urban Planning; Minor in Portuguese Language, University of Pittsburgh

Ms. Bispels takes an interdisciplinary approach to the many projects of QK. She has worked with a broad range of cities and understands the importance of identifying the particularities of each city to foster the best results. She has reviewed development project proposals for the City of Lemoore and made presentations to their Planning Commission. She has also assisted in the updates to Subdivision and Zoning Ordinances for the City of Chowchilla. **Ms. Bispels provides support planning services for the Cities of Chowchilla, Selma, Lemoore, and Lindsay.**

## **Jonnie Lam, AICP**

Technical Planner

Years planning in public sector: 15

- Certified Planner, American Institute of Certified Planners (AICP)
- MS, Planning and Development Studies, University of Southern California
- BA, History, University of California, Davis
- Social Studies Secondary Teaching Credential, University of California, Davis

Ms. Lan is an accomplished development and operational management professional with extensive experience in commercial, industrial and residential site and capital planning, and development and operational support projects., including seven years planning with the City of Modesto. She maintains experience in development due diligence, occupancy planning, and space management. Notable projects for Ms. Lan include management of the City of Fremont's Housing Element Implementation Commercial and Industrial Rezoning Program; representation of City of Modesto, City of Fremont, and City of Hollister in development negotiations; drafting and updating of City of Hollister's General Plan and Zoning Ordinance; and creation of the City of Hollister's code enforcement program.

## **Jaymie Brauer**

Lead Environmental Planner

Years planning in public sector: 7

- MA, Anthropology (Zoology minor), University of Texas, Austin
- BA, Anthropology (English/Biology minors), Purdue University (with Honors)

Ms. Brauer leads the environmental practice for QK and has more than 14 years of experience with CEQA/NEPA compliance, as well as managing projects for public agencies and private interests. Prior to joining QK, Ms. Brauer was a senior level planner with the County of Kern, where she managed numerous entitlement projects and wrote CEQA documents.

**In addition to the planners listed above, we also have 1 Senior Associate Planner, 3 Associate Planners, and 1 Assistant Planner to provide additional support to the City of Madera on a project-by-project basis depending on the needs and level of time commitment required by each project.**

# On-Call Planning & Environmental Experience

## Contract City Planning Services City of Lemoore, CA

**Reference:**

Judy Holwell, Development Services Director  
City of Lemoore  
Ph: (559) 924-6744  
Email: jholwell@lemoore.com

**Project Start Date:** June 2013  
**Project End Date:** Continuing

QK currently provides technical planning services to the City of Lemoore and serves as city planner to the Planning Commission and City Council. Planning tasks performed include City staff representation with project applicants, entitlement and site plan review, planning research, reports and updates to City Manager, and advisor to the Planning Commission at their meetings.

**Projects completed, in addition to on-site duties, for the City of Lemoore as City Planner, include:**

- Cannabis Application Processing
- Zoning Ordinance Text Amendments (major update in 2012 and yearly updates since then)
- Processing of over 40 discretionary Planning Permits with presentations at Planning Commission and City Council in past 5+ years, including CUPs, Variances, Zone Changes, General Plan Amendments, Tentative Subdivision Maps, and Site Plan Reviews
- Preparation of CEQA Documents for Planning Permit projects
- Training City staff to process most administrative, over-the-counter Planning Permits
- Staff Report development

## Contract City Planning and Environmental Services City of Chowchilla, CA

**Reference:**

Mark Hamilton, Community Development Director  
City of Chowchilla  
Ph: (559) 665-8615  
Email: MHamilton@CityofChowchilla.org

**Project Start Date:** February 2016  
**Project End Date:** Continuing

QK is currently providing technical planning services to the City and serving as city planner to the City Planning Commission and City Council. Essential ongoing duties and responsibilities include approximately 20 hours per week of front counter (pre-COVID) planning staff representation for the City's Community Development Department. Over the past year, QK has been providing on-call planning services off-site. Additional tasks include:

- On-site public assistance at the Planning Counter
- Preparation of CEQA Documents for Planning Permit projects
- Processing of CUPs, Tentative Subdivision/Parcel Maps, and Site Plan Reviews
- Zoning research
- Staff Report development

- Reports and updates to Community Development Director

QK also prepared a specific plan for Chowchilla's industrial park, and recently completed a comprehensive update to Chowchilla's Zoning Ordinance and Subdivision Ordinance.

