

**AGREEMENT WITH \_\_\_\_\_ FOR PROFESSIONAL ESTIMATION  
SERVICES FOR RESIDENTIAL SINGLE-FAMILY  
REHABILITATION OR RECONSTRUCTION**

This Agreement made and entered into this \_\_\_\_ day of \_\_\_\_\_, 2019 between the City of Madera, a municipal corporation of the State of California, hereinafter called “**CITY**”, and “ \_\_\_\_\_”, located in \_\_\_\_\_, CA, hereinafter called “**CONSULTANT**”.

**WITNESSETH**

**WHEREAS**, CITY plans to rehabilitate or reconstruct a single-family home in the City of Madera, California, hereinafter called “Project”; and

**WHEREAS**, CITY needs professional estimation services to determine residential rehabilitation or reconstruction estimates including a noise study and mitigation, off-site improvements and landscaping plan; and

**WHEREAS**, CONSULTANT is qualified and certified to provide the required professional project estimates and is knowledgeable of Federal, State, and City standard policies and regulatory requirements; and

**WHEREAS**, CITY desires to hire CONSULTANT for such professional project estimation services.

**NOW THEREFORE:**

The parties hereto mutually agree as follows:

**1. SERVICES OF CONSULTANT:**

CITY hereby hires CONSULTANT to provide professional project estimates as set forth herein in connection with the Project. Said work to be performed pursuant to this agreement is more particularly described in the Scope of Work.

**2. SCOPE OF WORK:**

CONSULTANT shall provide the professional estimation services as set forth in the Request for Qualifications, \_\_\_\_\_ and EXHIBIT A – Scope of Services attached hereto and incorporated herein by reference.

CONSULTANT accepts full responsibility for the scope of services provided by sub-consultants necessary for delivery of the project. CONSULTANT shall comply with applicable

City of Madera planning and building standards and requirements as directed by the CITY and applicable State and Federal requirements.

**3. PROGRESS MEETINGS:**

CONSULTANT shall communicate and meet with CITY staff at project progress meetings at intervals specified in the Scope of Services to verify, refine and complete the project requirements and review the progress of the project. CONSULTANT shall prepare brief minutes of such meetings and submit them to CITY for review and approval.

**4. CITY'S OBLIGATIONS:**

The CITY shall provide the consultant with the following:

- A. Provide a Program Manager – Grants to work with CONSULTANT;
- B. Review all submittals timely.

**5. COMPENSATION:**

The Fixed Fee for tasks in each Phase of work listed in **EXHIBIT B** “Task and Fee Summary” attached hereto and incorporated herein by reference. The fixed total fee for the work tasks itemized in the Scope of Services is \_\_\_\_\_.

City and Consultant agree on the fixed amounts for each of the four Phases shown in **EXHIBIT B “Task and Fee Summary”**. It is understood and agreed by both parties that all expenses incidental to Consultant’s performance of services, including travel expenses, are included in the four phases shown in **EXHIBIT B**.

**6. PAYMENT:**

Payments for all undisputed portions of each invoice as provided for hereunder shall be made within 30 days of receipt and approval of CONSULTANT’S monthly invoices for the work performed specified herein. CONSULTANT’S invoices shall specify the billed hours and hourly rates for each employee classification. The sub-consultants’ work shall be included on CONSULTANT'S invoice with a copy of the sub-consultant’s invoices attached. A report on summary of costs to date for each component of the work shall accompany the invoice. This summary shall also estimate the percentage of the work completed for each component and the balance remaining in each component.

**7. EXTRA SERVICES:**

CITY agrees to pay CONSULTANT for extra services not contemplated hereunder as set forth in the Scope of Services or for such services as may be specifically requested by CITY through the CONSULTANT in writing and agreed to by CONSULTANT in writing for an agreed to fixed fee or hourly rate of compensation, as listed in Exhibit C "Hourly Rate Schedule", or for necessary expenses over that listed in the Task and Fee Summary, provided, however; the Grants Department's authority is limited to expenditures not to exceed the amount of 10% per line item.

**8. AUDITS AND INSPECTIONS ACCESS:**

CONSULTANT shall, upon reasonable notice and at any time during regular business hours, and as often as CITY may deem necessary, make available to the CITY or its authorized representative for examination, all of its books, records and data with respect to matters covered by this Agreement. CONSULTANT shall permit CITY to audit and inspect all invoices, materials, payrolls, records of personnel, conditions of employment, and other data relating to matters covered by this Agreement.

**9. LIABILITY INSURANCE:**

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

Without limiting Consultant's indemnification of City, and prior to commencement of Work, Consultant shall obtain, provide, and continuously maintain at its own expense during the term of the Agreement, and shall require any and all Subcontractors and Subconsultants of every Tier to obtain and maintain, policies of insurance of the type and amounts described below and in form satisfactory to the City.

A. Minimum Scope of Insurance

CONSULTANT shall maintain limits no less than:

- i. \$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 to provide that the City and its officers, officials, employees and agents shall be additional insureds under such policies.
- ii. \$1,000,000 **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.
- iii. **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, it's officers, agents, employees, and volunteers.
- iv. \$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.

