

# PUBLIC WORKS DEPARTMENT

## MEMORANDUM

Date: April 17, 2017

To: Mayor and Council Members

From: Robin Bravo, Administrative Analyst *RAB*

Re: Regular Meeting of the Madera City Council of April 19, 2017,  
Agenda Item B-11

I am respectfully submitting the attached waterTALENT, LLC, Temporary Services Agreement and Task Order for your review and consideration. These items were not included in the Agenda Packet because the terms of the Agreement and Task Order were in the process of being finalized.

### Attachments:

1. Temporary Services Agreement
2. Task Order No. #001

Cc: Sonia Alvarez, City Clerk  
Brent Richardson, City Attorney  
Wendy Silva, Director of Human Resources  
Dave Randall, Public Works Operations Director  
David Merchen, Director of Community Development  
David Tooley, City Administrator

**waterTALENT**  
**Temporary Services Agreement**

This Temporary Services Agreement (“Agreement”) is entered into on this \_\_\_\_\_ day of \_\_\_\_\_, 2017 (the “Effective Date”), by and between waterTALENT, LLC, a California limited liability company (“waterTALENT”), with offices at 10877 Wilshire Blvd, Suite 1650, Los Angeles, CA 90024 and the City of Madera, a municipality (“Client”), with offices at 1030 S. Gateway Drive, Madera, CA 93637.

**RECITALS**

WHEREAS, waterTALENT is in the business of providing specialty technical staffing services to accommodate utilities and industries with temporary and temporary-to-hire operators who are experienced in waste water treatment, water treatment, and water distribution; and

WHEREAS, Client desires to retain waterTALENT to utilize the specialty technical staffing services provided by waterTALENT and Temporary Employees, as defined below.

NOW, THEREFORE, in consideration of the parties’ mutual covenants, conditions and promises contained herein, the parties hereto agree as follows:

**1. DESCRIPTION OF SERVICES**

- 1.1. waterTALENT agrees to provide Client with specialty technical staffing services as may be assigned from time to time, in writing by the Client. Personnel provided by waterTALENT shall be referenced in this Agreement in the singular as “Temporary Employee” or in the plural as “Temporary Employees.” Each such assignment shall be made in the form of a written Task Order. Each such Task Order shall include, but not be limited to a description of the nature and scope of services to be performed by waterTALENT Temporary Employee, the services fee schedule, the location of Premises where services will be performed, the name and title of direct supervisor provided by Client responsible for supervising the waterTALENT Temporary Employee, and the expected duration of the services.
- 1.2. Personnel provided by waterTALENT shall be referenced in this Agreement in the singular as “Temporary Employee” or in the plural as “Temporary Employees.” Unless otherwise agreed, all services performed by a Temporary Employee shall be performed at Client’s business Premises, as set forth in future Task Order. Client will not change the scope of services in the Task Order without prior written approval of waterTALENT. Client will not reassign or relocate a Temporary Employee without prior approval of waterTALENT. Client agrees to assume all liability for any third party claim arising after any reassignment, change in Task Order or relocation of any Temporary Employee without waterTALENT’s prior written approval.

**2. COMPENSATION**

- 2.1. In consideration for the services to be performed by waterTALENT, Client agrees to pay waterTALENT as provided for in each Task Order. Each Task Order shall specify a Fee Schedule for the hourly rate of waterTALENT services performed by Temporary Employee, which is set forth on an exhibit to be attached to each Task Order issued to Client. The hourly rate shall be based upon, but not limited to, the nature of work to be performed, the risk level of such work, the technical skill level required of Temporary Employee, the level of responsibility

of such work, and the duration of the Task Order.

- 2.2. waterTALENT shall not be compensated for any services rendered nor reimbursed for any expenses incurred in excess of those authorized in any Task Order unless approved in advance by Client in writing.

