

**REGULAR MEETING  
OF THE MADERA CITY COUNCIL**  
205 W. 4<sup>th</sup> Street, Madera, California 93637

**NOTICE AND AGENDA**

**Wednesday, October 17, 2018  
6:00 p.m.**

**Council Chambers  
City Hall**

**CALL TO ORDER**

**ROLL CALL:** Mayor Andrew J. Medellin  
Mayor Pro Tem Jose Rodriguez, District 2  
Council Member Cece Gallegos, District 1  
Council Member William Oliver, District 3  
Council Member Derek O. Robinson Sr., District 4  
Council Member Charles F. Rigby, District 5  
Council Member Donald E. Holley, District 6

**INVOCATION:** Pastor David Votaw, Harvest Community Church

**PLEDGE OF ALLEGIANCE:**

**PUBLIC COMMENT:**

The first fifteen 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 to identify themselves and state the subject of their comment. 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.

**PRESENTATIONS** Mid Valley Disposal 2018 First and Second Quarter Reports (Annette Kwock)

**INTRODUCTIONS** None.

**A. WORKSHOP**

There are no items for this section.

**B. CONSENT CALENDAR**

- B-1 Minutes – 10/04/17, 09/06/18
- B-2 Warrant Disbursement Report 9/25/18 – 10/08/18 (Report by Tim Przybyla)
- B-3 Water Conservation Report for 8/20/18 – 9/23/18 (Report by John Scarborough)
- B-4 Consideration of a Resolution Approving an Agreement with Live Oak Associates, Inc. for On-Call Professional Environmental Services to the City of Madera for Routine Maintenance of City-owned Bridges along the Fresno River and Authorizing the Mayor to Execute the Agreement (Report by Keith Helmuth)
- B-5 Consideration of a Resolution Approving Amendment No. 1 to the Agreement for Services for the 2018/2019 Community Development Block Grant Pomona Ranch Homeless Housing Project (Report by Ivette Iraheta)
- B-6 Consideration of a Resolution Approving the Program Supplement Agreement No. 059-F for the Purchase of One Diesel PM Certified Street Sweeper, State Project Number CMLNI 5157 (105) and Authorizing the City Engineer to Execute the Program Supplement Agreement No. 059-F on Behalf of the City (Report by Keith Helmuth)
- B-7 Consideration of a Resolution Approving an Agreement with 2ndnature Software Inc. for Software Service for Storm Water Quality Management and Authorizing the Mayor to Execute the Agreement (Report by Keith Helmuth)
- B-8 Consideration of a Resolution Approving an Agreement with Pitney Bowes for Lease of Mail Processing Equipment and Authorizing the Mayor to Execute the Agreement and Related Documents (Report by Rosa Hernandez)
- B-9 Consideration of a Resolution Approving the Revised Contract with Krazan & Associates, Inc., for On-Demand Testing Services not to Exceed \$25,000 for the Madera Transit Center City Project No. Trans-1, and Authorizing the Mayor to Execute the Contract on Behalf of the City and Rescinding Resolution No. 18-174 (Report by Keith Helmuth)
- B-10 Consideration of a Resolution Ratifying the Adoption of Chapter 10 of the Local Assistance Procedures Manual (LAPM) (Report by Keith Helmuth)

**C. HEARINGS, PETITIONS, BIDS, RESOLUTIONS, ORDINANCES, AND AGREEMENTS**

- C-1 Consideration of a Resolution Setting a Public Hearing to Determine Whether the Public Interest and Necessity, Safety or Welfare Require the Formation of Rule 20B Underground Utility District No. 19 in Designated Real Property Located within and Adjacent to the Olive Avenue Widening Project from Gateway Drive to Knox Street (Report by Keith Helmuth)
- C-2 Public Hearing and Consideration of Introduction of an Ordinance Amending Subsection B of Section 3-5.08 of Chapter 5 of Title III of the Madera Municipal Code Relating to Speed Limits in Certain Zones (Report by Keith Helmuth)
- C-3 Consideration of a Resolution Approving a Program Development Agreement Between the City of Madera and ENGIE Services U.S. Inc. for the Preparation of an Integrated Energy Assessment and Identification of Energy Conservation Measures and Authorizing the Mayor to Execute the Agreement (Report by David Merchen)



- C-4 Consideration of a Resolution Approving the Award of Contract for Fire Station No. 58 Fire Station Construction Northwest City Project No. FD-00002 in the Amount of \$6,568,364.60 to Davis Moreno Construction, Inc., Authorizing Construction Contingencies of Up to 10% and Construction Inspection and Management of Up to 5%, and Authorizing the Mayor to Execute the Contract on Behalf of the City; and

Consideration of a Resolution Approving a Contract with Moore Twining Associates, Inc., for On-Demand Testing Services not to Exceed \$35,000 for Fire Station No. 58 Fire Station Construction Northwest City Project No. FD-00002, and Authorizing the Mayor to Execute the Contract on Behalf of the City (Report by Keith Helmuth)

- C-5 Consideration of a Resolution Approving a Fifth Amendment to the City Attorney At-Will Employment Agreement and Authorizing the Mayor to Execute the Amendment (Report by Wendy Silva)

**D. WRITTEN COMMUNICATIONS**

There are no items for this section.

**E. ADMINISTRATIVE REPORTS**

There are no items for this section.

**F. COUNCIL REPORTS**

**G. CLOSED SESSION**

- G-1 Closed Session Announcement – City Attorney

- G-2 Conference with Legal Counsel – Pending Litigation pursuant to Government Code §54956.9(d)(1) - 1 case: Johnnie Smith WCAB No. ADJ10868300

- G-3 Conference with Legal Counsel – Anticipated Litigation. Initiation of litigation pursuant to paragraph (4) of subdivision (d) of Section 54956.9 - 1 potential case.

- G-4 Conference with Labor Negotiators Pursuant to Government Code §54957.6

Agency Designated Representatives: Steve Frazier, Wendy Silva  
Unrepresented Positions: City Manager, City Attorney and City Clerk

- G-5 Closed Session Report – City Attorney

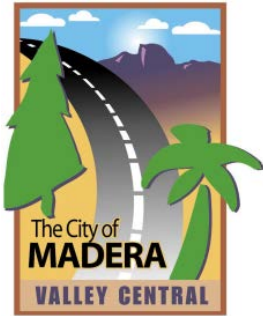
**ADJOURNMENT** – Next regular meeting November 7, 2018

*[Continued on next page.]*

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- 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 1<sup>st</sup> and 3<sup>rd</sup> Wednesday of each month at 6:00 p.m. in the Council Chambers at City Hall.
  - Any writing related to an agenda item for the open session of this meeting distributed to the City Council less than 72 hours before this meeting is available for inspection at the City of Madera Office of the City Clerk, 205 W. 4<sup>th</sup> Street, Madera, California 93637 during normal business hours.
  - 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.
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I, Sonia Alvarez, 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 October 17, 2018, near the front entrances of City Hall at 4:30 p.m. on October 11, 2018.

  
\_\_\_\_\_  
Sonia Alvarez, City Clerk



**October 4, 2017  
6:00 p.m.**

Item:	B-1
Minutes for:	10/04/17
Adopted:	10/17/18

**MINUTES OF A REGULAR MEETING  
OF THE MADERA CITY COUNCIL  
CITY OF MADERA, CALIFORNIA**

**Council Chambers  
City Hall**

**CALL TO ORDER** - The meeting was called to order at 6:00 p.m.

**ROLL CALL:**

**Present:** Mayor Andrew J. Medellin  
Mayor Pro Tem Cece Foley Gallegos, District 1  
Council Member Jose Rodriguez, District 2  
Council Member Derek O. Robinson Sr., District 4  
Council Member William Oliver, District 3  
Council Member Charles F. Rigby, District 5

**Absent:** Council Member Donald E. Holley, District 6

Others present were City Administrator David Tooley, City Attorney Brent Richardson, City Clerk Sonia Alvarez, Director of Community Development David Merchen, Director of Financial Services Tim Przybyla, City Engineer Keith Helmuth, Public Works Operations Director David Randall, Chief of Police Steve Frazier, Director of Human Resources Wendy Silva, Director of Parks and Community Services Mary Anne Seay, Grant Administrator Ivette Iraheta, Information Services Manager Mark Souders, Planning Manager Chris Boyle, Public Works Administrative Analyst Robin Bravo and Commander Dino Lawson.

**INVOCATION:** Pastor David Votaw, Harvest Community Church

**PLEDGE OF ALLEGIANCE:** Mayor Medellin led in the Pledge of Allegiance.

**PUBLIC COMMENT:**

The first fifteen 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 to identify themselves and state the subject of their comment. 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.

Cory Valdez, residing in Madera, California, spoke in favor of the City offering funding support for the Friends of the Madera Animal Shelter and the Community Cat Program.

Mayor Medellin closed public comment.

**PRESENTATIONS** Presentation by Dylan Miracle, Associated Student Body President Madera South High School

Dylan Miracle, Associated Student Body President for Madera South High School provided the Council with an update on the activities to date at the high school.

**A. WORKSHOP**

- A-1 Madera Community College Center Progress & Accreditation Timeline (Dr. Sandra Caldwell, President Reedley College)

Dr. Sandra Caldwell, Reedley College President, along with her colleagues, provided an update on the community college, information on enrollment, an update on the bond projects and timelines toward accreditation. She was joined by Trustee Bobby Kahn, Chancellor Dr. Paul Parnell, Vice Chancellor Jerome Countee, and Vice President Dr. Claudia Habib.

**B. CONSENT CALENDAR – REGULAR MEETING**

*Items on the consent calendar are adopted with a single motion and vote of the council. Items pulled from the consent calendar for further discussion are adopted under separate action.*

Council Member Rodriguez requested item B-4 pulled for discussion.

**ON MOTION BY COUNCIL MEMBER RIGBY, AND SECONDED BY COUNCIL MEMBER OLIVER, THE CONSENT CALENDAR, WITH THE EXCEPTION OF ITEM B-4, WAS ADOPTED UNANIMOUSLY BY A VOTE OF 6-0. ABSENT: COUNCIL MEMBER HOLLEY.**

- B-1 Minutes – There are no items for this section.
- B-2 Information Only – Warrant Disbursement Report
- B-3 Bi-Weekly Water Conservation Report for 9/11/17 – 9/24/17 (Report by Dave Randall)
- B-4 Consideration of a Resolution Approving an Agreement for Temporary Staffing Services, RFP No. 201718-02, with waterTalent, LLC, and Authorizing the Mayor or His Designee to Sign the Agreement and Related Documents (Report by Dave Randall) *[Item pulled for discussion.]*
- B-5 Consideration of a Resolution Approving an Agreement with Anderson Striping & Construction, Inc. for Construction Services for the Crack Seal and Reseal Joints in Airfield Pavements Project at Madera Municipal Airport in the Amount of \$295,469.00 and Authorizing Contingencies of up to Ten Percent (10%), as Approved by the City Engineer; and Authorizing the Mayor to Execute the Agreement on Behalf of the City (Report by Dave Randall)

**RES. NO. 17-153      RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MADERA, CALIFORNIA, APPROVING AN AGREEMENT WITH ANDERSON STRIPING & CONSTRUCTION, INC. FOR CONSTRUCTION SERVICES FOR THE CRACK SEAL AND RESEAL JOINTS IN AIRFIELD PAVEMENTS PROJECT AT MADERA MUNICIPAL AIRPORT IN THE AMOUNT OF \$295,469.00 AND AUTHORIZING CONTINGENCIES OF UP TO TEN PERCENT (10%), AS APPROVED BY THE CITY ENGINEER; AND AUTHORIZING THE MAYOR TO EXECUTE THE AGREEMENT ON BEHALF OF THE CITY OF MADERA**

- B-6 Consideration of a Minute Order Approving a Letter of Participation for the Madera County Public Health Department Emergency Preparedness Coalition and Authorizing the Mayor to Sign on Behalf of the City (Report by Wendy Silva)
- B-7 Consideration of a Resolution Approving Contract with Nor-Cal Pump & Well, Inc., in the Amount of \$169,743 for the Water Pollution Control Facility Replacement Water Supply Well, City Project No. WWTP 17-01, and Authorizing Construction Contingencies of Up to



20% as Approved by the City Engineer and Authorizing the Mayor to Execute the Contract on Behalf of the City (Report by Keith Helmuth)

**RES. NO. 17-154      A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MADERA, CALIFORNIA, APPROVING CONTRACT WITH NOR-CAL PUMP & WELL DRILLING, INC., IN THE AMOUNT OF \$169,743 FOR THE WATER POLLUTION CONTROL FACILITY REPLACEMENT WATER SUPPLY WELL, CITY PROJECT NO. WWTP 17-01, AUTHORIZING CONSTRUCTION CONTINGENCIES OF UP TO 20% AS APPROVED BY THE CITY ENGINEER, AND AUTHORIZING THE MAYOR TO EXECUTE THE CONTRACT ON BEHALF OF THE CITY**

CONSENT CALENDAR ITEMS PULLED FOR DISCUSSION

*B-4      Consideration of a Resolution Approving an Agreement for Temporary Staffing Services, RFP No. 201718-02, with waterTalent, LLC, and Authorizing the Mayor or His Designee to Sign the Agreement and Related Documents (Report by Dave Randall)*

Public Works Operations Director Dave Randall addressed the questions/comments from Council Member Rodriguez.

**ON MOTION BY COUNCIL MEMBER OLIVER, AND SECONDED BY COUNCIL MEMBER RIGBY, ITEM B-4, RES. NO. 17-152 WAS ADOPTED UNANIMOUSLY BY A VOTE OF 6-0. ABSENT: COUNCIL MEMBER HOLLEY.**

**RES. NO. 17-152      A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MADERA, CALIFORNIA, APPROVING AN AGREEMENT WITH WATERTALENT, LLC, FOR THE PROVISION OF TEMPORARY EMPLOYEES AND AUTHORIZING THE MAYOR TO EXECUTE THE AGREEMENT ON BEHALF OF THE CITY**

**C.      HEARINGS, PETITIONS, BIDS, RESOLUTIONS, ORDINANCES, AND AGREEMENTS**

**C-1      Public Hearing and Consideration of Introduction of an Ordinance Rezoning Approximately 1.4 Acres of Property Located at 733 and 743 Linden Street from the PD-1500 (Planned Development) Zone District to the PD-2000 (Planned Development) Zone District. (APNs: 006-360-013 and 014) (Report by Chris Boyle)**

Planning Manager Chris Boyle presented the report.

Mayor Medellin opened the public hearing and there being no speakers closed the public hearing.

The introduction of an ordinance was read by title by the City Clerk.

**ON MOTION BY COUNCIL MEMBER RIGBY, AND SECONDED BY COUNCIL MEMBER RODRIGUEZ, FURTHER READING WAS WAIVED, AND ITEM C-1, THE INTRODUCTION OF AN ORDINANCE, WAS ADOPTED UNANIMOUSLY BY A VOTE OF 6-0. ABSENT: COUNCIL MEMBER HOLLEY.**

**INTRO. ORD.      INTRODUCTION OF AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MADERA AMENDING THE OFFICIAL CITY OF MADERA ZONING MAP TO REZONE APPROXIMATELY 1.4 ACRES OF PROPERTY LOCATED ON THE EAST SIDE OF LINDEN STREET (733 AND 743 LINDEN STREET), APPROXIMATELY 650 FEET NORTH OF THE INTERSECTION OF LINDEN STREET AND SUNSET AVENUE, FROM THE PD-1500 (PLANNED DEVELOPMENT) ZONE DISTRICT TO THE PD-2000 (PLANNED DEVELOPMENT) ZONE DISTRICT.**

**C-2 Public Hearing and Consideration of Introduction of an Ordinance Rezoning Approximately 40 Acres of Land Located at the Southeast Corner of Tozer Street (Road 28) and Sunrise Avenue (Avenue 14½) to the PF (Public Facilities) Zone District; and**

**Consideration of Adoption of a Resolution Amending the General Plan Land Use Designation on Approximately 40 Acres Located at the Southeast Corner of Tozer Street (Road 28) and Sunrise Avenue (Avenue 14½ from the LD (Low Density), MD (Medium Density) and NMU (Neighborhood Mixed Use) Land Use Designation to the P&SP (Public and Semi-Public) Land Use Designation (Report by Chris Boyle)**

Planning Manager Chris Boyle presented the report.