B. 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.

C. 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.

D. 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.

E. 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.

F. 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.

G. 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.

H. 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.

I. 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.

J. 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.

K. 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.

**10. OWNERSHIP OF DOCUMENTS:**

All original papers, documents, reports, drawings and other work product of CONSULTANT are instruments of service. All reports and legal documents shall include the professional's registration number and be stamped, signed and dated. All instruments of service shall, upon payment in full to CONSULTANT, become the property of the City whether the project for which they are prepared is executed or not. CONSULTANT shall be permitted to retain copies, including

reproducible copies, of the instruments of service for information and reference. The instruments of service shall not be used by the CONSULTANT on other projects, except by agreement in writing by the City. In the event the City reuses such instruments of service, CONSULTANT shall be released and held harmless by the City from any and all liability, including legal costs and attorneys' fees, with respect to the reuse of such instruments of service.

Reuse of documents for any purpose other than as intended under this Agreement shall be at CITY's sole risk. CITY shall indemnify CONSULTANT for any damages incurred as a result of such reuse, including use of incomplete documents.

#### **11. TIME OF COMPLETION:**

- A. Based on an agreed upon Notice to Proceed date, CONSULTANT shall complete the work as shown in **EXHIBIT A, "SCOPE OF SERVICES"**.
- B. CONSULTANT shall not be held responsible for delays caused by CITY review or by reasons beyond CONSULTANT'S control. Also, CONSULTANT shall not stop his work, including work unrelated to any extra services request, unless it can be shown that the project work cannot proceed while a claim or request for extra services is being evaluated.
- C. Time is of the essence in the completion of the services covered by this Agreement. Failure of CONSULTANT to comply with the above time schedule by more than fourteen (14) calendar days, unless the delay is not attributable to CONSULTANT or is attributable to CITY, is sufficient cause to terminate this Agreement, at the option of CITY, in accordance with Section 13.
- D. CONSULTANT shall complete all services required under this Agreement and this Agreement shall expire on an agreed upon date for each individual project, unless extended by mutual agreement in writing.

#### **12. TERMINATION OF AGREEMENT:**

- 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, CONSULTANT 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 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, in the determination of CITY, there is:
- i. An illegal use of funds by CONSULTANT;
  - ii. A failure by CONSULTANT to comply with any material term of this Agreement;
  - iii. A substantially incorrect or incomplete report submitted by CONSULTANT to CITY.
  - iv. In no event shall any payment by CITY or acceptance by CONSULTANT 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. CITY shall have the right to demand of CONSULTANT the repayment to CITY of any funds disbursed to CONSULTANT under this Agreement which, as determined by the appropriate court or arbitrator, were not expended in accordance with the terms of this Agreement.

**13. APPROVAL:**

CITY will give reasonably prompt consideration to all matters submitted by CONSULTANT for approval to the end that there will be no significant delays in CONSULTANT's program of work. An approval, authorization or request to CONSULTANT given by CITY will only be binding upon CITY under the terms of this Agreement if in writing and signed on behalf of CITY by a CITY representative or designee.

**14. HOLD HARMLESS:**

**Indemnity for Professional Liability:** When the law establishes a professional standard of care for Consultant's Services, to the fullest extent permitted by law, CONSULTANT shall indemnify, protect, defend, and hold harmless Agency and any and all of its officials, employees and agents from and against any and all losses, liabilities, damages, costs, and expenses, including reimbursement of reasonable legal counsel's fees and costs to the extent caused by Consultant's negligent acts, errors or omissions. but only to the extent the Consultant (and its Subconsultants) are responsible for such damages, liabilities and costs on a comparative basis of fault between the Consultant (and its Subconsultants) and the Agency in the performance of professional services under this agreement. Consultant shall not be obligated to defend or indemnify Agency for the Agency's own negligence or for the negligence of others.



**Indemnity for Other Than Professional Liability:** Other than in the performance of professional services and to the full extent permitted by law, Consultant shall indemnify, defend, and hold harmless Agency, and any and all of its employees, officials and agents from and against any liability (including liability for claims, suits, actions, arbitration proceedings, administrative proceedings, regulatory proceedings, losses, expenses or costs of any kind, whether actual, alleged or threatened, including reimbursement of reasonable legal counsel's fees and costs, court costs, interest, defense costs, and expert witness fees), where the same arise out of, are a consequence of, or are in any way attributable to, in whole or in part, the negligent performance of this Agreement by Consultant or by any individual or Agency for which Consultant is legally liable, including, but not limited to, officers, agents, employees, or subcontractors of Consultant.

**15. DISADVANTAGED BUSINESS ENTERPRISE (DBE):**

CITY has a 13% DBE goal in place. During the period of this agreement, CITY shall maintain records of all applicable subcontracts advertised and entered into germane to this agreement, documenting the opportunity given to DBE's to participate in this agreement, actual DBE participation, and records of materials to be purchased from DBE suppliers. Such documentation shall show the name, business address, and DBE certification number of each DBE sub-consultant or vendor.