### **3. TERM AND TERMINATION**

- 3.1. This Agreement shall commence as of the date set forth above, and shall continue in full force and effect for two (2) years following the Effective Date (the "Initial Term") unless earlier terminated as provided herein.
- 3.2. Either party may terminate this Agreement by giving thirty (30) days' notice in writing to the other party.
- 3.3. In the event that this Agreement is terminated prior to conclusion of the Initial Term, all fees, costs and reimbursements owed, due, accrued, or earned as provided in this Agreement remain owed, due, accrued, or earned and shall be paid within ten days after termination. Further, any and all provisions in the Agreement regarding Proprietary Software, Non-Solicitation, Confidentiality, Work Product and Indemnification shall continue in full force and effect through the period of the Initial Term.

### **4. PREQUALIFICATION OF TEMPORARY EMPLOYEES**

- 4.1. waterTALENT shall complete the following verifications for all Temporary Employees: I-9 verification; Confirmation of specified professional certifications; Confirmation of professional references.
- 4.2. waterTALENT may also complete any other screening as it deems necessary to determine the qualifications and suitability of the Temporary Employees. Professional reference checks for Temporary Employees shall be based solely upon application information provided by the Temporary Employees. waterTALENT shall be entitled to rely upon any and all information received from Temporary Employees and their references with respect to such Temporary Employees.
- 4.3. waterTALENT shall arrange for third party verifications which will include a criminal background check from all counties, states and federal territories where the applicant has lived in the past 7 years. These third party verifications also search all names the applicant has identified to waterTALENT as having been used in the past. waterTALENT will also request and review a driving record in the states where the applicant has indicated a license has been issued for the 7 years prior to application. Any convictions or citations found through either the criminal background check or through the driving record verification will be disclosed to Client. Client has the right to refuse assignment to Client's premises based on the provided information.
- 4.4. Each potential Temporary Employee must submit to a full 10 panel drug test with Medical Review Officer services which includes Amphetamines, Cocaine, Marijuana, Opiate, Phencyclidine PCP, Barbiturates, Benzodiazepine, Methadone, Propoxyphene, and Methaqualone. waterTALENT may revise its verification and testing procedures as it determines appropriate. Temporary Employee may only be considered for assignment of Client

if all aspects of the drug test are determined to be negative.

- 4.5. Except as specifically provided herein or mutually agreed upon between Client and waterTALENT, waterTALENT shall not provide or conduct any other background, reference or qualification checks or testing.

## **5. COMPENSATION OF TEMPORARY EMPLOYEES**

- 5.1. waterTALENT shall be responsible for the compensation of its Temporary Employees, including payment of wages, applicable federal, state and local taxes, and the payment of any required insurance (FUTA, SDI, Unemployment Insurance). waterTALENT shall be solely responsible for any insurance premium payments for Workers' Compensation, disability, or other insurance, which is imposed upon waterTALENT and required as a consequence of waterTALENT's employment of Temporary Employees under this Agreement. waterTALENT agrees to hold Client harmless from all applicable federal, state and local taxes relating to income tax withholding, unemployment taxes, FUTA, SDI, and state unemployment insurance imposed upon waterTALENT for wages paid by waterTALENT to Temporary Employees.