Mayor Medellin opened the public hearing and there being no speakers closed the public hearing.

The introduction of an ordinance was read by title by the City Clerk.

**ON MOTION BY COUNCIL MEMBER OLIVER, AND SECONDED BY COUNCIL MEMBER RIGBY, FURTHER READING WAS WAIVED, AND ITEM C-2, THE INTRODUCTION OF AN ORDINANCE, WAS ADOPTED UNANIMOUSLY BY A VOTE OF 6-0. ABSENT: COUNCIL MEMBER HOLLEY.**

**INTRO. ORD. INTRODUCTION OF AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MADERA AMENDING THE OFFICIAL CITY OF MADERA ZONING MAP PREZONING APPROXIMATELY FORTY ACRES LOCATED AT THE SOUTHEAST CORNER OF TOZER STREET AND SUNRISE AVENUE TO THE PF (PUBLIC FACILITY) ZONE DISTRICT AS IDENTIFIED WITHIN EXHIBIT "A"**

**ON MOTION BY COUNCIL MEMBER OLIVER, AND SECONDED BY COUNCIL MEMBER RIGBY, ITEM C-2, RES. NO. 17-155, WAS ADOPTED UNANIMOUSLY BY A VOTE OF 6-0. ABSENT: COUNCIL MEMBER HOLLEY.**

**RES. NO. 17-155 RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MADERA APPROVING AN AMENDMENT OF THE GENERAL PLAN CHANGING THE LAND USE DESIGNATION OF APPROXIMATELY FORTY ACRES LOCATED ON THE SOUTHEAST CORNER OF TOZER STREET (ROAD 28) AND SUNRISE AVENUE (AVENUE 14 ½) FROM THE LD (LOW DENSITY), MD (MEDIUM DENSITY) AND NMU (NEIGHBORHOOD MIXED USE) TO P&SP (PUBLIC AND SEMIPUBLIC) GENERAL PLAN LAND USE DESIGNATION AND THE PREZONING OF THE PROPERTY TO THE PF (PUBLIC FACILITY) ZONE DISTRICT**

**C-3 Public Hearing and Consideration of a Resolution Establishing Fees and Charges for Functions in Accordance with the Madera Municipal Code, Modifying Miscellaneous Fees and Charges for Services in the Building, Planning and Engineering Departments and Superseding All Other Resolutions In Conflict Herewith (Report by David Merchen)**

The report was presented by the Community Development Director David Merchen. Mr. Merchen identified an error under the Re-roof, Commercial Addition Category fees. The item should read 5,000 square feet, not 500 square feet. He requested the correction be stated in the motion for adoption.

Mayor Medellin opened the public hearing and there being no speakers closed the public hearing.

ON MOTION BY COUNCIL MEMBER OLIVER, AND SECONDED BY COUNCIL MEMBER RIGBY, ITEM C-3, RES. NO. 17-156, WITH REVISION TO EXHIBIT A, DEVELOPMENT USER FEES, RE-ROOF CATEGORY, COMMERCIAL ADDITION, TO REFLECT CORRECT SQUARE FOOTAGE OF 5,000 SQUARE FEET, WAS ADOPTED UNANIMOUSLY BY A VOTE OF 6-0. ABSENT: COUNCIL MEMBER HOLLEY

**RES. NO. 17-156      RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MADERA, CALIFORNIA, ESTABLISHING FEES AND CHARGES FOR FUNCTIONS IN ACCORDANCE WITH THE MADERA MUNICIPAL CODE, MODIFYING MISCELLANEOUS FEES AND CHARGES FOR SERVICES IN THE COMMUNITY DEVELOPMENT DEPARTMENT AND SUPERSEDING ALL OTHER RESOLUTIONS IN CONFLICT HERewith**

**C-4      Public Hearing and Consideration of Introduction of an Ordinance Amending Certain Sections of Chapter 1 of Title II of the Madera Municipal Code Pertaining to Council Meeting Agendas (Report by Sonia Alvarez)**

The report was presented by the City Clerk Sonia Alvarez.

Mayor Medellin opened the public hearing and there being no speakers, closed the public hearing.

The introduction of an ordinance was read by title by the City Clerk.

ON MOTION BY COUNCIL MEMBER OLIVER, AND SECONDED BY COUNCIL MEMBER RIGBY, FURTHER READING WAS WAIVED, AND ITEM C-4, THE INTRODUCTION OF AN ORDINANCE, WAS ADOPTED UNANIMOUSLY BY A VOTE OF 6-0. ABSENT: COUNCIL MEMBER HOLLEY.

**INTRO. ORD.      INTRODUCTION OF AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MADERA, CALIFORNIA, AMENDING PORTIONS OF CHAPTER 1 OF TITLE II OF THE MADERA MUNICIPAL CODE PERTAINING TO COUNCIL MEETING AGENDAS**

**D.      WRITTEN COMMUNICATIONS**

There are no items for this section.

**E.      ADMINISTRATIVE REPORTS**

**E-1      Review of Proposed Conservation Easements Outside the City Limits and Request for Staff Direction Regarding the Submittal of Comments to Madera County (Report by David Merchen)**

The report was presented by the Community Development Director David Merchen. Charlotte Mitchell with the Central Valley Farmland Trust, stated they are the non-profit organization that would hold the conservation easements for these properties. They are in favor of the easements.

Council concurrence was reached for staff to submit a comment letter to Madera County regarding the Bidi and Fred Ranches, and the Pollas Ranch, as recommended by staff.

**F.      COUNCIL REPORTS**

Council Member Robinson reported on his attendance at the networking event with Council Member Oliver.

Council Member Robinson reported that he attended the Rose Parade and Ribbon Cutting Ceremony in Pasadena.

Council Member Robinson reported that he attended the Dual Language Instruction Program Ribbon Cutting at James Madison Elementary.

Council Member Robinson reported on his attendance at the Department of Social Services and the Madera County Probation Department luncheon regarding the California Child and Family Services review process.

Mayor Pro Tem Foley Gallegos stated she also attended the ribbon cuttings mentioned by Council Member Robinson.

Mayor Pro Tem Foley Gallegos reported that she served as emcee for the Madera Community Hospital Hoe Down.

Council Member Rigby thanked staff for providing the information he needed for the Tri-Agency meeting at the Golf Course.

Council Member Rigby recognized recently retired City employee Louie Franco, who also happens to be his uncle, for his service to the City as the Downtown Parking Enforcement Officer.

Council Member Rodriguez also spoke regarding the intergovernmental agency workshop.

Council Member Oliver spoke regarding the grand opening of the Tap House Restaurant.

Mayor Medellin stated it was an honor to speak at the Young Professionals event and the Tap House opening.

Mayor Medellin commended his colleagues for all the events they participate in.

## **G. CLOSED SESSION**

### **G-1 Closed Session Announcement – City Attorney**

City Attorney Brent Richardson requested item G-2 pulled from the agenda.

The Council adjourned to closed session at 8:14 p.m. to discuss items G-3 and G-4 as listed on the agenda.

### **G-2 Conference with Legal Counsel – Existing Litigation.** Subdivision (d)(1) of Government Code §54956.9

One case: MCA 1803, LLC, et al. v. City of Madera  
MCV073252

### **G-3 Conference with Legal Counsel – Anticipated Litigation.** Significant exposure to litigation pursuant to Government Code §54956.9(d)(2): 1 case

### **G-4 CONFERENCE WITH LABOR NEGOTIATORS** - Pursuant to California Government Code Section 54957.6

Agency Designated Representatives: David Tooley and Wendy Silva

Employee Organizations: Operating Engineers Local Union No. 3  
Madera Police Officers' Association  
Mid-Management Employee Group  
Law Enforcement Mid-Management Group



**G-5 Closed Session Report – City Attorney**

The Council returned from closed session at 9:17 p.m. with all members present.

There was no reportable action for items G-3 and G-4.

**ADJOURNMENT** - The meeting was adjourned at 9:18 p.m. Next regular meeting 10/18/17.

**CONSISTENCY WITH THE VISION MADERA 2025 PLAN**

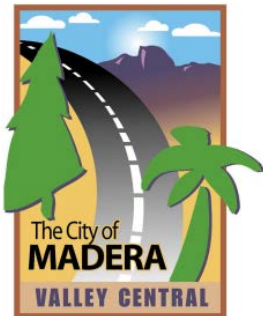
Approval of the minutes is not addressed in the vision or action plans; the requested action is also not in conflict with any of the actions or goals contained in that plan.

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SONIA ALVAREZ, City Clerk

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ANDREW J. MEDELLIN, Mayor



**MINUTES OF A SPECIAL MEETING  
OF THE MADERA CITY COUNCIL  
CITY OF MADERA, CALIFORNIA**

**September 6, 2018  
1:45 p.m.**

**Council Chambers  
City Hall**

**CALL TO ORDER** – The meeting was called to order at 1:49 p.m.

**ROLL CALL:**

**Present:** Mayor Andrew J. Medellin  
Mayor Pro Tem Jose Rodriguez, District 2  
Council Member Cece Foley Gallegos, District 1  
Council Member William Oliver, District 3  
Council Member Derek O. Robinson Sr., District 4  
Council Member Charles F. Rigby, District 5  
Council Member Donald E. Holley, District 6

Others present were City Attorney Brent Richardson, City Clerk Sonia Alvarez, Community Development Director David Merchen, and Director of Human Resources Wendy Silva.

**INVOCATION:** Council Member Holley

**PLEDGE OF ALLEGIANCE:** Mayor Medellin led in the Pledge of Allegiance.

**PUBLIC COMMENT:**

The first fifteen 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 to identify themselves and state the subject of their comment. 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.

No comments were offered.

**1. Closed Session**

1a. Closed Session Announcement – City Attorney

The City Attorney announced that the Council will adjourn to closed session to discuss items 1b and 1c as listed on the agenda.

Recess: 1:51 p.m. – 2:39 pm.

The Council adjourned to closed session at 2:39 p.m.

1b. PUBLIC EMPLOYEE APPOINTMENT – Pursuant to Government Code Section 54957(b)(1)

Title: City Manager

- 1c. Conference with Labor Negotiators Pursuant to Government Code §54957.6

Agency Designated Representatives: Wendy Silva, Gary Phillips  
Unrepresented Position: City Administrator/City Manager

- 1d. Closed Session Report – City Attorney

The Council returned from closed session at 11:16 p.m.

There was no reportable action for items 1b and 1c.

## **2. Council Reports**

There were no council reports.

**ADJOURNMENT** - The meeting was adjourned at 11:17 p.m. Next regular meeting September 19, 2018

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

Approval of the minutes is not addressed in the vision or action plans; the requested action is also not in conflict with any of the actions or goals contained in that plan.

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SONIA ALVAREZ, City Clerk

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ANDREW J. MEDELLIN, Mayor

City of Madera

Council Meeting Of  
Agenda Item No.

October 17, 2018  
B-2

Memorandum To: The Honorable Mayor,  
City Council and City Administrator

From: Office of the Director of Finance

Subject: Listing of Warrants Issued

Date: 10/17/2018

Attached, for your information, is the register of the warrants for the City of Madera covering obligations paid during the period of:

September 25th, 2018 to October 8th, 2018

Each demand has been audited and I hereby certify to their accuracy and that there were sufficient funds for their payment.

General Warrant:	19390 - 19595	\$	1,782,907.73
Wire Transfer	Union Bank Payroll and Taxes	\$	715,675.89
Wire Transfer	SDI	\$	2,260.21
Wire Transfer	Cal Pers	\$	367,059.11