**16. RESPONSIBILITY FOR OTHERS:**

CONSULTANT shall be responsible to CITY for its services and the services of its sub consultants. CONSULTANT shall not be responsible for the acts or omissions of other parties engaged by CITY nor for their construction means, methods, techniques, sequences, or procedures, or their health and safety precautions and programs.

**17. PROFESSIONAL RESPONSIBILITY:**

CONSULTANT shall be obligated to comply with applicable standards of professional care in the performance of the Services. CONSULTANT recognizes that opinions relating to environmental, geologic, and geotechnical conditions are based on limited data and that actual conditions may vary from those encountered at the times and locations where the data are obtained, despite the use of due professional care.

**18. PARTIES BOUND BY AGREEMENT:**

This Agreement shall be binding upon CITY, CONSULTANT, and their successors in interest, legal representatives, executors, administrators and assigns with respect to all covenants as set forth herein. CONSULTANT shall not subcontract, assign, or transfer any of the work except as otherwise provided for in this agreement.

**19. COMPLETE AGREEMENT OF PARTIES:**

This Agreement, including attachments incorporated herein by reference, represents the entire Agreement and understanding between the parties. Any modifications of this Agreement shall be in writing and signed by authorized representatives of the parties. One or more waivers of any term, condition or covenant by either party shall not be construed as a waiver of any other term, condition or covenant.

**20. ASSIGNMENT WITH APPROVAL:**

It is understood that neither party shall assign, sublet, subcontract or transfer its rights or obligation under this Agreement without the prior express, written consent of the other party.

**21. INDEPENDENT CONTRACTOR:**

In performance of the work, duties and obligations assumed by CONSULTANT under this Agreement, it is mutually understood and agreed that CONSULTANT, including any and all of CONSULTANT'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 venture, partner or associate of CITY. Furthermore, CITY shall have no right to control or supervise or direct the manner or method by which CONSULTANT shall perform its work and function. However, CITY shall retain the right to administer this Agreement so as to verify that CONSULTANT is performing its obligations in accordance with the terms and conditions hereof. CONSULTANT and 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, CONSULTANT shall have absolutely no right to employment rights and benefits available to CITY employees. CONSULTANT shall be solely liable and responsible for providing to, or on behalf of, its employees all legally required benefits to employee or to others unrelated to CITY or to this Agreement.

**22. GOVERNING LAW:**

Any controversy or claim arising out of, or relating to, this Agreement which cannot be amicably settled without court action shall be litigated either in the appropriate State court for Madera County, California, or as appropriate in the U. S. District Court for the Eastern District of California, located in Fresno County. The rights and obligations of the parties and all interpretations and performance of this Agreement shall be governed in all respects by the laws of the State of California.

**23. AMENDMENTS:**

Any changes to this Agreement requested either by CITY or CONSULTANT may only be affected 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 in writing.

**24. COMPLIANCE WITH LAWS AND WAGE RATES:**

CONSULTANT shall comply with all Federal, State, and local laws, ordinances, regulations and provisions applicable in the performance of CONSULTANT's services. CONSULTANT may use professional practices and standards regarding the interpretation of these laws.

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.

**25. CONSULTANT 'S LEGAL AUTHORITY:**

Each individual executing or attesting this Agreement on behalf of CONSULTANT 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 board of directors and 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 CONSULTANT is a duly organized and legally existing corporation in good standing in the State of California.

**26. NOTICES:**

Any and all notices or other communications required or permitted by this Agreement or by law to be served on or given to either party to this Agreement by the other party shall be in

writing, and shall be deemed duly served and given when personally delivered to the party to whom it is directed or any managing employee of that party or, in lieu or personal service, when deposited in the United States mail, first class postage prepaid, addressed as follows:

**CITY OF MADERA**

Grants Department  
205 W. 4th Street  
Madera, CA 93637

**CONSULTANT**

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**27. SOLE AGREEMENT:**

This instrument constitutes the sole and only agreement between CONSULTANT and CITY respecting the Project and correctly sets the obligations of the CONSULTANT and CITY to each other as of this date. Any agreements or representations respecting the above project, not expressly set forth in this instrument are null and void.

**IN WITNESS WHEREOF**, the parties hereto have caused this Agreement to be executed as of the day and year first above written.

\* \* \* \* \*

**CITY OF MADERA**

**CONSULTING FIRM**

By: \_\_\_\_\_  
Andrew J. Medellin, Mayor

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

\_\_\_\_\_  
Taxpayer I.D. Number

**APPROVED AS TO FORM:**

**ATTEST:**

By: \_\_\_\_\_  
\_\_\_\_\_, City Attorney

By \_\_\_\_\_  
\_\_\_\_\_, City Clerk

**ATTACHMENTS**

**EXHIBIT A**

**SCOPE OF SERVICES**

**EXHIBIT B**

**TASK AND FEE SUMMARY**

**EXHIBIT C**

**HOURLY RATE SCHEDULE FOR**  
**PROFESSIONAL ESTIMATION SERVICES**