## **6. SUPERVISION OF TEMPORARY EMPLOYEES**

- 6.1. Client agrees to provide direct supervision and training to Temporary Employees at all such times that the Temporary Employees are at Client's business Premises. Client further agrees that Temporary Employees shall not be permitted, without express advance written approval by an officer of waterTALENT, while on Client's business Premises or providing services to Client, to (a) engage in travel or otherwise operate a motor vehicle or any motorized equipment on behalf of Client, (b) handle cash or negotiable instruments, (c) be permitted unsupervised or uncontrolled access to confidential or proprietary information, (d) be permitted unsupervised access to or control of the Client's Premises, (e) remove any property of Client from Client's business Premises, (f) consume any alcohol, or (g) consume drugs, unless advance written authorization is provided by a physician, while the Temporary Employees are on assignment to Client.
- 6.2. In the event Client allows Temporary Employees to participate in any of the activities specified in subparts (a)-(g), above, waterTALENT shall incur no liability as a consequence of the conduct of the Temporary Employee and Client shall defend, indemnify and hold waterTALENT harmless from and against any claim arising out of any such activity.
- 6.3. In the event written approval is granted by waterTALENT for item (a) the operation of a Client motor vehicle or motorized equipment in support of the execution of the scope of services, Client shall provide copies of current motor vehicle or motorized equipment maintenance logs, registration, and proof of insurance for any motor vehicle or motorized equipment that Temporary Employee is charged with operating in the execution of the scope of the services. Client shall provide written authority to Temporary Employee certifying that Temporary Employee is authorized by Client to operate any motor vehicle or motorized equipment for the duration of the assignment.
- 6.4. Client shall not pay Temporary Employees other than through its payments to waterTALENT under this Agreement, or advance any funds to them.

## **7. WORK ENVIRONMENT FOR TEMPORARY EMPLOYEES; EQUAL OPPORTUNITY**

7.1. Client agrees to comply with all applicable laws and ordinances relating to work site health and safety, and agrees to provide Temporary Employees a safe and healthful workplace, notices and training required by the Hazardous Communications Standard established by the Occupational Safety and Health Administration (“OSHA”), California Fair Employment and Housing Act, Title VII, and any other law applicable to employees. Client agrees that it shall have in place at all times during the term of this Agreement an ongoing safety program in compliance with all applicable state and federal laws. Client agrees to indemnify, defend and hold harmless waterTALENT for claims, damages or penalties arising out of violations of the Occupational Safety and Health Act of 1970, or any similar state law and any and all regulations, rules or orders adopted thereunder with respect to workplaces owned, leased or supervised by Client, and/or to which waterTALENT employees are assigned. In the event of an accident, medical treatment, serious illness or injury, or death involving a waterTALENT employee assigned to Client, Client shall notify waterTALENT headquarters via telephone at 424-832-7217 immediately. For any serious injury, illness or death, of a waterTALENT employee occurring in a place of employment or in connection with a Temporary Employee, Client shall report immediately, by telephone or fax, to the nearest OSHA office and shall make the report on behalf of both waterTALENT and Client. Client shall provide to OSHA all information required by applicable law, as well as waterTALENT’s name, address, phone number and contact person, and the waterTALENT employee’s name. Client shall notify waterTALENT concurrently with or, if that is not possible, immediately after the report has been made.

## **8. TERMINATION OF TEMPORARY EMPLOYEE JOB ASSIGNMENT OR REASSIGNMENT OF TEMPORARY EMPLOYEE BY WATERTALENT**

8.1. Client acknowledges that waterTALENT has the right to terminate the assignment of any Temporary Employee, or to reassign any Temporary Employee to other positions including positions with other clients of waterTALENT. Client may notify waterTALENT at any time of Client’s request that any Temporary Employee with whom Client is not satisfied be removed from a particular assignment or from performing services at Client altogether.

## **9. REPLACEMENT POLICY**

9.1. If waterTALENT’s Temporary Employee proves unsatisfactory, waterTALENT shall attempt to identify a similarly-qualified candidate as a substitute Temporary Employee at no additional charge to Client.

## **10. WATERTALENT AS INDEPENDENT CONTRACTOR**

10.1. waterTALENT shall be considered for all purposes to be an independent contractor of Client and nothing in this Agreement shall be construed to create a partnership, employment relationship, joint venture or enterprise between waterTALENT, and Temporary Employees, and Client.

## **11. PROPRIETARY SOFTWARE**

11.1. To satisfy Client’s Temporary Employee requirements, data and invoices may be generated using waterTALENT’s proprietary or licensed software to which Client and Temporary Employees may have access. Client agrees that waterTALENT software, including its data formats and any other related information pertaining to the software and its functions, shall remain the exclusive property of waterTALENT or licensor, and shall not be duplicated, copied or disclosed, or utilized for any other purpose.