## **Contract City Planning Services City of Selma, CA**

### **Reference:**

**Teresa Galvin, City Manager**

City of Selma

**Ph:** (559) 891-2200

**Email:** TeresaG@CityofSelma.com

**Project Start Date:** May 2019

**Project End Date:** Continuing

QK is currently providing technical planning services to the City and serving as city planner to the City Planning Commission and City Council. Essential ongoing duties and responsibilities include approximately 20 hours per week of front counter (pre-COVID) planning staff representation for the City's Community Development Department. Over the past year, QK has been providing on-call planning services off-site. Additional tasks include:

- On-site public assistance at the Planning Counter
- Preparation of CEQA Documents for Planning Permit projects
- Processing of CUPs, Tentative Subdivision Maps, and Site Plan Reviews
- Zoning research
- Staff Report development
- Reports and updates to City Manager

## **Contract City Planning and Environmental Services City of Lindsay, CA**

### **Reference:**

**Joe Tanner, City Planner**

City of Lindsay

**Ph:** (559) 562-7102

**Email:** Jtanner@lindsay.ca.us

**Project Start Date:** November 2018

**Project End Date:** Continuing

QK is currently providing technical planning services to the City and serving as city planner to the City Council. Essential ongoing duties and responsibilities include approximately 8 hours per week of front counter (pre-COVID) planning staff representation for the City's Community Development Department. Over the past year, QK has been providing on-call planning services off-site. Additional tasks include:

- Cannabis Application Processing
- On-site public assistance at the Planning Counter
- Review of CEQA documents
- Processing of CUPs, Tentative Subdivision Maps, and Site Plan Reviews
- Planning research
- Reports and updates to City Manager

## Billing Structure

We understand that cities are on tight budgets. City planning departments traditionally operate with funding from a combination of development project processing fees and support from the City's general fund. In our experience, processing fees cover 30% to 80% of a planning department's budget, depending on the local economy (which affects the number of applications received) and the City Council's decisions about adopting full cost recovery fees versus charging a lower fee to encourage more development.

If selected, we would work with the City Manager and Planning Director to set budget and hours expectations that fit Madera's needs and funding availability. The following represents the billing rates and tasks for each proposed team member.

### Hourly Billing Rates

Key Team Member	Title	Hourly Billing Rate
Steve Brandt, AICP	Principal Planner	\$170
Kira Noguera	Senior Planner	\$155
Annalisa Perea, AICP, LEED AP-ND	Senior Planner	\$155
Jaymie Brauer	Principal Planner	\$170
Jonnie Lam, AICP	Senior Planner	\$155
Mike Ratajski	Senior Planner	\$155
Jessica Bispels	Associate Planner	\$105
Trevor Stearns	Associate Planner	\$105
Sam Rashe	Associate Planner	\$105
Amber Williams	Assistant Planner	\$90

### Direct Expenses

QK has been providing planning services to Central Valley Cities for over 48 years. As a result, we are aware of the associated costs. We charge for mileage when we are attending a meeting or hearing. We also will charge for postage if we are the ones to send out notices of meetings or hearings.

Expense	Cost
Round trip transportation to Madera from our Clovis office	62 miles * 0.56 = \$34.72
Round trip transportation to Madera from our Merced office	68 miles * 0.56 = \$38.08
Current IRS reimbursement mileage rate is \$0.56	

### Indirect Expenses

Indirect expenses are built into our billing rates.