Respectfully submitted,



Tim Przybyla  
Financial Services Director

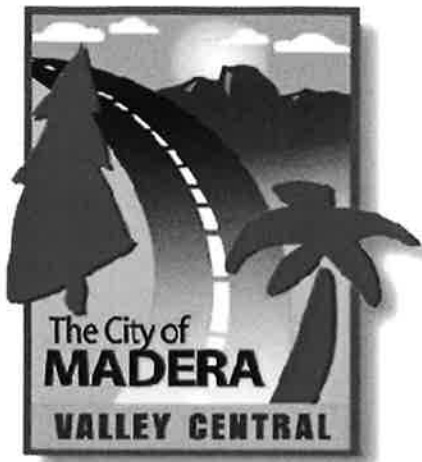


**CITY OF MADERA**  
**REGISTER OF AUDITED DEMANDS FOR BANK #1-UNION BANK GENERAL ACCOUNT**  
**October 3rd, 2018**

CHECK	PAY DATE	ISSUED TO	DESCRIPTION	AMOUNT
19390	09/28/2018	47TH PLACE- CARPET ONE	CARPET AND INTALLATION AT PD	7,841.65
19391	09/28/2018	AMERICAN LEGAL PUBLISHING CORPORATION	MUNICIPAL CODE FOLIO INSTALLATION	15.00
19392	09/28/2018	AMERICAN MOBILE SHREDDING	SHREDDING SERVICE 09/06/18	280.00
19393	09/28/2018	KELM, MICHAEL	REIMBURSEMENT FOR OVERPAYMENT OF ALARM FEES	50.00
19394	09/28/2018	AT&T	08/18 SVS 8310006408576	5,741.02
19395	09/28/2018	AT&T	08/18 & 09/18 CALNET 3 SVS	2,220.43
19396	09/28/2018	BIANCHI, BRANDON	REIMBURSE FOR RIPPED PANTS	59.38
19397	09/28/2018	GVP VENTURES INC.	EXECUTIVE RECRUITMENT FOR CITY MANAGER	1,850.98
19398	09/28/2018	CALIFORNIA DEPARTMENT OF JUSTICE	FINGERPRINT APPS/FED LVL VOLTEER BILLED	154.00
19399	09/28/2018	DIVISION OF AERONAUTICS	SHARED MAINTENANCE 08/22/18 & 09/17/18	180.16
19400	09/28/2018	CHAVIRA, ISAAC	REIMBURSE FOR LIFEGUARD CERTIFICATION COURSE	200.00
19401	09/28/2018	COLGAN CONSULTING CORPORATION	PROFESSIONAL SVS RELATED-DVLPMT FEE STUDY	1,050.00
19402	09/28/2018	COMCAST	CITY INTERNET CONNECTION 09/15/18 - 10/14/18	1,372.25
19403	09/28/2018	COMCAST	09/14- 10/21 SVS 8155500320322006	219.56
19404	09/28/2018	CONCENTRA MEDICAL CENTERS	DOT RECERT EXAM	61.50
19405	09/28/2018	CREATIVE COPY	MAX TRANSFER TRANSIT SLIPS & MONTHLY PASSES	217.15
19406	09/28/2018	FUTURE FORD OF CLOVIS	BUS #43 REPLACEMENT TRANSMISSION	3,762.93
19407	09/28/2018	GONZALEZ, FELIX	PER DIEM - SLI SESSION #6	231.00
19408	09/28/2018	HERNANDEZ, MARIBEL	PER DIEM - 2018 CACEO ANNUAL SEMINAR	129.50
19409	09/28/2018	J'S COMMUNICATIONS	SERVICE AGREEMENT JULY-SEPTEMBER 2018	4,707.00
19410	09/28/2018	JOHNSON, PHIL	PER DIEM - FLUID COMPONENTS INTERN CSTMR WRKSH	124.50
19411	09/28/2018	LANGUAGE LINE SERVICES, INC.	OVER THE PHONE INTERPRETATIONS	71.87
19412	09/28/2018	LAW & ASSOCIATES	EMPLOYMENT BACKGROUND CHECK	700.00
19413	09/28/2018	LIEBERT CASSIDY WHITMORE	PROFESSIONAL SVS AUG 2018 - MA020-00001/MA020-00051	700.00
19414	09/28/2018	LINCOLN AQUATICS INC.	CHLORINE FOR POOL	1,540.63
19415	09/28/2018	LSA ASSOCIATES, INC	VILLAGE D EIR - MAY 2018	2,700.00
19416	09/28/2018	MADERA ANIMAL HOSPITAL	VET SERVICES 09/06/18	249.30
19417	09/28/2018	MADERA CLEANERS AND LAUNDRY INC.	MAT CLEANING - YOUTH CENTER	32.30
19418	09/28/2018	MADERA COUNTY RECORDERS OFFICE	RECORDING OF FY18/19 LMD ENGINEERS RPT	953.00
19419	09/28/2018	MADERA TRIBUNE	VILLAGE D SCOPING MTNG, AD #12493 9/8/18	146.25
19420	09/28/2018	MADERA TRIBUNE	ANNUAL SUBSCRIPTION - PLNG DEPT	49.00
19421	09/28/2018	MADERA TRIBUNE	CC & PC WORKSHOP, AD #12494 9/8/18	130.00
19422	09/28/2018	MARTINEZ, ANDREW	PER DIEM - 2018 CACEO ANNUAL SEMINAR	129.50
19423	09/28/2018	N.P.C.-ORCHARD TRUST COMPANY	PLAN #340227-01 FOR 04/20/18 PAYROLL-REISSUE	9,495.47
19424	09/28/2018	PACIFIC GAS & ELECTRIC	09/18 SVS 6690755760-8 & 1619119913-8	139.62
19425	09/28/2018	AVILA, RICK	PARK DEPOSIT REFUND - LTC	50.00
19426	09/28/2018	CONLEY, DORIS	PARK DEPOSIT REFUND - ROTARY PAVILION	50.00
19427	09/28/2018	GATES OF GRACE CHURCH OF GOD	PARK DEPOSIT REFUND - POOL	60.00
19428	09/28/2018	GRAY, NANCY	PARK DEPOSIT REFUND - ROTARY PAVILION	50.00
19429	09/28/2018	MAYA, CINDY	PARK DEPOSIT REFUND - LTC	50.00
19430	09/28/2018	PACHECO, NOEMI	CANCELLED SWIM LESSONS	85.00
19431	09/28/2018	PITNEY BOWES, INC.	PURCHASE POWER AGREEMENT FOR POSTAGE MACHINE	198.29
19432	09/28/2018	PURL'S SHEET METAL & AIR CONDITIONING	HVAC REPAIR-PAN AM CENTER	202.00
19433	09/28/2018	RAFFELIS FINANCIAL CONSULTANTS, INC.	CONSULTING SERVICES AUGUST 2018	2,760.00
19434	09/28/2018	RRM DESIGN GROUP, A CALIFORNIA CORPORATION	FIRE STATION DESIGN-RRM DESIGN	3,499.37
19435	09/28/2018	TESEI PETROLEUM, INC.	FUEL 09/11/18 - 09/20/18	13,981.24
19436	09/28/2018	AWAD MUWAFK OR CITY OF MADERA	UTILITY BILLING CREDIT REFUND	151.96
19437	09/28/2018	CENTRAL VALLEY CAPITAL	UTILITY BILLING CREDIT REFUND	2.51
19438	09/28/2018	CENTRAL VALLEY CAPITAL LP	UTILITY BILLING CREDIT REFUND	311.48
19439	09/28/2018	CITY OF MADERA OR BECERRA IVAN	UTILITY BILLING CREDIT REFUND	151.20
19440	09/28/2018	CITY OF MADERA OR GONZALEZ ALFONSO	UTILITY BILLING CREDIT REFUND	151.09
19441	09/28/2018	CITY OF MADERA OR GUTIERREZ JOSE	UTILITY BILLING CREDIT REFUND	151.75
19442	09/28/2018	CITY OF MADERA OR PULIDO JAVIER	UTILITY BILLING CREDIT REFUND	207.37
19443	09/28/2018	CITY OF MADERA OR THEODOZIO HOLLY	UTILITY BILLING CREDIT REFUND	39.45
19444	09/28/2018	CITY OF MADERA OR TORRES NICHOLAS	UTILITY BILLING CREDIT REFUND	153.39
19445	09/28/2018	GARCIA PAULA	UTILITY BILLING CREDIT REFUND	213.97
19446	09/28/2018	GUERRERO GRISELDA	UTILITY BILLING CREDIT REFUND	134.10
19447	09/28/2018	HERNANDEZ MARIA GUADALUPE OR CITY OF MADERA	UTILITY BILLING CREDIT REFUND	150.76
19448	09/28/2018	MAGNUM PROPERTIES	UTILITY BILLING CREDIT REFUND	105.78
19449	09/28/2018	MILLER JIM C AND JULIA A	UTILITY BILLING CREDIT REFUND	138.40
19450	09/28/2018	MONTES NELLIE	UTILITY BILLING CREDIT REFUND	65.89
19451	09/28/2018	NAVARRETE MARIA E	UTILITY BILLING CREDIT REFUND	227.15
19452	09/28/2018	NEW GENERATION CHRISTIAN FELLOWSHIP	UTILITY BILLING CREDIT REFUND	481.03
19453	09/28/2018	PACHECO CARLOS	UTILITY BILLING CREDIT REFUND	96.01
19454	09/28/2018	PEREZ CLARENCE	UTILITY BILLING CREDIT REFUND	187.44
19455	09/28/2018	RAMIRES GARCIA LUCERITO	UTILITY BILLING CREDIT REFUND	231.43
19456	09/28/2018	REEL-MULLINS MATHEW T	UTILITY BILLING CREDIT REFUND	96.87
19457	09/28/2018	REYES MAURA	UTILITY BILLING CREDIT REFUND	226.80
19458	09/28/2018	RODRIGUEZ EULALIA ALVAREZ AND COUCH TRIS	UTILITY BILLING CREDIT REFUND	34.91
19459	09/28/2018	SAAVEDRA LEONARDO	UTILITY BILLING CREDIT REFUND	136.23
19460	09/28/2018	SANDOVAL GABRIEL G	UTILITY BILLING CREDIT REFUND	221.92
19461	09/28/2018	SOLIS NOE	UTILITY BILLING CREDIT REFUND	32.38

CHECK	PAY DATE	ISSUED TO	DESCRIPTION	AMOUNT
19462	09/28/2018	TREVINO MARIO AND WHITE CHARMAINE OR THE CITY OF M	UTILITY BILLING CREDIT REFUND	85.76
19463	09/28/2018	VERIZON WIRELESS	CC IPAD/AIR CARDS/PHONE CHRGS SVS 8/11/18 - 9/10/18	8,203.40
19464	09/28/2018	HARRY D. WILSON INC.	SERVICE TO 2014 HONDA #6601 & #6605	327.70
19465	09/28/2018	ZEE MEDICAL SERVICE CO.	FIRST AID SUPPLIES	104.96
19466	10/05/2018	ACRO SERVICE CORPORATION	TEMP CONST MNGR-W R BELL 9/16/18 & DRAFTER-S ROBERSON	3,346.00
19467	10/05/2018	ANTHEM BLUE CROSS	CITY PAID RETIREE RX BILL/G SKEELS-OCTOBER 2018	169.80
19468	10/05/2018	RJ BERRY JR INC	HANGAR #22 DEPOSIT REFUND	1,642.57
19469	10/05/2018	OVIEDO-MARQUEZ, REINA	REIMBURSE - BACKGROUND CHECK REPORT	25.00
19470	10/05/2018	AT&T	09/18 CALNET 3 SVS	1,208.34
19471	10/05/2018	BSK ASSOCIATES	WATER SAMPLES	1,272.00
19472	10/05/2018	CAL VALLEY PRINT	FALL T-BALL SHIRTS & HATS	1,012.02
19473	10/05/2018	CALIFORNIA DEPARTMENT OF JUSTICE	AUGUST 2018 BLOOD/ALCOHOL ANALYSIS	2,135.00
19474	10/05/2018	CALIFORNIA DEPARTMENT OF TRANSPORTATION	SHARED COSTS - DAMAGE SIGNAL LIGHTS 9/9/18	58.12
19475	10/05/2018	NICHOLAS AVILA	BOUNCE HOUSES FOR NNO CONNECT - 10/18/18	1,640.20
19476	10/05/2018	CHEVROLET OF WATSONVILLE	PURCHASE FORD F-250 TRUCKS, UNITS #1519, 1520, 1521, 1522	175,134.62
19477	10/05/2018	CHICAGO TITLE COMPANY	FWFM-5001800537 - APN 011-203-005 (NUNEZ)	16,512.50
19478	10/05/2018	CHICAGO TITLE COMPANY	FWFM-5001800537 - APN 011-300-010 (SJR, LLC)	17,013.05
19479	10/05/2018	CHICAGO TITLE COMPANY	FWFM-5001800537 - APN 011-300-011 (GONZALEZ)	132,222.00
19480	10/05/2018	CHICAGO TITLE COMPANY	FWFM-5001800537 - APN 011-182-002 (ALLEN)	196,681.40
19481	10/05/2018	CITY OF MADERA	DRIP IRRIGATION REBATE APPLY TO ACCT 9894080	42.11
19482	10/05/2018	CITY OF MADERA	MULCH REBATE APPLY TO ACCT 9923124	54.79
19483	10/05/2018	CITY OF MADERA	MULCH & DELIVERY REBATE APPLY TO ACCT 9894080	155.00
19484	10/05/2018	CITY OF MADERA	TOILET X2 REBATE APPLY TO ACCT 9923331	178.00
19485	10/05/2018	CITY OF MADERA	TOILET X2 REBATE APPLY TO ACCT 9923124	196.20
19486	10/05/2018	CITY OF MADERA	DISHWASHER REBATE APPLY TO ACCT 5318921	200.00
19487	10/05/2018	CITY OF MADERA	TOILET X2 & INSTALL REBATE APPLY TO ACCT 5799231	200.00
19488	10/05/2018	CITY OF MADERA	DISHWASHER REBATE APPLY TO ACCT 9908684	200.00
19489	10/05/2018	CITY OF MADERA	TOILET X2 & INSTALL REBATE APPLY TO ACCT 9909680	300.00
19490	10/05/2018	CITY OF MADERA	TOILET X3 REBATE APPLY TO ACCT 9923737	300.00
19491	10/05/2018	COMMUNITY MEDICAL CENTER	AUG 2018 LEGAL BLOOD DRAW	175.00
19492	10/05/2018	CONCENTRA MEDICAL CENTERS	PRE EMPLOYMENT PHYSICALS	462.50
19493	10/05/2018	CORELOGIC INFORMATION SOLUTIONS INC	REALQUEST 08/18	175.00
19494	10/05/2018	CREATIVE COPY	NEW TRANSIT MAX TICKETS & CARDS FOIL MASTERS	1,805.95
19495	10/05/2018	COUNTY SUPERVISORS ASSOCIATION OF CALIFORNIA	WEBSITE JOB POSTING - SR PLANNER JUL 2018	150.00
19496	10/05/2018	DIAMOND COMMUNICATIONS	YOUTH CENTER & PAN AM ALARM SVS & MONITORING	1,770.22
19497	10/05/2018	DT ONTARIO HOTEL PARTNERS LESSEE LLC	J LIPPINCOTT - CALBO EDUCATION CLASS 10/14-10/16	205.20
19498	10/05/2018	ENTENMANN-ROVIN CO	LIEUTENANT CAP PIECE	107.20
19499	10/05/2018	EVERGREEN LAWN CARE & MAINTENANCE, INC.	GROUPS 1, 2, 3 MAINTENANCE SEP 2018 FOR MEDIAN & NON-MEDIAN	14,720.00
19500	10/05/2018	FERGUSON ENTERPRISES, INC.	PARTS FOR CONTRACTOR BREAKING CITY MAIN	424.31
19501	10/05/2018	FIRE SAFETY SOLUTIONS, LLC	FIRE PROTECTION ENG SVS 09/16/18-09/30/18	10,143.75
19502	10/05/2018	FRESNO MADERA AREA AGENCY ON AGING	08/18 UNSERVED MEALS	86.19
19503	10/05/2018	GACAYAN, PAIGE	TUITION REIMBURSEMENT	407.00
19504	10/05/2018	J'S COMMUNICATIONS	SERVICE AGREEMENT OCTOBER-DECEMBER 2018	4,707.00
19505	10/05/2018	JAMES PALMER APPRAISALS, INC.	APPRAISALS-2 PARCELS HOWARD/WESTBERRY INT PRJCT	2,475.00
19506	10/05/2018	KER'S GAS & LUBE, INC.	JULY 2018 PD CAR WASHES	353.50
19507	10/05/2018	LINCOLN FINANCIAL	LIFE AND LTD INSURANCE OCTOBER 2018	8,305.91
19508	10/05/2018	LIPPINCOTT, JOHN	PER DIEM - CALBO EDUCATION 10/14-10/16	122.00
19509	10/05/2018	LOU'S GLOVES, INC.	GLOVES & EXTENDED CUFFS - PD	260.00
19510	10/05/2018	MADERA CLEANERS AND LAUNDRY INC.	YOUTH CENTER MAT SERVICES	32.30
19511	10/05/2018	MADERA TRIBUNE	ANNUAL SUBSCRIPTION - CODE ENFORCEMENT	49.00
19512	10/05/2018	MADERA UNIFORM & ACCESSORIES	STRYKE MOTOR BREECH	346.38
19513	10/05/2018	MID VALLEY DISPOSAL INC.	WASTE DISPOSAL SERVICE JULY 2018	319,097.98
19514	10/05/2018	MID VALLEY DISPOSAL INC.	WASTE DISPOSAL SERVICE AUGUST 2018	321,397.82
19515	10/05/2018	MUNISERVICES, LLC	LTC DISCOVERY - JULY 2018	291.65
19516	10/05/2018	NOR-CAL PUMP & WELL DRILLING, INC.	WATER POLLUTION CONTROL FACILITY	8,467.15
19517	10/05/2018	WADE BRILL	DEPOSIT FOR OFFICE CUBICLES - GRANTS	2,500.00
19518	10/05/2018	SALDIVAR, DAN	TURF REPLACEMENT REBATE (18-06)	2,565.00
19519	10/05/2018	OVERLAND, PACIFIC & CUTLER LLC	RELOCATION CONSULTING SVS-OLIVE AVE WIDENING PRJCT	3,251.25
19520	10/05/2018	PACIFIC GAS & ELECTRIC	08/18 & 09/18 SVS	263,293.97
19521	10/05/2018	GARIBAY, CARLOS	PARK CANCELLATION REIMBURSEMENT- LTC PAVILION	125.00
19522	10/05/2018	GUTIERREZ, RAMONA	FACILITY DEPOSIT REFUND - PAN AM GYM	400.00
19523	10/05/2018	ISMA MINISTRIES INC	FACILITY DEPOSIT REFUND - FRANK BERGON CENTER	100.00
19524	10/05/2018	MACIEL, MIRIAM	PARKS DEPOSIT REFUND - ROTARY PAVILION	50.00
19525	10/05/2018	MUNOZ, MARISOL	PARKS DEPOSIT REFUND - MSR PAVILION	50.00
19526	10/05/2018	NUNEZ, CRYSTAL	PARKS DEPOSIT REFUND - POOL	100.00
19527	10/05/2018	ROJAS, JOSE	PARKS DEPOSIT REFUND - POOL	100.00
19528	10/05/2018	RUIZ, CHRISTINA	T-BALL CANCELLATION REIMBURSEMENT	55.00
19529	10/05/2018	SOTO, ROCIO	FACILITY DEPOSIT REFUND - PAN AM GYM	500.00
19530	10/05/2018	AIO ACQUISITION INC	CALIFORNIA SS1 LABOR LAW POSTER	27.49
19531	10/05/2018	PITNEY BOWES, INC.	QUARTERLY EQUIP RENTAL 6/30/18-9/29/18-FINANCE	367.68
19532	10/05/2018	POLYDYNE INC.	BIOSOLIDS/SLUDGE DEWATERING	5,328.07
19533	10/05/2018	RON'S TOWING & ROAD SERVICE	TOWING FEE - FILE #18M-05806, #18M-06062, #18M-07836	745.00
19534	10/05/2018	SHRED-IT USA-FRESNO	SHREDDING SERVICE - CODE ENFORCEMENT	392.49
19535	10/05/2018	SITE ONE LANDSCAPE SUPPLY LLC	IRRIGATION PARTS	1,065.92