## **12. PRICING, INVOICING AND PAYMENT**

- 12.1. waterTALENT shall invoice Client weekly following the Client approval of Temporary Employee's approved hours and charges of work completed and agreed upon other direct charges. Client agrees to pay such invoices net thirty (30) days of receipt of invoice. Any invoice that is not paid in full within thirty (30) days after the invoice due date will bear default interest of the lesser of one and one-half percent (1.5%) per month or the highest amount allowed by law. Client shall pay any such default charges and any costs incurred by waterTALENT in collecting its fees and costs.
- 12.2. Rates and fees under this Agreement may be increased upon written notice to include any increase or addition of any government imposed taxes, fees or costs, including costs incurred in complying with applicable laws, rules and regulations, imposed after the Effective Date.
- 12.3. In addition to the payment provisions set forth in the applicable Task Order, waterTALENT shall be entitled to reimbursement from Client for Other Direct Costs (ODCs) which may include meal per diems, hotel, automobile rental, gas, and air fare by Temporary Employees whose residence is more than forty (40) miles from Client Business Premises. Any such fees will be disclosed to Client in advance and included in any prepared Task Order.
- 12.4. Client's payment method (Check box). If Payment Cards is selected, Client will be responsible for the transaction fee associated with the transaction for a fee of no greater than three percent (3%) of the invoiced amount:

- Check
- ACH Wires
- Payment Cards

## **13. COMPLIANCE WITH LAW**

- 13.1. Client agrees to comply with all applicable local, state and federal laws, rules, regulations and orders. Without limiting the foregoing, Client will comply with all applicable laws, federal and state, pertaining to labor and employment, including but not limited to Title VII of the 1964 Civil Rights Act, the Americans with Disabilities Act, the Age Discrimination in Employment Act, the Fair Labor Standards Act, the Immigration Reform and Control Act, the California Fair Employment and Housing Act, the California Labor Code and California Industrial Welfare Orders, and all laws governing acts of sexual harassment or discrimination in the workplace. waterTALENT shall incur no liability with regard to any alleged violation of laws by Client.

## **14. UNAUTHORIZED CONVERSION OF TEMPORARY EMPLOYEE BY CLIENT; NON-SOLICITATION**

- 14.1. Client understands that Temporary Employees are assigned to Client to render temporary services, and absent agreement to the contrary, are not assigned to become employees of Client. Client acknowledges that considerable expense is incurred by waterTALENT to advertise, recruit, evaluate, train, screen, and provide appropriate quality controls relative to Temporary Employees.
- 14.2. Accordingly, Client will not, without the prior written consent of waterTALENT, which may

be granted or withheld in waterTALENT's sole discretion, solicit a Temporary Employee for employment other than through waterTALENT, interfere with the employment relationship between waterTALENT and Temporary Employees, or directly or indirectly cause a Temporary Employee to transfer to another temporary staffing service.

14.3. waterTALENT acknowledges that Client uses an open, public competitive recruitment process and there are currently active recruitments for Client's vacant positions which require certifications similar to certifications that may be held by Temporary Employees. Client agrees not to solicit employment applications from Temporary Employees, however Client will not be held liable for any costs, fees or expenditures should Temporary Employees apply for consideration of Client's vacant positions of their own accord.

## 15. INSURANCE

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

15.2. Minimum Scope and Limits of Insurance: waterTALENT shall maintain limits no less than:

15.2.1. **\$5,000,000 General Liability** (including operations, products and completed operations) per occurrence, \$5,000,000 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 forms CG 20 10 to provide that the Client and its officers, officials, employees and agents shall be additional insureds under such policies.

15.2.2. **\$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 WaterTALENT 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 Client and its officers, officials, employees and agents shall be additional insureds under such policies.