### Charge Rate Schedule

A copy of our Charge Rate Schedule is included on the following page.



## 2021 CHARGE RATE SCHEDULE

Current

TECHNICAL SERVICES	
Project Assistant	\$69 / hour
Project Administrator	\$92 / hour
Assistant CADD Technician/Designer /GIS Technician	\$87 / hour
Associate CADD Technician/Designer /GIS Analyst	\$102 / hour
Senior Associate CADD Technician/Designer / GIS Analyst	\$118 / hour
Senior CADD Technician/Designer /GIS Analyst	\$133 / hour
Landscape Architect Technician	\$102 / hour

### PROFESSIONAL SERVICES

Engineering	
Assistant Engineer	\$115 / hour
Associate Engineer	\$145 / hour
Senior Associate Engineer	\$170 / hour
Senior Engineer / City Engineer / District Engineer	\$199 / hour
Principal Engineer	\$250 / hour

### Planning / Environmental / Landscape Architecture

Assistant Environmental Scientist	\$80 / hour
Assistant Planner	\$90 / hour
Associate Planner/Environmental Scientist	\$105 / hour
Senior Associate Environmental Scientist	\$130 / hour
Senior Associate Planner	\$130 / hour
Senior Environmental Scientist	\$155 / hour
Senior Planner/ Landscape Architect	\$155 / hour
Principal Planner/Environmental Scientist	\$170 / hour
Senior Principal Planner/Environmental Scientist	\$195 / hour

### Construction and Project Management

Field Construction Observer	\$118 / hour
Senior Field Construction Observer	\$138 / hour
Assistant Construction/Project Manager	\$110 / hour
Associate Construction/Project Manager	\$129 / hour
Project Manager	\$133 / hour
Senior Associate Construction/Project Manager	\$148 / hour
Senior Construction/Project Manager	\$170 / hour
Principal Construction/Project Manager	\$185 / hour

### Surveying

Assistant Surveyor	\$102 / hour
Associate Surveyor	\$116 / hour
Senior Associate Surveyor	\$145 / hour
Senior Surveyor	\$170 / hour
One-Person Survey Crew	\$140 / hour
Two-Person Survey Crew	\$225 / hour
Three-Person Survey Crew	\$275 / hour
UAV Pilot	\$156 / hour
UAV Flight Observer	\$116 / hour

Fees are based on the median hourly pay rate for employees in each classification, plus indirect costs, overhead, and profit.

### EXPENSES

Plotting, Printing and Reproduction, Equipment Rental, Postage and Shipping	1.15 x Cost
Transportation and per diem (QK will provide documented evidence of business travel, travel outside of work areas shall be pre-approved by Client)	1.15 x Cost
Mileage	\$0.67 / mile
Other Expenses – Including Subconsultants & Purchased Services through Subcontracts	1.15 x Cost

Rates are effective through December 31, 2021. If contract assignment extends beyond that date, a new rate schedule may be added to the contract. Expert Witness/ Litigation support will be billed as quoted.

Rates based on "Prevailing Wage" (PW) for Construction Surveying will be determined by project and County per California law.

12/23/2020

## EXHIBIT B INSURANCE

### A. Insurance Requirements

Consultant shall maintain limits no less than:

- **\$2,000,000 General Liability** (including operations, products and completed operations) per occurrence, \$4,000,000 general aggregate, for bodily injury, personal injury, and property damage, including without limitation, blanket contractual liability. Coverage shall be at least as broad as Insurance Services Office (ISO) Commercial General Liability coverage form CG 00 01. General liability policies shall be endorsed using ISO form CG 20 10 that the City and its officers, officials, employees, and agents shall be additional insureds under such policies.
- **\$2,000,000 Automobile Liability** combined single limit per accident for bodily injury or property damage at least as broad as ISO Form CA 00 01 for all activities of Consultant arising out of or in connection with Work to be performed under this Agreement, including coverage for any owned, hired, non-owned or rented vehicles. Automobile Liability policies shall be endorsed to provide that the City and its officers, officials, employees, and agents shall be additional insureds under such policies.
- **Worker's Compensation** as required by the State of California and **\$1,000,000 Employer's Liability** per accident for bodily injury or disease. Consultant shall submit to the City, along with the certificate of insurance, a Waiver of Subrogation endorsement in favor of the City, its officers, agents, employees, and volunteers.
- **\$1,000,000 Professional Liability (Errors & Omissions)** per claim and in the aggregate. Consultant shall maintain professional liability insurance that insures against professional errors and omission that may be made in performing the Services to be rendered in connection with this Agreement. Any policy inception date, continuity date, or retroactive date must be before the effective date of this Agreement, and Consultant agrees to maintain continuous coverage through a period no less than three years after completion of the services required by this Agreement. The cost of such insurance shall be included in Consultant's bid.

#### *Maintenance of Coverage*

Consultant shall procure and maintain, for the duration of the contract, insurance against claims for injuries to persons or damages to property, which may arise from or in connection with the performance of the Work hereunder by Consultant, its agents, representatives, employees, subcontractors or subconsultants as specified in this Agreement.

#### *Proof of Insurance*

Consultant shall provide to the City certificates of insurance and endorsements, as required, as evidence of the insurance coverage required herein, along with a waiver of

subrogation endorsement for workers' compensation. Insurance certificates and endorsements must be approved by the City prior to commencement of performance. Current evidence of insurance shall be kept on file with the City at all times during the term of this Agreement. Agency reserves the right to require complete, certified copies of all required insurance policies, at any time.

*Acceptable Insurers*

All insurance policies shall be issued by an insurance company currently authorized by the Insurance commissioner to transact business of insurance in the State of California, with an assigned policyholders' Rating of A- (or higher) and a Financial Size Category Class VII (or larger), in accordance with the latest edition of Best's Key Rating Guide.

*Waiver of Subrogation*

All insurance coverage maintained or procured pursuant to this agreement shall be endorsed to waive subrogation against the City, its elected or appointed officers, agents, officials, employees, and volunteers, or shall specifically allow Consultant, or others providing insurance evidence in compliance with these specifications, to waive their right of recovery prior to a loss. Consultant hereby waives its own right of recovery against the City and shall require similar written express waivers and insurance clauses from each of its subconsultants or subcontractors.

*Enforcement of Contract Provisions (non estoppel)*

Consultant acknowledges and agrees that any actual or alleged failure on the part of the Agency to inform Consultant of non-compliance with any requirement imposes no additional obligations on the City, nor does it waive any rights hereunder.

*Specifications not Limiting*

Requirements of specific coverage features or limits contained in this Section are not intended as a limitation on coverage, limits or other requirements, or a waiver of any coverage normally provided by any insurance. 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 all inclusive, or to the exclusion of other coverage, or a waiver of any type. If Consultant maintains higher limits than the minimums required above, the entity shall be entitled to coverage at the higher limits maintained by Consultant.

*Notice of Cancellation*

Consultant agrees to oblige its insurance agent or broker and insurers to provide to the City with thirty (30) calendar days' notice of cancellation (except for nonpayment for which ten (10) calendar days' notice is required) or nonrenewal of coverage for each required coverage.

*Self-insured Retentions*

Any self-insured retentions must be declared to and approved by the City. The City reserves the right to require that self-insured retentions be eliminated, lowered, or replaced by a deductible. Self-insurance will not be considered to comply with these specifications unless approved by the City's Risk Manager.

*Timely Notice of Claims*

Consultant shall give the City prompt and timely notice of claims made or suits instituted that arise out of or result from Consultant's performance under this Agreement, and that involve or may involve coverage under any of the required liability policies.

*Additional Insurance*

Consultant shall also procure and maintain, at its own cost and expense, any additional kinds of insurance, which in its own judgement may be necessary for its proper protection and prosecution of the Work.