CHECK	PAY DATE	ISSUED TO	DESCRIPTION	AMOUNT
19536	10/05/2018	SPARKLETT'S	LAB & DRINKING WATER	181.69
19537	10/05/2018	STANTEC ARCHITECTURE INC.	PROFESSIONAL ARCHITECTURAL & ENG SVS-TRANSIT FACIL	6,459.94
19538	10/05/2018	TESEI PETROLEUM, INC.	FUEL 09/21/18 - 09/30/18	12,079.22
19539	10/05/2018	THYSSENKRUPP ELEVATOR CORPORATION	YOUTH CENTER ELEVATOR SERVICE OCT 2018	267.45
19540	10/05/2018	TRANSUNION RISK & ALTERNATIVE DATA SOL.	DATABASE ACCESS SEPTEMBER 2018	175.00
19541	10/05/2018	TURF STAR, INC.	NEW TORO GM5900 MOWER	99,507.50
19542	10/05/2018	ALMOND GARDENS/VERSMAN LOUIS C	UTILITY BILLING CREDIT REFUND	1,527.19
19543	10/05/2018	AULAKH HARPAL	UTILITY BILLING CREDIT REFUND	281.05
19544	10/05/2018	BARROS ALLAN AND KAREN	UTILITY BILLING CREDIT REFUND	109.70
19545	10/05/2018	BERRY CONSTRUCTION	UTILITY BILLING DEPOSIT REFUND	55.28
19546	10/05/2018	BERRY CONSTRUCTION OR CITY OF MADERA	UTILITY BILLING DEPOSIT REFUND	12.34
19547	10/05/2018	BOUNPHANH SOMPONE	UTILITY BILLING CREDIT REFUND	107.54
19548	10/05/2018	CARRANZA NOE	UTILITY BILLING CREDIT REFUND	189.96
19549	10/05/2018	CENTRAL VALLEY CAPITAL	UTILITY BILLING CREDIT REFUND	170.09
19550	10/05/2018	CENTRAL VALLEY CAPITAL	UTILITY BILLING CREDIT REFUND	212.41
19551	10/05/2018	CHAMBERS PATRICIA	UTILITY BILLING CREDIT REFUND	48.23
19552	10/05/2018	COSIO MAYRA	UTILITY BILLING CREDIT REFUND	141.83
19553	10/05/2018	DAZA LOPEZ HEVER AND YAVIN CASTILLO	UTILITY BILLING DEPOSIT REFUND	8.23
19554	10/05/2018	DE LA GARZA IRASEMA	UTILITY BILLING CREDIT REFUND	57.14
19555	10/05/2018	DOSANJH BALHAR S	UTILITY BILLING DEPOSIT REFUND	2.66
19556	10/05/2018	DUNU SOBENNA AND EYIUCHE	UTILITY BILLING CREDIT REFUND	184.30
19557	10/05/2018	FIELD ASSET SERVICES LLC	UTILITY BILLING DEPOSIT REFUND	37.14
19558	10/05/2018	FOSTER MARY	UTILITY BILLING DEPOSIT REFUND	109.83
19559	10/05/2018	GERBI LINDA	UTILITY BILLING CREDIT REFUND	183.74
19560	10/05/2018	GOMEZ III THOMAS	UTILITY BILLING CREDIT REFUND	152.86
19561	10/05/2018	GUTIERREZ SILVIA	UTILITY BILLING CREDIT REFUND	256.14
19562	10/05/2018	JACOBSEN WM AND SHARON	METER CONNECTED TO CITY PARK STRIP-REIMBURSE	528.52
19563	10/05/2018	JIMENEZ SEDRIC OR THE CITY OF MADERA	UTILITY BILLING CREDIT REFUND	150.94
19564	10/05/2018	JOHNSON BERNICE	UTILITY BILLING CREDIT REFUND	80.30
19565	10/05/2018	MACIEL MIGUEL GONZALEZ	UTILITY BILLING CREDIT REFUND	125.60
19566	10/05/2018	MACIEL SOLEDAD OR CITY OF MADERA	UTILITY BILLING CREDIT REFUND	71.92
19567	10/05/2018	MARQUARDT LAURA	UTILITY BILLING CREDIT REFUND	90.49
19568	10/05/2018	MARTINEZ ANGELITA	UTILITY BILLING CREDIT REFUND	24.69
19569	10/05/2018	MEINZER CRAIG	UTILITY BILLING DEPOSIT REFUND	63.22
19570	10/05/2018	MOYERS SAM	UTILITY BILLING DEPOSIT REFUND	5.81
19571	10/05/2018	ORTEGA LUZ VERONICA	UTILITY BILLING CREDIT REFUND	73.12
19572	10/05/2018	ORTEGA MARIA ELENA OR CITY OF MADERA	UTILITY BILLING CREDIT REFUND	150.93
19573	10/05/2018	PACINI MICHAEL	UTILITY BILLING DEPOSIT REFUND	1.15
19574	10/05/2018	PINNACLE HOSPITALITY GROUP LONG JOHN SILVERS	UTILITY BILLING DEPOSIT REFUND	116.11
19575	10/05/2018	PRECIADO MA SANTOS	UTILITY BILLING CREDIT REFUND	88.65
19576	10/05/2018	PULIDO JAVIER	UTILITY BILLING DEPOSIT REFUND	161.96
19577	10/05/2018	REALTY FRESNO	UTILITY BILLING CREDIT REFUND	218.23
19578	10/05/2018	RICCIARDI CHRISTOPHER AND ANDREA	UTILITY BILLING CREDIT REFUND	66.39
19579	10/05/2018	RODRIGUEZ BARBARA	UTILITY BILLING CREDIT REFUND	77.85
19580	10/05/2018	RODRIGUEZ JULIA	UTILITY BILLING CREDIT REFUND	178.35
19581	10/05/2018	SALEM SAMMY C/O PERFORMANCE PROPERTY MANAGEMENT	UTILITY BILLING CREDIT REFUND	187.18
19582	10/05/2018	SCORSUR BENJAMIN D	UTILITY BILLING CREDIT REFUND	117.98
19583	10/05/2018	TARLTON ESTATE AND ASSET MANAGEMENT	UTILITY BILLING DEPOSIT REFUND	68.90
19584	10/05/2018	TORRES RENEE	UTILITY BILLING DEPOSIT REFUND	42.66
19585	10/05/2018	ZARAGOSA ABEL OR THE CITY OF MADERA	UTILITY BILLING CREDIT REFUND	152.14
19586	10/05/2018	VILLA GARDENING SERVICE INC	09/18 ACCORNERO PARK LAWN SERVICE	275.00
19587	10/05/2018	WILLDAN FINANCIAL SERVICES	CFD FEES FOR OCTOBER 2018	1,324.64
19588	10/05/2018	HARRY D. WILSON INC.	REPLACE TIRES FOR 2014 HONDA #6605 & SVS TO #6603	1,010.72
19589	10/05/2018	ADMINISTRATIVE SOLUTIONS INC.	MEDICAL & CHILD CARE EXPENSE ACCT 10/05/18 PAYROLL	1,274.21
19590	10/05/2018	CA DEPARTMENT OF CHILD SUPPORT	CHILD SUPPORT DEDUCTIONS FOR 10/05/18 PAYROLL	2,290.58
19591	10/05/2018	COLONIAL LIFE & ACCIDENT INSURANCE CO	#E700482-3 FOR 10/05/2018 PAYROLL	977.49
19592	10/05/2018	N.P.C.-ORCHARD TRUST COMPANY	PLAN #340227-02 FOR 10/05/2018 PAYROLL	2,350.20
19593	10/05/2018	N.P.C.-ORCHARD TRUST COMPANY	PLAN #340227-01 FOR 10/05/2018 PAYROLL	9,975.37
19594	10/05/2018	STATE OF CALIFORNIA	FRANCHISE TAX DEDUCTIONS FOR 10/05/18 PAYROLL	762.36
19595	10/05/2018	VANTAGEPOINT TRANSFER AGENTS-457	PLAN #302351 CONTRIBS FOR 10/05/18 PAYROLL	26,538.07
Bank # 1 - Union Bank General Account Total				1,782,907.73



## REPORT TO CITY COUNCIL

MEETING DATE: October 17, 2018

AGENDA ITEM NUMBER: B-3

Approved By:

  
INTERIM PUBLIC WORKS DIRECTOR

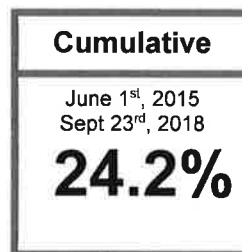
  
CITY ADMINISTRATOR

**SUBJECT:** Water Conservation Report for August 20<sup>th</sup> through September 23<sup>rd</sup>

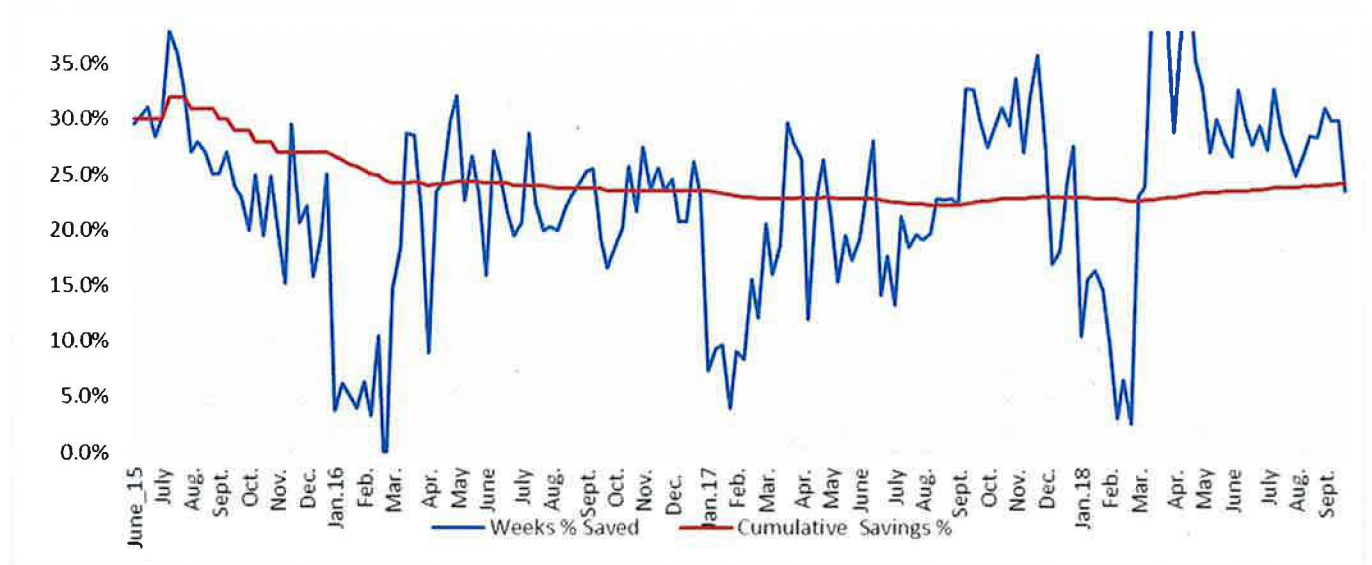
**RECOMMENDATION:** Staff recommends that Council review the attached report of water conservation activities and progress in reducing residential water consumption.

**BACKGROUND:** This report addresses the four different areas of focus: water conservation & education, water patrol activity, water meter maintenance activities, and information on the overall capacity of the water wells, the amount of production, and reserve production capacity.

**WATER CONSERVATION:** As illustrated in the chart, the City's average monthly water conservation rate for the period from August 20<sup>th</sup>- September 23<sup>rd</sup> is increased at 28.6% from 27.67% for the same period in 2017. Below is the most current water conservation data.







**CONSERVATION OUTREACH:** As part of our local outreach and education, water conservation presentations were made at the following events. The Water Conservation Department invites you to visit us at our next event, National Night Out Connect on October 18th at the Madera Fairgrounds from 5p.m. to 9p.m.

Conservation Outreach	
Events	
Madera District Fair Booth- September 6-9	
Facebook Postings	
Watering schedule, event notice	
Utility Billing Newsletter-September Billing	
Watering Schedule and articles on conservation tips	

**WATER CONSERVATION CITATIONS:** The water conservation citation staff made a total of 368 individual public contacts. Below is the most current enforcement data.

ENFORCEMENT			
Individual Contacts	368	1 <sup>st</sup> offenses (\$75)	88
Verbal Warnings	66	2 <sup>nd</sup> offenses (\$200)	4
Maintenance Notices	55	3 <sup>rd</sup> or more offense (\$500)	1

**WATER METERS:** In addition to the monthly reading of the manual read meters and the service interruptions due to delinquency during this reporting period, the water meter staff performed various repair and/or meter programming at 72 properties. Customer concern investigations were conducted

and the investigations resulted in discovery of leaks at 26 properties, need for irrigation adjustments at 11 properties and two referrals to Utility Billing regarding billing issues. Notification of possible leaks were sent out to 48 additional properties.

**SYSTEM CAPACITY:** The system has continued to produce adequate flows to meet our peak demand and maintain reserve fire flow capacity. See report below.

**FINANCIAL IMPACT:** The expenses for implementing and administering these water conservation activities occur within the Water Fund and do not impact the General Fund.