15.2.3. **Worker's Compensation** as required by the State of California and **\$1,000,000 Employer's Liability** per accident for bodily injury or disease. WaterTALENT shall submit to the Client, along with the certificate of insurance, a Waiver of Subrogation endorsement in favor of the Client, its officers, agents, employees, and volunteers.

15.3. Maintenance of Coverage: waterTALENT 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 waterTALENT, his agents, representatives, employees, subconsultants as specified in this Agreement.

15.4. Proof of Insurance: waterTALENT shall provide to the Client 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 Client prior to commencement of performance. Current evidence of insurance shall be kept on file with the Client 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.

- 15.5. **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.
- 15.6. **Waiver of Subrogation:** All insurance coverage maintained or procured pursuant to this agreement shall be endorsed to waive subrogation against the Client, its elected or appointed officers, agents, officials, employees, and volunteers, or shall specifically allow waterTALENT, or others providing insurance evidence in compliance with these specifications, to waive their right of recovery prior to a loss. waterTALENT hereby waives its own right of recovery against the Client and shall require similar written express waivers and insurance clauses from each of its subconsultants or waterTALENTs.
- 15.7. **Enforcement of Contract Provisions (non estoppel):** waterTALENT acknowledges and agrees that any actual or alleged failure on the part of the Agency to inform waterTALENT of non-compliance with any requirement imposes no additional obligations on the Client, nor does it waive any rights hereunder.
- 15.8. **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 waterTALENT maintains higher limits than the minimums required above, the entity shall be entitled to coverage at the higher limits maintained by waterTALENT.
- 15.9. **Notice of Cancellation:** waterTALENT agrees to oblige its insurance agent or broker and insurers to provide to the Client 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.
- 15.10. **Self-insured Retentions:** Any self-insured retentions must be declared to and approved by the Client. The Client 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 Client's Risk Manager.
- 15.11. **Timely Notice of Claims:** waterTALENT shall give the Client prompt and timely notice of claims made or suits instituted that arise out of or result from waterTALENT's performance under this Agreement, and that involve or may involve coverage under any of the required liability policies.
- 15.12. **Additional Insurance:** waterTALENT 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.



## **16. CONFIDENTIALITY**

16.1. During the performance of this Agreement, it may be necessary for the parties to provide confidential or proprietary information to one another. The parties agree that such information will be held in strict confidence by the receiving party and will not be disclosed by the receiving party to any third party, or used by the receiving party for its own purposes, except to the extent that such disclosure or use is necessary in the performance by the receiving party of its obligations under this Agreement. No information shall be subject to protection of this section if such information is:

16.1.1. or becomes publicly available;

16.1.2. proven to be already known to or rightfully in the possession of a party or its personnel at the time of disclosure;

16.1.3. or becomes known or developed by the receiving party independently of the confidential and/or proprietary information of the other party; or

16.1.4. released in response to a subpoena, court order the California Public Records Act or other legal process.

16.2. Neither party shall be liable, however, for inadvertent or accidental disclosure of such information if such disclosure occurs despite the exercise of the same degree of care as such party normally takes to preserve and safeguard its own proprietary information. The receiving party upon the request of the disclosing party will return all writings or documents that contain information subject to the protections of this subsection.

## **17. WORK PRODUCT**

17.1. waterTALENT agrees that all inventions, innovations or improvements, including copyright in any product, software, reports, surveys, marketing, promotional and collateral material prepared by the Temporary Employee assigned to the Client pursuant to the terms of this Agreement shall be the exclusive property of the Client. waterTALENT acknowledges and agrees that the work product shall be considered a work made for hire within the meaning of the patent and copyright laws of the United States and that Client is entitled, as author thereof, to the copyright and all rights therein, including, but not limited to the right to make such changes therein and such uses thereof, as it may determine in its sole and absolute discretion; provided, that under no circumstances shall a Temporary Employee be considered an employee of Client.