**CONSISTENCY WITH THE VISION MADERA 2025 PLAN:** The report is consistent with the Madera Vision Plan, specifically Strategy 434: Water Quality and Usage: ensure continued water supplies to meet the demands of all Maderans through innovative reclamation, conservation and education on water use

**STATUS REPORT August 20th SEPTEMBER 23rd, 2018**  
**WATER PRODUCTION AND RESERVE FIRE FLOW CAPABILITY**

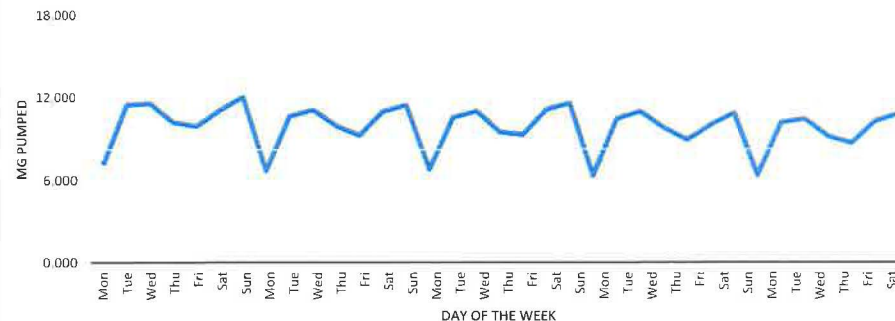
Dates	Day	Peak Temp	MG Pumped	Peak Hour	Lowest Pressure*	Lowest Tank Storage **	Wells Available	Wells On During Peak Hours	Wells in Reserve During Peak Hours	Reserve GPM at Peak	Reserves Meets Fire flow for			
											Residential 1,500 GPM	Commercial 2,500 GPM	Industrial 3,500 GPM	Hospital 4,500 GPM
8/20/2018	Mon	103	7.217	9pm-10pm	47	380,000	16	8	8	9227	Yes	Yes	Yes	Yes
8/21/2018	Tue	94	11.529	9pm-10pm	40	780,000	16	12	4	4136	Yes	Yes	Yes	Yes
8/22/2018	Wed	94	11.631	9pm-10pm	40	780,000	16	13	3	3234	Yes	Yes	Yes	Yes
8/23/2018	Thu	93	10.241	9pm-10pm	40	780,000	16	12	4	4828	Yes	Yes	Yes	Yes
8/24/2018	Fri	91	9.964	10pm-11pm	40	680,000	16	11	5	6036	Yes	Yes	Yes	Yes
8/25/2018	Sat	95	11.134	10pm-11pm	39	680,000	16	13	3	4145	Yes	Yes	Yes	Yes
8/26/2018	Sun	97	12.094	9pm-10pm	38	520,000	16	14	2	2945	Yes	Yes	Yes	Yes
8/27/2018	Mon	93	6.732	9pm-10pm	42	680,000	16	8	8	8857	Yes	Yes	Yes	Yes
8/28/2018	Tue	90	10.682	10pm-11pm	41	600,000	16	12	4	5135	Yes	Yes	Yes	Yes
8/29/2018	Wed	91	11.162	10pm-11pm	39	680,000	16	13	3	4145	Yes	Yes	Yes	Yes
8/30/2018	Thu	88	9.983	9pm-10pm	40	680,000	16	12	4	5126	Yes	Yes	Yes	Yes
8/31/2018	Fri	91	9.298	9pm-10pm	41	780,000	16	8	8	8555	Yes	Yes	Yes	Yes
9/1/2018	Sat	95	11.047	10pm-11pm	39	680,000	16	13	3	4145	Yes	Yes	Yes	Yes
9/2/2018	Sun	99	11.496	10pm-11pm	39	680,000	16	12	4	4434	Yes	Yes	Yes	Yes
9/3/2018	Mon	98	6.854	8pm-9pm	45	680,000	16	8	8	9284	Yes	Yes	Yes	Yes
9/4/2018	Tue	99	10.593	10pm-11pm	40	680,000	16	12	4	5263	Yes	Yes	Yes	Yes
9/5/2018	Wed	101	11.056	10pm-11pm	48	780,000	16	13	3	3847	Yes	Yes	Yes	Yes
9/6/2018	Thu	98	9.553	10pm-11pm	45	780,000	16	10	6	6107	Yes	Yes	Yes	Yes
9/7/2018	Fri	102	9.355	10pm-11pm	42	780,000	16	10	6	6027	Yes	Yes	Yes	Yes
9/8/2018	Sat	101	11.186	10pm-11pm	39	780,000	16	13	3	3935	Yes	Yes	Yes	Yes
9/9/2018	Sun	99	11.631	9pm-10pm	41	780,000	16	13	3	3935	Yes	Yes	Yes	Yes
9/10/2018	Mon	97	6.379	9pm-10pm	43	780,000	16	8	8	8647	Yes	Yes	Yes	Yes
9/11/2018	Tue	98	10.496	9pm-10pm	40	780,000	16	13	3	4273	Yes	Yes	Yes	Yes
9/12/2018	Wed	89	11.043	8pm-9pm	40	780,000	16	13	3	4273	Yes	Yes	Yes	Yes
9/13/2018	Thu	86	9.847	8pm-9pm	41	780,000	16	10	6	6453	Yes	Yes	Yes	Yes
9/14/2018	Fri	89	8.972	8pm-9pm	43	780,000	16	9	7	7657	Yes	Yes	Yes	Yes
9/15/2018	Sat	87	10.037	10pm-11pm	42	780,000	16	10	6	6027	Yes	Yes	Yes	Yes
9/16/2018	Sun	86	10.911	9pm-10pm	40	600,000	16	12	4	4804	Yes	Yes	Yes	Yes
9/17/2018	Mon	89	6.406	9pm-10pm	44	680,000	16	7	9	10457	Yes	Yes	Yes	Yes
9/18/2018	Tue	88	10.230	9pm-10pm	40	680,000	16	12	4	5077	Yes	Yes	Yes	Yes
9/19/2018	Wed	90	10.499	8pm-9pm	40	780,000	16	13	3	3557	Yes	Yes	Yes	Yes
9/20/2018	Thu	93	9.233	10pm-11pm	42	820,000	16	11	5	5117	Yes	Yes	Yes	Yes
9/21/2018	Fri	97	8.747	9pm-10pm	42	780,000	16	9	7	7604	Yes	Yes	Yes	Yes
9/22/2018	Sat	99	10.314	10pm-11pm	43	780,000	16	11	5	5738	Yes	Yes	Yes	Yes
9/23/2018	Sun	98	10.838	10pm-11pm	39	780,000	16	12	4	4757	Yes	Yes	Yes	Yes

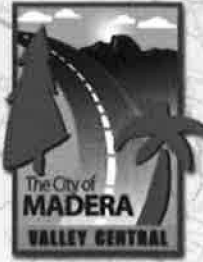
\* Goal is to keep system above 30 psi., below 20 cause regulatory issue.

\*\* Elevated tank has a 1,000,000 gallon maximum capacity.

19 **Total Wells**  
 3 **Wells Not Available**  
     #16 Being Retrofitted for Submersible Pump to Gain 500 gpm  
     #20 Air intrusion  
     #27 Redevelopment in process  
 16 **Number of Wells Available**

**Daily Production**





[Return to Agenda](#)

## REPORT TO CITY COUNCIL

Approved By:

Department Director

City Administrator

Council Meeting of October 17, 2018

Agenda Item Number B-4

**SUBJECT: CONSIDERATION OF A RESOLUTION APPROVING AN AGREEMENT WITH LIVE OAK ASSOCIATES, INC. FOR ON-CALL PROFESSIONAL ENVIRONMENTAL SERVICES TO THE CITY OF MADERA FOR ROUTINE MAINTENANCE OF CITY-OWNED BRIDGES ALONG THE FRESNO RIVER**

### RECOMMENDATION:

That the City Council approves Resolution No. 18-\_\_\_\_\_:

1. Approving the Agreement with Live Oak Associates, Inc.
2. Authorizing the Mayor to execute the Agreement.

### SUMMARY:

The Agreement with Live Oak Associates, Inc. is to perform a Pre-activity survey (Project) around the area of City-owned Bridges for sensitive status species, in compliance with the Lake or Streambed Alteration Agreement (LSA) with the California Department of Fish and Wildlife (CDFW). The total amount of the agreement is \$16,725 for the Pre-activity surveys to include Swainson's Hawk Survey and Nesting Bird Raptor Survey, and for the preparation of the Verification Review Form (VRF). The project is included in the 2018/19 City Budget. The Professional Environmental Services will be funded with Local Transportation Funds (LTF).

### DISCUSSION:

Every two (2) years, Caltrans Bridge Inspectors conduct an inspection of City Bridges and sends a copy of the Bridge Inspection Report (BIR) to City. The BIR includes various information regarding the condition of the Bridges at the time they were inspected. Additionally the BIR also includes maintenance recommendations ranging from scour protection, erosion control, re-painting of Bridge members, and replacement of Bridge components.

### Engineering

205 W. Fourth Street • Madera, CA 93637 • TEL (559) 661-5418 • FAX (559) 675-6605

[www.cityofmadera.ca.gov](http://www.cityofmadera.ca.gov)



The City-owned Bridges along the Fresno River are as follows:

1. Granada Bridge - North of Riverview Drive
2. Schnoor Bridge – North of Riverview Drive
3. Gateway Bridge – North of Central Avenue
4. “D” Street Bridge – South of Riverside Drive
5. Lake Street Bridge – South of Riverside Drive
6. Cleveland Avenue Bridge – North of Yosemite Avenue (SR 145)

The City of Madera Department of Public Works is responsible for the maintenance of all City Bridges. Pursuant to Fish and Wildlife Code (FWC) Section 1602, City is required to notify CDFW of City's intent to perform routine maintenance on the Bridges along the Fresno River and to enter into a Lake or Streambed Alteration (LSA) agreement between the CDFW and the City of Madera.

On January 21, 2016, the LSA agreement was approved by both City and CDFW. The agreement is effective for five (5) years from the date of approval. Part of the agreement requires the City to conduct Pre-activity Survey 30 days prior to performing routine maintenance work on the Bridges.

Since the Pre-activity survey requires a qualified Biologist, a Request for Proposal (RFP) was prepared and sent to three (3) Consultants. Proposals were received from Alphabiota Biological Consulting, and Live Oak Associates, Inc. The third Consultant, Compliance Solutions, Inc. did not submit a proposal.

The Selection Committee consisting of three City Engineering Division staff reviewed, evaluated and ranked the proposals based on the four criteria listed in the RFP, as follows; personnel biological experience, similar project experience, approach to work tasks/schedule, and fee schedule. Live Oak Associates, Inc. received the highest ranking. The required process for determining an acceptable fee for services was conducted by Staff and the agreement is hereby recommended for council approval.

The agreement amount is \$16,725 for the Pre-activity Survey to include Swainson's Hawk Survey and Nesting Bird Raptor Survey, and for the preparation of the Verification Review Form (VRF) for the six (6) Bridges overcrossing the Fresno River, as they become needed.

#### **FISCAL IMPACT:**

There is no fiscal impact to the City's General Fund. Funding for these professional services is included in the 2018/19 City Budget for Project number RM-00001. The Environmental Services will be funded with Local Transportation Fund (LTF), Org number 42005330, Object number 7050.

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

**Strategy 126:** Supports clean, safe and attractive streets to accommodate traffic.

**RESOLUTION NO. 18-\_\_**

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MADERA, CALIFORNIA, APPROVING AN AGREEMENT WITH LIVE OAK ASSOCIATES, INC. FOR ON-CALL PROFESSIONAL ENVIRONMENTAL SERVICES TO THE CITY OF MADERA FOR ROUTINE MAINTENANCE OF CITY-OWNED BRIDGES ALONG THE FRESNO RIVER AND AUTHORIZING THE MAYOR TO EXECUTE THE AGREEMENT**

**WHEREAS**, the City of Madera owns and maintains six (6) Bridges along the Fresno River; and

**WHEREAS**, these six (6) Bridges are inspected bi-annually by Caltrans, and a Bridge Inspection Report (BIR) is submitted to the City with recommendations for various maintenance work; and

**WHEREAS**, pursuant to Fish and Wildlife Code (FWC) Section 1602, City is required to notify the California Department of Fish and Wildlife (CDFW) City's intent to perform routine maintenance on the Bridges along the Fresno River and to enter into a Lake or Streambed Alteration (LSA) agreement between the CDFW and the City of Madera; and

**WHEREAS**, the agreement also requires a pre-activity survey for sensitive status species to be conducted by a Biologist before any routine maintenance work is done; and

**WHEREAS**, environmental services by a professional firm is required to comply with the Agreement between the City and the CDFW; and

**WHEREAS**, Live Oak Associates, Inc., has the professional skills to perform the necessary professional environmental services and City desires to retain Live Oak Associates, Inc; and

**WHEREAS**, the funding for routine maintenance and environmental work on the Project has been included in the 2018/19 Budget; and

**WHEREAS**, the Agreement with Live Oak Associates, Inc. for such professional environmental services is recommended for approval and a copy of such agreement is on file in the Office of the City Clerk.

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

1. The above recitals are true and correct.
2. The Agreement with Live Oak Associates, Inc. for professional environmental services for a budget amount of \$16,725 for the Pre-activity surveys to include Swainson's Hawk Survey and Nesting Bird Raptor Survey, and for the preparation of the Verification Review Form (VRF) for the six (6) Bridges overcrossing the Fresno River, as they become needed, a copy of which is on file in the Office of the City Clerk and referred to for particulars, is hereby approved.
3. The Mayor is authorized to execute the Agreement.
4. This resolution is effective immediately upon adoption.

\* \* \* \* \*

**AGREEMENT WITH LIVE OAK ASSOCIATES, INC. FOR AN ON-CALL PROFESSIONAL ENVIRONMENTAL SERVICES FOR ROUTINE MAINTENANCE WORK ON CITY-OWNED BRIDGES ALONG THE FRESNO RIVER**

This Agreement made and entered into this 17<sup>th</sup> of October, 2018, between the City of Madera a municipal corporation of the State of California, hereinafter called "**CITY**", and **LIVE OAK ASSOCIATES, INC.**, located in Oakhurst, CA, hereinafter called "**CONSULTANT**".

**WITNESSETH**

**WHEREAS**, CITY will be performing its annual Routine Maintenance work within and around six (6) City-owned Bridges along the Fresno River, hereinafter called "Project"; and

**WHEREAS**, CITY needs professional environmental services to perform a Pre-activity survey to comply with the requirements stipulated in the Agreement between the City and the California Department of Fish and Wildlife (CDFW) before any routine maintenance work in the Fresno River can be performed; and

**WHEREAS**, CONSULTANT is qualified and certified to provide the required professional environmental services on an on-call basis and is knowledgeable of State and Federal environmental requirements; and

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

**NOW THEREFORE:**

The parties hereto mutually agree as follows:

**1. SERVICES OF CONSULTANT:**

CITY hereby hires CONSULTANT to provide professional environmental services on an on-call basis as set forth herein in connection with the Project, and shall be in compliance with Federal and State environmental requirements. 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 environmental services set forth in EXHIBIT A, "Work Plan", 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 standards and requirements as directed by the CITY, and applicable Federal and State environmental requirements.

### **3. TERM:**

The term of this agreement shall commence upon the date the above-written date and shall remain in effect until December 31, 2020, unless this agreement is terminated as set forth in Section 12. The City may opt to extend this agreement for two (2) additional one-year terms with written notice to the Consultant thirty (30) days prior to the expiration of this contract.

### **4. PROGRESS REPORTS AND MEETINGS:**

CONSULTANT shall communicate with CITY staff once a week to verify, refine and complete the project requirements and review the work progress for the project. CONSULTANT shall prepare updates on the progress of the tasks listed in the Scope of Services. If it deem necessary, CONSULTANT shall have a meeting with the CITY staff to review the completion of the survey.

### **5. CITY'S OBLIGATIONS**

The CITY shall provide the consultant with the following:

- a. Provide a Project Manager to work with CONSULTANT;
- b. Review all submittals timely;

### **6. COMPENSATION**

The basic fee based on the estimated hours of work listed in EXHIBIT B, "MANPOWER SCHEDULE AND FEE PROPOSAL", attached hereto and incorporated herein by reference, for the work tasks itemized in the Scope of Services. CITY and CONSULTANT agree that the hourly rates shown in EXHIBIT C, "HOURLY RATE", shall remain in full force and effect through December 31, 2020. 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 basic fee as shown in EXHIBIT B.

## **7. 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 invoice 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 invoice 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.

## **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:**

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 sub-consultants 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. Maintenance of Coverage**

CONSULTANT shall maintain limits no less than:

- **\$1,000,000 General Liability** (including operations, products and completed operations) per occurrence, \$2,000,000 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 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.

- **\$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.
- **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.

**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 sub-consultants 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 sub-consultants 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 day notice of cancellation (except for nonpayment for which ten (10) calendar day 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. Where applicable and appropriate, 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 a Notice to proceed issued by the City, CONSULTANT shall perform and complete the work with diligence and timely manner as shown in EXHIBIT D, "BAR CHART SCHEDULE". Failure by the CONSULTANT to perform the services in a diligent and timely manner may result in termination of this Agreement by the CITY.

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 12.

D. CONSULTANT shall complete all services required under this Agreement and this Agreement shall expire on December 31, 2020 unless extended by mutual agreement.

## **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:

1. An illegal use of funds by CONSULTANT;
2. A failure by CONSULTANT to comply with any material term of this Agreement;
3. A substantially incorrect or incomplete report submitted by CONSULTANT to CITY.

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. 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 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:**

CONSULTANT shall indemnify, protect, defend, and hold harmless the City and any and all of its officials, employees and agents from and against any and all losses, liabilities, damages, costs, and expenses, including legal counsel's fees and costs but only to the extent the Consultant (and its Sub-consultants) are responsible for such damages, liabilities and costs on a comparative basis of fault between the Consultant (and its Sub-consultants) 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.

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 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 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. 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.

**16. 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.

**17. 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.

**18. 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.

**19. 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.



## **20. 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 employee benefits to others unrelated to CITY or to this Agreement.

## **21. 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.

## **22. 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.

### **23. 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.

### **24. 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

### **25. 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 or that party or, in lieu of personal service, when deposited in the United States mail, first class postage prepaid, addressed as follows:

#### **CITY OF MADERA**

Engineering Division  
205 W. 4th Street  
Madera, CA 93637  
Attention: City Engineer

#### **CONSULTANT**

Live Oak Associates, Inc.  
39930 Sierra Way, Suite B  
Oakhurst, CA 93644  
Attention: Austin Pearson

**26. 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**

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

**LIVE OAK ASSOCIATES, INC.**

By:   
Austin Pearson, Director

**770548068**  
Taxpayer I.D. Number

**APPROVED AS TO FORM:**

By: \_\_\_\_\_  
Brent Richardson, City Attorney

**ATTEST:**

By: \_\_\_\_\_  
Sonia Alvarez, City Clerk

\* \* \* \* \*

## **EXHIBIT A**

### **WORK PLAN**

LOA proposes to provide on-call professional environmental services for the City of Madera's planned routine maintenance work at City-owned bridges along the Fresno River. As we understand it, the work will occur within 100 feet upstream and downstream of the following six bridges: Cleveland Avenue, Lake Street, D Street, Gateway Drive, Schnoor Street, and Granada Drive. The work is covered by California Department of Fish and Wildlife (CDFW) Streambed Alteration Agreement Notification No. 1600-2015-0112-R4 ("Agreement"). This Agreement contains a number of provisions designed for the protection of wildlife and plants, including state- and federally-listed and other special status species. LOA's proposed services are derived from Provisions 1.9, 2.3, and 2.4 of the Agreement, which call for pre-activity surveys for special status species and nesting birds and raptors, and preparation of a Verification Request Form (VRF) for each maintenance activity. LOA also proposes to prepare a survey report and, if necessary, conduct follow-up surveys and construction monitoring as specified in the City's Request for Proposal (RFP) dated August 2, 2018.

As follows is a detailed breakdown of tasks associated with our proposed scope of work.

#### **Task 1.0 – Field Surveys**

The Streambed Alteration Agreement calls for several types of field surveys prior to the start of maintenance activities. These include a general pre-activity survey for special status species, a protocol-level survey for nesting Swainson's hawks, and a survey for nesting birds and raptors protected under California Fish and Game Code Sections 3503 and 3503.5. LOA proposes to conduct all surveys as specified in the Agreement. As follows is a description of the methodologies that will be used.

#### **Task 1.1 – General Pre-Activity Survey for Special Status Species**

Provision 2.3(d) of the Agreement requires a pre-activity survey for special status species to be conducted within 30 days prior to the start of each maintenance activity. The survey is to include, at a minimum, the western spadefoot and western pond turtle per Provision 2.3(g), the American badger per Provision 2.3(h), and the valley elderberry longhorn beetle (VELB) per Provision 2.3(f). Per the Agreement, the survey for the VELB is to encompass the work area and surrounding lands within 100 feet, while the survey for the remaining species may be limited to the work area and all access routes. Please note that, while the U.S. Fish and Wildlife Service (USFWS) determined in 2016 that the distribution of the VELB does not include Madera County, all of the Agreement's obligations regarding elderberry shrubs remain in force until the Agreement is amended or an explicit exception from CDFW is granted.

LOA will conduct the pre-activity survey as specified in the Agreement. In addition to the four species identified in the Agreement, our survey will target the burrowing owl and San Joaquin kit fox, both known to occur in the region. Survey methodologies will vary by species. The search for the western spadefoot will entail inspecting inundated portions of the survey area for eggs, tadpoles, and metamorphs, and inspecting the entrances of rodent burrows for aestivating toads. The search for the western pond turtle will entail inspecting

inundated portions of the survey area for turtles. The search for the badger, burrowing owl, and kit fox will entail scanning suitable habitats of the survey area for individuals of these species, and inspecting all suitably-sized burrows for their sign. The VELB survey will entail inspecting the survey area for blue elderberry shrubs, the host plant of this species.

LOA will mark the location of any special status species or elderberry shrubs with a handheld GPS, and will delineate areas to be avoided with flagging or fencing. Per the Agreement, no ground-disturbing activities may occur within 100 feet of elderberry shrubs unless explicitly authorized by the USFWS.

Although Provision 2.3(d) of the Agreement indicates that the pre-activity survey for a given bridge location may be conducted anytime within 30 days prior to the start of work at that bridge, the effective survey window is actually much smaller, between approximately 18 and 30 days prior to the start of work. This is because survey results must be submitted with the VRF required for each maintenance activity, and the VRF itself is due at least 14 days prior to the start of work at a given location. Conducting the survey no less than 18 days prior to the start of work will give LOA time to prepare the survey report for inclusion with the VRF (see Task 2.0 below).

Our current scope and budget assume that work at all six bridges will be initiated within a period of 12 days, enabling us to survey all sites on the same day. If the start of work at any location is delayed past the 30-day survey window, LOA can conduct a repeat survey at that location as shown in the per-bridge manpower schedule (see below).

### **Task 1.2 – Protocol-Level Surveys for Nesting Swainson’s Hawks**

Provision 2.3(e) of the Agreement requires surveys for nesting Swainson’s hawks to be conducted in accordance with the Swainson’s Hawk Technical Advisory Committee (SHTAC) 2000 *Recommended Timing and Methodology for Swainson’s Hawk Nesting Surveys in California’s Central Valley*, assuming maintenance work is to take place during this species’ nesting season, defined in the Agreement as March 1 to August 31. The SHTAC 2000 guidelines prescribe three surveys within each of the two predefined survey periods immediately prior to the start of project activities, where the survey periods are: Period I – January to March 20, Period II – March 20 to April 5, Period III – April 5 to April 20, Period IV – April 21 to June 10, and Period V – June 10 to July 30. The guidelines recommend completing the surveys in Periods II, III and/or V, and advise against conducting surveys during Period IV due to reduced probability of detection.

If maintenance activities are scheduled for the nesting season, LOA will conduct six surveys for nesting Swainson’s hawks in accordance with the SHTAC 2000 guidelines. Each survey will cover the six work areas and surrounding lands within ½ mile. The surveys will entail driving all accessible roads of the survey area and using binoculars to inspect the survey area’s trees for the presence of Swainson’s hawk nests and individuals. Any active Swainson’s hawk nests that are identified will be marked with a handheld GPS, and if accessible, will be identified in the field with brightly-colored flagging.

Our current scope and budget assume that maintenance activities at the six bridges will be timed such that the Swainson’s hawk surveys can target all sites at once. If project timing will not permit this, we can conduct additional Swainson’s hawk surveys as shown in the per-bridge manpower schedule.

### **Task 1.3 – Survey for Nesting Birds and Raptors**

Provision 2.4(b) of the Agreement calls for a survey for nesting birds and raptors to be conducted within 30 days prior to the start of each maintenance activity, assuming work is to occur during the avian nesting season, defined in the Agreement as February 15 to August 31. The survey for nesting raptors is to be conducted within a 500-foot radius of the work area, and the survey for other nesting birds is to be conducted within a 250-foot radius of the work area. If bridge maintenance work is to occur during the nesting season, LOA proposes to survey for nesting birds and raptors in conjunction with the general pre-activity survey provided for in Task 1.1. Any active nests discovered will be marked with a handheld GPS, and if accessible, will be identified in the field with brightly-colored flagging.

Our current scope and budget assume that work at all six bridges will be initiated within a period of 12 days, enabling us to conduct the nest survey at all sites on the same day in conjunction with the Task 1.1 pre-activity survey. If the start of work at any location is delayed past the 30-day survey window, LOA can conduct a repeat nest survey at that location in conjunction with the repeat pre-activity survey, as shown in the per-bridge manpower schedule.

### **Task 2.0 – Survey Report**

The survey findings will be summarized in a letter report to be submitted to the City of Madera within three business days after the last survey date, no less than 15 days prior to the start of work at the first bridge location, to facilitate timely submittal of the VRF. The report will identify the boundaries of the survey area, the survey dates and times, methodologies used, and results obtained. The results section will describe existing conditions in each work area, including land uses and the presence of any sensitive habitats, and provide details on any special status species, elderberry shrubs, or nesting birds that were observed. Also included in the report will be a brief project description, a brief assessment of impacts to sensitive biological resources, and a list of recommended avoidance and minimization measures if applicable. If additional permits are required before work may begin at a given location, the report will so state. The report will be appended with a list of all terrestrial wildlife species observed during the surveys, the mapped locations of any special status species, elderberry shrubs, or nesting birds that were identified, a vicinity map, and representative photographs of the six work areas.

### **Task 3.0 – VRF Preparation**

Per LOA's email correspondence with you dated August 9, 2018, we understand that you would like us to include VRF preparation in our proposed scope of work. As discussed, the VRF for each maintenance activity must be submitted to CDFW for approval at least 14 days prior to the activity's initiation. To complete the VRFs, LOA will need the following information from the City for each maintenance activity: 1) a detailed description of the maintenance work to be performed at the bridge, photos of the feature(s) needing repair (for bridge footing and slope protection activities), 2) type of equipment to be used, 3) project start and end dates, and 4) proposed access routes for vehicles and heavy equipment.

LOA will complete the VRF for each maintenance activity no less than 15 days prior to the activity's initiation, enabling the City to review it prior to its submittal to CDFW. Following submittal, LOA will correspond with CDFW as needed to facilitate the maintenance activity's timely approval. Our past experience with this project

indicates that, in some cases, CDFW may approve an activity before the end of the 14-day VRF review window, allowing the activity to be initiated earlier than planned.

#### **Task 4.0 – Optional Follow-up Surveys**

The RFP states that, if it is determined during the wildlife surveys that the project may impact covered species, follow-up surveys may need to be conducted. If requested, LOA can conduct follow-up surveys on a time-and-charges basis or prepare a new scope and budget for your approval.

#### **Task 5.0 – Optional Construction Monitoring**

The RFP indicates that construction monitoring may be deemed necessary based on the findings of the wildlife surveys. If requested, LOA can conduct construction monitoring on a time-and-charges basis or prepare a new scope and budget for your approval.

#### **Assumptions**

As discussed, our current scope and budget assume that maintenance activities at all six bridges will be initiated within a period of 12 days, enabling us to conduct the required surveys for all locations concurrently. However, we have included a per-bridge cost for additional survey work in our fee proposal to accommodate any work that must be initiated outside of the 12-day timeline.

LOA does not propose, at present, to attend meetings, consult with CDFW apart from limited correspondence to facilitate VRF approval, delineate no-disturbance buffers around the active nests of Swainson's hawks or other nesting birds or raptors, or relocate any special status species from the work areas. Should any of these tasks be required at some point in the future, LOA can complete this work on a time-and-charges basis or prepare a new scope and budget for your approval.



## EXHIBIT B

### MANPOWER SCHEDULE AND FEE PROPOSAL

#### Manpower Schedule (Six Bridges)

Task	Staff Classification	Hours Allotted
Task 1.0 (Field Surveys)		
Task 1.1 (General Pre-Activity Survey)	Senior Project Manager	8
	Staff Ecologist	8
Task 1.2 (Swainson's Hawk Surveys)	Senior Project Manager	12
	Staff Ecologist	36
Task 1.3 (Nesting Bird Survey)	Senior Project Manager	4.5
	Staff Ecologist	4.5
Task 2.0 (Survey Report)	Director	2
	Senior Project Manager	4
	Project Manager	8
	Cartographer	4.5
Task 3.0 (VRF Preparation)	Director	3
	Senior Project Manager	6
	Project Manager	30
Task 3.0 (Optional Follow-up Surveys)	Senior Project Manager	As needed
Task 4.0 (Optional Construction Monitoring)	Senior Project Manager	As needed
<b>TOTAL HOURS</b>		<b>130.5</b>



**Manpower Schedule (Per Bridge)**

<b>Task</b>	<b>Staff Classification</b>	<b>Hours Allotted For First Bridge</b>	<b>Hours Allotted For Each Additional Bridge</b>
Task 1.0 (Field Surveys)			
Task 1.1 (General Pre-Activity Survey)	Senior Project Manager	5.5	0.5
	Staff Ecologist	5.5	0.5
Task 1.2 (Swainson's Hawk Surveys)	Senior Project Manager	9.5	0.5
	Staff Ecologist	31	1
Task 1.3 (Nesting Bird Survey)*	Senior Project Manager	.75	.75
	Staff Ecologist	.75	.75
Task 2.0 (Survey Report)	Director	2	0
	Senior Project Manager	4	0
	Project Manager	5.5	0.5
	Cartographer	2	0.5
Task 3.0 (VRF Preparation)	Director	0.5	0.5
	Senior Project Manager	1	1
	Project Manager	5	5
Task 4.0 (Optional Follow-up Surveys)	Senior Project Manager	As needed	As needed
Task 5.0 (Optional Construction Monitoring)	Senior Project Manager	As needed	As needed
<b>TOTAL HOURS</b>		<b>73</b>	<b>11.5</b>

\* The hours shown for the Task 1.3 nesting bird survey assume that this survey will be conducted concurrently with the Task 1.1 pre-activity survey at a given location



# LIVE OAK ASSOCIATES, INC.

an Ecological Consulting Firm

August 13, 2018

Keith B. Helmuth  
City of Madera  
205 W. Fourth Street Madera, CA 93637

Dear Mr. Helmuth,

LOA proposes to provide on-call professional environmental consulting services for the City of Madera's planned routine maintenance work at six City-owned bridges along the Fresno River. These services include pre-activity surveys for special status species and nest surveys for Swainson's hawks and other birds and raptors (Task 1.0), preparation of a survey report (Task 2.0), preparation of Verification Request Forms (VRFs) for each bridge location (Task 3.0), and, if necessary, follow-up surveys and construction monitoring (Tasks 4.0 and 5.0).

Tasks 1.0 through 3.0 will be completed for the six bridges for a not-to-exceed cost of \$16,725 as follows.