## **18. PERSONAL INFORMATION**

18.1. This Agreement is made on the basis that each party is entitled to assume that the other has complied and will continue to comply with its obligations arising from data protection and privacy laws in force from time to time to the extent applicable to this Agreement and the scope of services detailed in the Task Order. The parties acknowledge that any use or processing by waterTALENT of Personal Information, which is defined as "any information relating to an identified or identifiable individual that is subject to applicable data protection, privacy or other similar laws, including but not limited to the Health Insurance Portability and Accountability Act of 1996" shall be done solely on behalf of Client and for Client's purposes and waterTALENT shall deal with such Personal Information only in accordance with such

reasonable instructions as Client may from time to time provide or as reasonably necessary for the purpose of providing the services contemplated hereby. waterTALENT shall take such technical and organizational measures as it has determined appropriate to guard against unauthorized or unlawful processing of Personal Information and against accidental loss or destruction of, or damage to, Personal Information in accordance with applicable law.

## **19. INDEMNIFICATION**

19.1. waterTALENT shall indemnify, defend with legal counsel approved by Client, and hold harmless Client, 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 waterTALENT'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 Client. Should conflict of interest principles preclude a single legal counsel from representing both Client and waaterTALENT, or should Client otherwise find waterTALENT's legal counsel unacceptable, then waterTALENT shall reimburse the Client its costs of defense, including without limitation, reasonable legal counsel fees, expert fees, and all other costs and fees of litigation. waterTALENT shall promptly pay any final judgment rendered against the Client (and its officers, officials, employees and volunteers) with respect to claims determined by a trier of fact to have been the result of waterTALENT'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.

## **20. AUDIT RIGHTS**

20.1. Client shall have the right to audit timekeeping and billing records maintained by waterTALENT for services provided to Client, upon reasonable notice to waterTALENT. Such audit shall be performed at the corporate headquarters of waterTALENT located in Los Angeles, California.

## **21. OTHER TERMS**

21.1 This Agreement, its interpretation and all work performed under this Agreement, shall be governed by the laws of the State of California. Any arbitration concerning this Agreement, or the parties' rights or obligations pursuant hereto shall be instituted in the County of Madera, California. The parties hereby waive any rights they may have to a change of venue.

21.2 waterTALENT reserves the right to enter into one or more contracts with one or more third party providers to provide Temporary Employees at any time. Any third party providers must comply will all provisions related to insurance requirements or Temporary Employee screening processes as identified herein.

21.3 This Agreement may not be assigned by either party without the express written consent of the other party.

21.4 Neither party will be responsible for any failure or delay in performing any of its obligations under

this Agreement or any Task Order due to causes beyond its reasonable control, and such obligations will be suspended for the period during which a fire, flood, war, natural disaster, earthquake, other acts of God," riots, new laws which prevent the carrying out of the Services, or the results of terrorist activity prevent the affected party from performing its obligations under this Agreement or any Task Order. A party affected by a force majeure event shall promptly notify the other party by the quickest means available, explaining the nature and expected duration thereof, and shall act diligently to remedy the interruption or delay if it is reasonably capable of being remedied.