Task 1.0 Field Surveys	
Task 1.1 Pre-Activity Surveys	\$ 2,025
Task 1.2 Swainson's Hawk Surveys (if needed)	\$ 5,700
Task 1.3 Nesting Bird and Raptor Survey (if needed)	\$ 1,050
Task 2.0 Survey Report	\$ 2,550
Task 3.0 VRF Preparation	<u>\$ 5,400</u>
<b>TOTAL:</b>	<b>\$ 16,725</b>

The above budget assumes that the maintenance activities will be timed such that surveys can be conducted for all bridge sites concurrently, and results presented in a single survey report. If this is not the case, we can complete the work on a per-bridge basis as shown below. "Additional bridges" are those that can be surveyed on the same day and covered in the same survey report as the first bridge.

	<u>First Bridge</u>	<u>Per Additional Bridge</u>
Task 1.0 Field Surveys		
Task 1.1 Pre-Activity Surveys	\$ 1,400	\$ 125
Task 1.2 Swainson's Hawk Surveys (if needed)	\$ 4,825	\$ 175
Task 1.3 Nesting Bird and Raptor Survey (if needed)	\$ 175	\$ 175
Task 2.0 Survey Report	\$ 1,925	\$ 125
Task 3.0 VRF Preparation	<u>\$ 900</u>	<u>\$ 900</u>
<b>TOTAL:</b>	<b>\$ 9,225</b>	<b>\$ 1,500</b>

It is not possible to know at this time if Tasks 4.0 and 5.0 (follow-up surveys and construction monitoring) will be necessary, and how much effort would be required. As such, we have not provided a cost estimate for these tasks. Once the need for these tasks has been assessed, a separate scope and budget can be prepared at that time. Tasks 1.2 and 1.3 are only necessary if work occurs during the nesting season, defined in the project's Streambed Alteration Agreement as March 1 to August 31 for Swainson's hawks and February 15 to August 31 for other nesting birds.

This fee proposal is a firm offer for a 90-day period. Thank you for considering our firm for assistance with this project. Please don't hesitate to contact me if I can answer questions about our fee.

Sincerely,

A handwritten signature in dark ink, appearing to read "D. J. Hartesveldt". The signature is fluid and cursive, with the first name "David" and last name "Hartesveldt" clearly legible.

David J. Hartesveldt  
President and Senior Ecologist

## EXHIBIT C

### HOURLY RATES

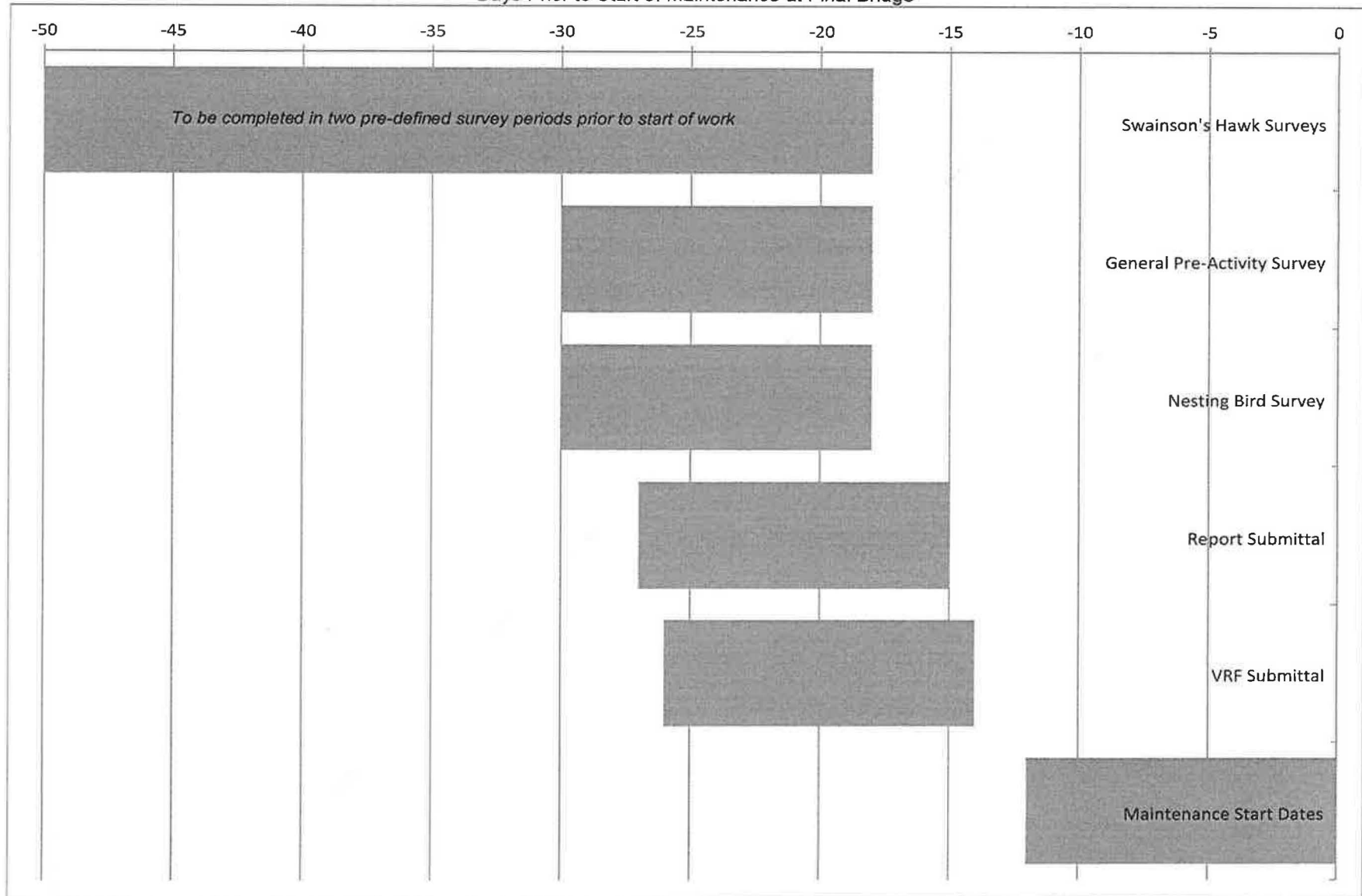
David Hartesveldt, Principal and Senior Botanist/Wetland Scientist .....	\$215
Austin Pearson, Director of Ecological Services Central Valley/Sierra .....	\$175
Jeff Gurule, Senior Project Manager/Staff Ecologist .....	\$140
Wendy Fisher, Senior Project Manager/Staff Ecologist .....	\$140
Tom Haney, Director of Cartography/GIS .....	\$140
Rebekah Jensen, Project Manager/Staff Ecologist .....	\$130
Anna Godinho, Staff Ecologist .....	\$100
Natalie Neff, Staff Ecologist .....	\$100

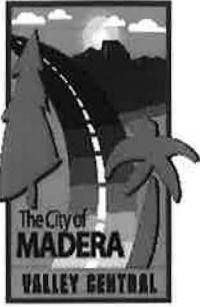
### Miscellaneous Fees

Travel .....	\$0.545/mile
Service Fee on Direct Expenses .....	10%

**EXHIBIT D**  
**BAR CHART SCHEDULE**

Days Prior to Start of Maintenance at Final Bridge





# REPORT TO THE CITY COUNCIL

COUNCIL MEETING OF October 17, 2018

AGENDA ITEM NUMBER B-5

APPROVED BY

  
\_\_\_\_\_  
GRANT ADMINISTRATOR

  
\_\_\_\_\_  
CITY ADMINISTRATOR

**SUBJECT: CONSIDERATION OF A RESOLUTION APPROVING AMENDMENT NO. 1 TO THE AGREEMENT FOR SERVICES FOR THE 2018/2019 COMMUNITY DEVELOPMENT BLOCK GRANT POMONA RANCH PHASE II HOMELESS HOUSING PROJECT**

## **RECOMMENDATION:**

Staff recommends Council adopt the Resolution.

## **DISCUSSION:**

Agreements with subrecipients are a central part of the subrecipient requirements of the Community Development Block Grant (CDBG) program for Entitlement Communities. It fulfills a legal requirement by presenting a concise statement of the rules for the CDBG program and the conditions under which funds are provided. Also, it provides a yardstick for monitoring subrecipient performance. In addition, HUD CDBG regulations (24 CFR 570.503) require that grantees have written agreements in effect for each subrecipient before giving out any CDBG funds. The written Agreement must remain in effect during any period that the subrecipient has control over any CDBG funds.

So that all CDBG applicants could adequately plan and budget for their proposed programs and projects in their application packets, the City published insurance requirements for the various types of projects funded under CDBG programs with the initial application packet. These insurance requirements were then incorporated into the agreements with approved subrecipients. The City Council approved an agreement with the City of Madera Housing Authority (Housing Authority) for the Pomona Ranch Homeless Housing Project at its meeting on June 20, 2018. After the agreement was fully executed, the City was advised by the Housing Authority that it did not have General Liability insurance at the required limits per the executed agreement. For the type of project proposed, the Housing Authority is required to provide \$2 Million per accident/\$4 Million

in aggregate in General Liability insurance naming the City as additional insured. The Housing Authority carries \$2 Million per accident/\$2 Million in aggregate in General Liability insurance. In order to comply with the existing Agreement requirements, the Housing Authority would need to purchase a separate excess/umbrella liability policy and estimates the premium at \$7,000 per year. Staff has reviewed the proposed project and verified the Housing Authority's current insurance and is recommending an Amendment be executed to the Agreement for funding that would revise the required insurance limits to \$2 Million per accident/\$2 Million in aggregate for General Liability insurance. The basis for the lowered limit is supported by the Housing Authorities Risk Retention Pool and the City's Human Resources Department.

**FINANCIAL IMPACT:**

Approval of the Amendment will not impact the General Fund because CDBG is the sole funding source.

**VISION MADERA 2025 ACTION PLAN CONSISTENCY:**

Of the Plan's Strategies, the Agreement meets a Strategy as follows,

**Strategy 136, Transitional Housing,** Promote transitional housing to ensure the homeless have safe shelter.

**RESOLUTION NO. 18-\_\_\_\_\_**

**A RESOLUTION OF THE CITY COUNCIL, OF THE CITY OF MADERA,  
CALIFORNIA, APPROVING AMENDMENT NO. 1 TO THE AGREEMENT FOR  
SERVICES FOR THE 2018/2019 COMMUNITY DEVELOPMENT BLOCK GRANT  
POMONA RANCH PHASE II HOMELESS HOUSING PROJECT**

**WHEREAS**, an Agreement to upgrade the Pomona Ranch Housing Center's six units with air conditioning and heating to provide temporary residences and a continuum of care for homeless families with children during the off-season's colder winter months, was approved by the City Council on June 20, 2018; and

**WHEREAS**, the approved agreement required General Liability insurance requirements of \$2 million per occurrence and \$4 million aggregate; and

**WHEREAS**, the Housing Authority of the City of Madera carries General Liability insurance with \$2 million per occurrence and \$2 million per aggregate; and

**WHEREAS**, the amendment is to change the aggregate insurance requirement to \$2 million; and

**WHEREAS**, the limits specified in the Amendment are supported by the Housing Authorities Risk Retention Pool and the City's Human Resources Department; and

**WHEREAS**, the HUD regulations require subrecipients to comply with the bonding and insurance requirements of 24 CFR 84.31 and 84.48; and

**WHEREAS**, the City of Madera insurance requirements are dependent on the type of work being performed and in some cases the value of the work; and

**WHEREAS**, Amendment No. 1 ensures CDBG-funded subrecipients comply with HUD regulations and City of Madera insurance requirements.

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

1. The above recitals are true and correct.
2. Amendment No. 1 to the Agreement for Services Funded by the City of Madera, California, with the Housing Authority of the City of Madera is on file in the office of the City Clerk, and to which reference is hereby made for full particulars, is hereby approved, and the Mayor is authorized and directed to execute Amendment No. 1 to Agreement for and on behalf of the City of Madera.
3. The City Clerk is hereby authorized and directed to forward a copy of the Resolution to the Grant Administrator.
4. This resolution is effective immediately upon adoption.

\* \* \*



**AMENDMENT NO 1 TO THE AGREEMENT FOR SERVICES FUNDED BY THE  
CITY OF MADERA'S COMMUNITY DEVELOPMENT BLOCK GRANT FOR THE  
POMONA RANCH PHASE II HOMELESS HOUSING PROJECT**

This Amendment No. 1 to the Agreement for Services to upgrade six additional units at the Pomona Ranch Housing Center with air conditioning and heating to provide temporary residences and a continuum of care for homeless families with children during the off-season during the colder winter months, to fund salary and benefits for a Case Manager, services and supplies, insurance, consultation, equipment rentals, HVAC installation, transportation and contingencies (hereinafter called "Agreement"), between the City of Madera (hereinafter called "CITY") and the Housing Authority of the City of Madera (hereinafter called ("CONTRACTOR")) is entered this 17th day of October 2018.

**WITNESSETH**

**WHEREAS**, CITY has provided funding for services to provide temporary residences and a continuum of care for homeless families with children during the off-season during the colder winter months, to fund salary and benefits for a Case Manager, services and supplies, insurance, consultation, equipment rentals, HVAC installation, transportation and contingencies, hereinafter called "Project"; and

**WHEREAS**, CITY and CONTRACTOR entered into an Agreement dated July 1, 2018 to carry out the Project; and

**WHEREAS**, the City Council approved Resolution No. 18-113 for the Agreement on June 20, 2018; and

**WHEREAS**, CONTRACTOR has requested an amendment to the Insurance Requirements; and

**WHEREAS**, Amendment No. 1 is necessary to revise the Agreement.

**NOW THEREFORE**, the parties hereto mutually agree as follows:

**AGREEMENT**

Section 1: Paragraph 22 of the Agreement shall be Amended to read as follows:

**22. Insurance Requirements for Contractors**

Without limiting Contractor's indemnification of City, and prior to commencement of Work, Contractor 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.

## Minimum Scope and Limits of Insurance

Contractor shall maintain limits no less than:

- **\$2,000,000 General Liability** (including operations, products and completed operations) per occurrence, \$2,000,000 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 City and its officers, officials, employees and agents shall be additional insureds under such policies.
- **\$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 Contractor 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. Contractor 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.

## Maintenance of Coverage

Contractor 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 Contractor, his agents, representatives, employees, subcontractors or subconsultants as specified in this Agreement.

## Proof of Insurance

Contractor 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 Contractor, or others providing insurance evidence in compliance with these specifications, to waive their right of recovery prior to a loss. Contractor

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)

Contractor acknowledges and agrees that any actual or alleged failure on the part of the Agency to inform Contractor 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 Contractor maintains higher limits than the minimums required above, the entity shall be entitled to coverage at the higher limits maintained by Contractor.

#### Notice of Cancellation

Contractor 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

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

#### Additional Insurance

Contractor 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.

Section 2. All other provisions of the Agreement not inconsistent with this Amendment shall continue in full force and effect.

**IN WITNESS WHEREOF**, the parties hereto have caused this Amendment to be executed by and through their respective officers duly authorized on the date first written above.