- 21.5 Neither this Agreement nor any Task Order is intended to confer any rights or benefit on any third party.
- 21.6 Each party represents and warrants that the individual executing this Agreement on its behalf is duly authorized to so execute this Agreement, and this Agreement, when executed and delivered by such party, shall constitute the valid and binding agreement of such party, enforceable in accordance with its terms. In the event that any provision of this Agreement shall be unenforceable or inoperative as a matter of law, the remaining provisions shall remain in full force and effect.
- 21.7 This Agreement is subject to amendment only by the written agreement of all of the parties hereto. Any amendment or modification of this Agreement shall be dated, and where any conflict arises between the provisions incorporated in earlier documents, the most recent provisions shall be controlling.
- 21.8 Multiple copies of this Agreement may be executed, each of which shall be deemed to be an original. An electronic copy of this entire Agreement, including the signature page(s), shall be deemed an original.
- 21.9 This Agreement supersedes any and all other agreements, either oral or written, between the parties hereto with respect to the subject matter hereof. It contains all of the covenants, conditions and agreements between the parties with respect to the subject matter. Each party to this Agreement acknowledges that no representations, inducements, promises or agreements, oral or otherwise, have been made by any party or anyone acting on behalf of any party, which are not embodied herein, and that no other agreement, statement, or promises not contained herein shall be valid or binding. Any oral representations or modifications concerning this Agreement shall be of no force or effect, excepting a subsequent modification in writing signed by the parties to the Agreement.
- 21.10 The captions of paragraphs of this Agreement are for reference only and are not to be construed in any way as part of this Agreement.
- 21.11 A waiver of the breach of any covenant, condition, or promise of this Agreement shall not be deemed a waiver of any succeeding breach of the same or any other covenant, condition, or promise of this Agreement. No waiver shall be deemed to have been given, unless given in writing and in compliance with the "Notices" paragraph herein below recited.
- 21.12 In the event that any party herein commences any legal or equitable action or other proceeding, including without limitation, arbitration, an action for declaratory relief or any other form of relief, or to enforce, interpret, reform, rescind, or in any other manner affect the provision of this Agreement, the prevailing party shall be entitled to reasonable attorneys' fees which may be set by the arbitrator or in a separate action brought for that purpose, in addition to any other relief to which the party may be entitled.

21.13 All representations and warranties made herein shall survive the execution of this Agreement.

21.14 All notices under this Agreement shall be in writing and shall be delivered personally, or by registered or certified mail, return receipt requested, postage prepaid, or sent by Federal Express or other recognized overnight courier service, and addressed to the party to be notified at their address set forth below. All notices and other communications required or permitted under this Agreement shall be deemed given when delivered personally, or one (1) day after being deposited with Federal Express or other recognized overnight courier service, or five (5) days after being deposited in the United States mail, postage prepaid and addressed as follows, or to such other address as each party may designate in writing:

<u>For waterTALENT:</u>	<u>For City of Madera:</u>
Name: Peter Brooks	Name: David R. Tooley
Title: Vice President	Title: City Administrator
Address: 10877 Wilshire Blvd., Suite 1650 Los Angeles, CA 90024	Address: 205 W. Fourth Street Madera, CA 93637
Email: pbrooks@watertalent.net	Email:
Phone: (424) 832-7217	Phone: (559) 661-5400
Fax: (424) 832-7018	Fax:

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date first set forth above.

**waterTALENT, LLC**

**Client**

**For waterTALENT:**


**For City of Madera:**

Peter Brooks  
\_\_\_\_\_  
Printed Name

David R. Tooley  
\_\_\_\_\_  
Printed Name

Vice President  
\_\_\_\_\_  
Title

City Administrator  
\_\_\_\_\_  
Title

  
\_\_\_\_\_  
Signature

\_\_\_\_\_  
Signature

April 14, 2017  
\_\_\_\_\_  
Date

\_\_\_\_\_  
Date



**TASK ORDER**

**TASK ORDER NO. # 001**

**JOB NAME: City of Madera - Wastewater  
Grade III Operator**

**waterTALENT INFORMATION**

NAME: waterTALENT LLC  
ADDRESS: 10877 Wilshire Blvd  
Suite 1605  
Los Angeles, CA 9024

CONTACT: Peter Brooks, Vice President  
PHONE: (424)-832-7217  
EMAIL: pbrooks@watertalent.net

THIS TASK ORDER is issued pursuant to that certain Agreement for Temporary Services by Independent On-Call Contract between City of Madera (“Client”) and waterTALENT, LLC (“waterTALENT”) dated \_\_\_\_\_, 2017.

1. Project Name or Description: Wastewater Grade III Operator
2. Premises: The Client’s business premises is located at 13048 Rd 21 1/2, Madera, CA 93637 and shall be defined as the “Premises”.
3. Reporting Supervisor Name/Role: Humberto Molina, Wastewater Treatment Plant Manager
4. Duration of Services:  
Start Date/Time: \_\_\_\_\_ at \_\_\_\_\_  
End Date: Expected to last 90 days; Temporary Employee relationship is at-will and Client may terminate assignment at any time for any reason.  
Work Schedule: \_\_\_\_\_
5. Scope of Services:

Client is retaining the support of the waterTALENT Temporary Employee to support the execution of the following duties in support of the operations of the City of Madera wastewater treatment plant:

- Performs the full range of duties related to plant operations; operates facilities, systems, equipment, pumps and valves;
- Performs a variety of equipment maintenance duties; inspects, removes, cleans, lubricates, backwashes, repairs, maintains, and reinstalls equipment related to wastewater treatment plant operations; cleans and calibrates meters and probes;
- Performs a variety of process control related duties; collects samples from various plant processes for chemical/biological analysis; operates and calibrates automatic samplers; collects water samples outside the plant as necessary; performs a variety of tests and analysis; measures settling basins sludge depths, performs mathematical calculations related to various tests and analysis; evaluates laboratory testing results and calculations and implements results in operational control;



- Investigates alarms throughout the wastewater facility; monitors, polls and responds, locates and notifies appropriate personnel for response actions;
- Monitors and maintains leak detection system;
- Ensures NPDES permits are properly maintained and available; completes, maintains and files a variety of forms, lists, records, schedules, and informational logs;
- Performs duties in response to emergencies, operates monitors and adjusts plant drainage system;

6. Break Requirement:

California law requires that within an 8 hour shift the Operator is entitled to a 30 minute break. This lunch break may be waived by mutual consent of both the Client and the Operator. If the Operator works over 10 hours in one day they are entitled to a second lunch break of 30 min. The second meal period may not be waived if the first period is waived, however either meal period can be counted as work hours and compensated for at the normal hourly rate.



**EXHIBIT A  
FEE SCHEDULE**

Table 1 below covers the all-inclusive, fully-burdened rate for the services and coverages for the Temporary Employee including:

- \$5M Minimum Unencumbered General Liability
- \$2M Commercial Auto Insurance – Non-Owner Vehicle
- \$2M Professional Liability
- \$1M Worker’s Compensation
- \$1M Employment Practice Liability
- Payroll and compliance services
- Cell Phone for Real-time Tracking and Payroll
- Travel and Meals

**Table 1 – waterTALENT Fee Schedule**

Hours	Regular Rate
waterTALENT Candidate – Wastewater Grade III Operator	\$95/hour

**Overtime:** Workweeks are defined as either “normal” (i.e. 5 days @ 8 hours per day) or “alternative” (i.e. 4 days @ 10 hours per day). Overtime hours, according to the State of California, are defined as any work in excess of eight (8) hours in one “normal” workday or in excess of ten (10) hours in one “alternative” workday and any work in excess of 40 hours in any one workweek and the first eight hours worked on the seventh day of work in any one workweek. These overtime hours shall be compensated at the rate of no less than one and one-half (1.5) times the regular rate of pay. If Operator works more than 12 hours in any workday, or works any time in excess of eight hours on the seventh consecutive day of work in a workweek, Operator must be paid two (2.0) times the regular rate.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date first set forth above.

**waterTALENT, LLC**

**Client**

**For waterTALENT:**

**For City of Madera:**

Peter Brooks  
\_\_\_\_\_  
Printed Name

David R. Tooley  
\_\_\_\_\_  
Printed Name

Vice President  
\_\_\_\_\_  
Title

City Administrator  
\_\_\_\_\_  
Title

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date

\_\_\_\_\_  
Date