**CITY OF MADERA:**

**HOUSING AUTHORITY OF THE CITY OF  
MADERA**

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

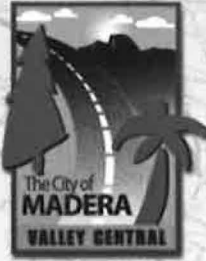
By: Linda M. Shaw  
Linda Shaw, Executive Director

**APPROVED AS TO LEGAL FORM**

By: \_\_\_\_\_  
Brent Richardson, City Attorney

**ATTEST:**

By: \_\_\_\_\_  
Sonia Alvarez, City Clerk



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## REPORT TO CITY COUNCIL

Approved By:   
Department Director

Council Meeting of October 17, 2018  
Agenda Item Number B-6

  
City Administrator

### **SUBJECT:**

**CONSIDERATION OF A RESOLUTION APPROVING THE PROGRAM SUPPLEMENT AGREEMENT NO. 059-F FOR THE PURCHASE OF ONE DIESEL PM CERTIFIED STREET SWEEPER, STATE PROJECT NUMBER CMLNI 5157 (105) AND AUTHORIZING THE CITY ENGINEER TO EXECUTE THE PROGRAM SUPPLEMENT AGREEMENT NO. 059-F ON BEHALF OF THE CITY**

### **RECOMMENDATION:**

Staff recommends that the City Council approve Resolution No. 18-\_\_:

- a. Approving Program Supplement Agreement No. 059-F for the purchase of One Diesel PM Certified Street Sweeper, State Project Number CMLNI 5157 (105)
- b. Authorizing the City Engineer to execute Program Supplement Agreement No. 059-F

### **SUMMARY:**

The project consists of the purchase of One Diesel PM Certified Street Sweeper coinciding with the Buy America Waiver program. The City of Madera will be adding a newer technology and cleaner operating piece of equipment in an effort to advance our attainment of air quality standards.

A Program Supplement Agreement (PSA) must be executed in order to receive reimbursement payments from the State. The Program Supplement Agreement (PSA) is a supplement to the Master Agreement which formalizes the financial responsibilities and provisions for a specific Federally funded project. In this case, the PSA is for the use of Congestion Mitigation & Air Quality Program

### **Engineering**

205 W. Fourth Street • Madera, CA 93637 • TEL (559) 661-5418 • FAX (559) 675-6605

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(CMAQ) funds. It is the contractual basis for the State to pay the local agency for work done for the project. It also includes special covenants that define the local agencies' specific responsibilities for providing local match.

No reimbursement payments can be made to the City until the PSA has been fully executed.

### **HISTORY:**

The Mayor executed the most recent Master Agreement with the State of California Department of Transportation (Caltrans) for Federal-Aid Projects on May 2, 2016. The Master Agreement enables the City of Madera to apply for and administer projects receiving funds from Federal transportation programs through Caltrans. Caltrans prepares and sends a project specific Program Supplement Agreement (PSA) to local agencies for execution.

### **SITUATION:**

The City was granted \$220,000 in Congestion Mitigation & Air Quality Program (CMAQ) funds for the purchase of One Diesel PM Certified Street Sweeper. The purpose of the CMAQ program is to fund transportation projects or programs that will contribute to the attainment of national air quality standards. With this purchase, Public Works will be replacing a non-certified 2003 Street Sweeper with a PM certified Street Sweeper.

Funding for the new Street Sweeper was included in the 2017 Federal Transportation Improvement Program (FTIP) and approved by Federal Highway Administration (FHWA) on December 16, 2016. The City applied for a Buy America Waiver March 15, 2017. The Buy America waiver was approved April 17, 2018, at which time the City was informed it could proceed to submit a Request for Authorization for the project. The RFA was submitted to Caltrans June 25, 2018. Currently, street sweepers do not meet the Federal Buy America requirements

The City received confirmation and approval of the RFA, but is subject to the requirements that City execute a PSA before any invoice for reimbursement can be processed. Public Works and Fleet staff have been working diligently to finalize the Request for Proposal (RFP) for the new sweeper. Staff projects to have it advertised during October and awarded by December of 2018 so that production on the new vehicle may begin.

Staff is recommending that Council approve the resolution for the Program Supplement Agreement 059-F and authorize the City Engineer to execute the Agreement.

### **FINANCIAL IMPACT:**

There is no adverse fiscal impact to the City's General Fund. Local matching funds of \$30,000 are budgeted in the FY 18/19 Fleet Acquisition Fund, Org 30701250 Object 7000.

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

Action 126.0 – Clean, Attractive Streets: Expand or develop programs to create clean, safe and aesthetically pleasing streets.



**RESOLUTION NO. 18 - \_\_\_\_\_**

**A RESOLUTION APPROVING THE PROGRAM SUPPLEMENT AGREEMENT NO. 059-F FOR THE PURCHASE OF ONE DIESEL PM CERTIFIED STREET SWEEPER, STATE PROJECT NUMBER CMLNI 5157 (105) AND AUTHORIZING THE CITY ENGINEER TO EXECUTE THE PROGRAM SUPPLEMENT AGREEMENT NO. 059-F ON BEHALF OF THE CITY**

**WHEREAS**, the City of Madera (Administering Agency) is eligible to receive State funding for various transportation projects through the California Department of Transportation; and

**WHEREAS**, Program Supplement Agreement No. 059-F must be executed with the California Department of Transportation before such funds can be approved for reimbursement of expenses incurred for the project; and

**WHEREAS**, the purchase of One Diesel PM Certified Street Sweeper, State Project Number CMLNI 5157 (105), is included in the 2018/19 Budget; and

**WHEREAS**, City wishes to delegate authorization to the City Engineer of the City of Madera to execute the Program Supplement Agreement No. 059-F and / or any amendments thereto with the California Department of Transportation.

**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. Program Supplement Agreement No. 059-F, a copy of which is on file in the office of the City Clerk and referred to for particulars, the purchase of One Diesel PM Certified Street Sweeper, State Project Number CMLNI 5157 (105), is approved.
3. The City Engineer is authorized to execute Program Supplement Agreement No. 059-F and/or any amendments with the California State Department of Transportation on behalf of the City.
4. This resolution is effective immediately upon adoption.

\* \* \* \* \*



PROGRAM SUPPLEMENT NO. F059  
to  
ADMINISTERING AGENCY-STATE AGREEMENT  
FOR FEDERAL-AID PROJECTS NO 06-5157F15

Adv Project ID Date: August 24, 2018  
0617000185 Location: 06-MAD-0-MAD  
Project Number: CMLNI-5157(105)  
E.A. Number:  
Locode: 5157

This Program Supplement hereby adopts and incorporates the Administering Agency-State Agreement for Federal Aid which was entered into between the Administering Agency and the State on 05/02/16 and is subject to all the terms and conditions thereof. This Program Supplement is executed in accordance with Article I of the aforementioned Master Agreement under authority of Resolution No. approved by the Administering Agency on (See copy attached).

The Administering Agency further stipulates that as a condition to the payment by the State of any funds derived from sources noted below obligated to this PROJECT, the Administering Agency accepts and will comply with the special covenants or remarks set forth on the following pages.

**PROJECT LOCATION:**

Purchase One Diesel PM Certified Street Sweeper.

**TYPE OF WORK:** Street Sweeper

**LENGTH:** 0.0(MILES)

Estimated Cost	Federal Funds		Matching Funds	
	M400		LOCAL	OTHER
\$250,000.00		\$220,000.00	\$30,000.00	\$0.00

**CITY OF MADERA**

By \_\_\_\_\_  
Title \_\_\_\_\_  
Date \_\_\_\_\_  
Attest \_\_\_\_\_

**STATE OF CALIFORNIA**  
Department of Transportation

By \_\_\_\_\_  
Chief, Office of Project Implementation  
Division of Local Assistance  
Date \_\_\_\_\_

I hereby certify upon my personal knowledge that budgeted funds are available for this encumbrance:

Accounting Officer \_\_\_\_\_

Date 8/24/18 \$220,000.00

Chapter	Statutes	Item	Year	Program	BC	Category	Fund Source	AMOUNT

061900000100

## Local Assistance

**ADA Notice:** For individuals with sensory disabilities, this document is available in alternate formats. For information, call (915) 654-6410 or TDD (916) -3880 or write Records and Forms Management, 1120 N. Street, MS-89, Sacramento, CA 95814.

**SPECIAL COVENANTS OR REMARKS**

1. A. The ADMINISTERING AGENCY will advertise, award and administer this project in accordance with the current published Local Assistance Procedures Manual.

B. ADMINISTERING AGENCY agrees that it will only proceed with work authorized for specific phase(s) with an "Authorization to Proceed" and will not proceed with future phase(s) of this project prior to receiving an "Authorization to Proceed" from the STATE for that phase(s) unless no further State or Federal funds are needed for those future phase(s).

C. STATE and ADMINISTERING AGENCY agree that any additional funds which might be made available by future Federal obligations will be encumbered on this PROJECT by use of a STATE-approved "Authorization to Proceed" and Finance Letter. ADMINISTERING AGENCY agrees that Federal funds available for reimbursement will be limited to the amounts obligated by the Federal Highway Administration.

D. Award information shall be submitted by the ADMINISTERING AGENCY to the District Local Assistance Engineer within 60 days of project contract award and prior to the submittal of the ADMINISTERING AGENCY'S first invoice for the construction contract.

Failure to do so will cause a delay in the State processing invoices for the construction phase. Attention is directed to Section 15.7 "Award Package" of the Local Assistance Procedures Manual.

E. ADMINISTERING AGENCY agrees, as a minimum, to submit invoices at least once every six months commencing after the funds are encumbered for each phase by the execution of this Project Program Supplement Agreement, or by STATE's approval of an applicable Finance Letter. STATE reserves the right to suspend future authorizations/obligations for Federal aid projects, or encumbrances for State funded projects, as well as to suspend invoice payments for any on-going or future project by ADMINISTERING AGENCY if PROJECT costs have not been invoiced by ADMINISTERING AGENCY for a six-month period.

If no costs have been invoiced for a six-month period, ADMINISTERING AGENCY agrees to submit for each phase a written explanation of the absence of PROJECT activity along with target billing date and target billing amount.

ADMINISTERING AGENCY agrees to submit the final report documents that collectively constitute a "Report of Expenditures" within one hundred eighty (180) days of PROJECT completion. Failure of ADMINISTERING AGENCY to submit a "Final Report of Expenditures" within 180 days of PROJECT completion will result in STATE imposing sanctions upon ADMINISTERING AGENCY in accordance with the current Local Assistance Procedures Manual.

F. Administering Agency shall not discriminate on the basis of race, religion, age, disability, color, national origin, or sex in the award and performance of any Federal-

**SPECIAL COVENANTS OR REMARKS**

assisted contract or in the administration of its DBE Program Implementation Agreement. The Administering Agency shall take all necessary and reasonable steps under 49 CFR Part 26 to ensure nondiscrimination in the award and administration of Federal-assisted contracts. The Administering Agency's DBE Implementation Agreement is incorporated by reference in this Agreement. Implementation of the DBE Implementation Agreement, including but not limited to timely reporting of DBE commitments and utilization, is a legal obligation and failure to carry out its terms shall be treated as a violation of this Agreement. Upon notification to the Administering Agency of its failure to carry out its DBE Implementation Agreement, the State may impose sanctions as provided for under 49 CFR Part 26 and may, in appropriate cases, refer the matter for enforcement under 18 U.S.C. 1001 and/or the Program Fraud Civil Remedies Act of 1986 (31 U.S.C. 3801 et seq.).

G. Any State and Federal funds that may have been encumbered for this project are available for disbursement for limited periods of time. For each fund encumbrance the limited period is from the start of the fiscal year that the specific fund was appropriated within the State Budget Act to the applicable fund Reversion Date shown on the State approved project finance letter. Per Government Code Section 16304, all project funds not liquidated within these periods will revert unless an executed Cooperative Work Agreement extending these dates is requested by the ADMINISTERING AGENCY and approved by the California Department of Finance.

ADMINISTERING AGENCY should ensure that invoices are submitted to the District Local Assistance Engineer at least 75 days prior to the applicable fund Reversion Date to avoid the lapse of applicable funds. Pursuant to a directive from the State Controller's Office and the Department of Finance; in order for payment to be made, the last date the District Local Assistance Engineer can forward an invoice for payment to the Department's Local Programs Accounting Office for reimbursable work for funds that are going to revert at the end of a particular fiscal year is May 15th of the particular fiscal year. Notwithstanding the unliquidated sums of project specific State and Federal funding remaining and available to fund project work, any invoice for reimbursement involving applicable funds that is not received by the Department's Local Programs Accounting Office at least 45 days prior to the applicable fixed fund Reversion Date will not be paid. These unexpended funds will be irrevocably reverted by the Department's Division of Accounting on the applicable fund Reversion Date.

H. As a condition for receiving federal-aid highway funds for the PROJECT, the Administering Agency certifies that NO members of the elected board, council, or other key decision makers are on the Federal Government Exclusion List. Exclusions can be found at [www.sam.gov](http://www.sam.gov).

2. A. ADMINISTERING AGENCY shall conform to all State statutes, regulations and procedures (including those set forth in the Local Assistance Procedures Manual and the Local Assistance Program Guidelines, hereafter collectively referred to as "LOCAL ASSISTANCE PROCEDURES") relating to the federal-aid program, all Title 23 Code of

**SPECIAL COVENANTS OR REMARKS**

Federal Regulation (CFR) and 2 CFR Part 200 federal requirements, and all applicable federal laws, regulations, and policy and procedural or instructional memoranda, unless otherwise specifically waived as designated in the executed project-specific PROGRAM SUPPLEMENT.

B. Invoices shall be submitted on ADMINISTERING AGENCY letterhead that includes the address of ADMINISTERING AGENCY and shall be formatted in accordance with LOCAL ASSISTANCE PROCEDURES.

C. ADMINISTERING AGENCY must have at least one copy of supporting backup documentation for costs incurred and claimed for reimbursement by ADMINISTERING AGENCY. ADMINISTERING AGENCY agrees to submit supporting backup documentation with invoices if requested by State. Acceptable backup documentation includes, but is not limited to, agency's progress payment to the contractors, copies of cancelled checks showing amounts made payable to vendors and contractors, and/or a computerized summary of PROJECT costs.

D. Indirect Cost Allocation Plan/Indirect Cost Rate Proposals (ICAP/ICRP), Central Service Cost Allocation Plans and related documentation are to be prepared and provided to STATE (Caltrans Audits & Investigations) for review and approval prior to ADMINISTERING AGENCY seeking reimbursement of indirect costs incurred within each fiscal year being claimed for State and federal reimbursement. ICAPs/ICRPs must be prepared in accordance with the requirements set forth in 2 CFR, Part 200, Chapter 5 of the Local Assistance Procedural Manual, and the ICAP/ICRP approval procedures established by STATE.

E. STATE will withhold the greater of either two (2) percent of the total of all federal funds encumbered for each PROGRAM SUPPLEMENT or \$40,000 until ADMINISTERING AGENCY submits the Final Report of Expenditures for each completed PROGRAM SUPPLEMENT PROJECT.

F. Payments to ADMINISTERING AGENCY for PROJECT-related travel and subsistence (per diem) expenses of ADMINISTERING AGENCY forces and its contractors and subcontractors claimed for reimbursement or as local match credit shall not exceed rates authorized to be paid rank and file STATE employees under current State Department of Personnel Administration (DPA) rules. If the rates invoiced by ADMINISTERING AGENCY are in excess of DPA rates, ADMINISTERING AGENCY is responsible for the cost difference, and any overpayments inadvertently paid by STATE shall be reimbursed to STATE by ADMINISTERING AGENCY on demand within thirty (30) days of such invoice.

G. ADMINISTERING AGENCY agrees to comply with 2 CFR, Part 200, Uniform Administrative Requirements, Cost Principles and Audit Requirement for Federal Awards.

H. ADMINISTERING AGENCY agrees, and will assure that its contractors and subcontractors will be obligated to agree, that Contract Cost Principles and Procedures,



**SPECIAL COVENANTS OR REMARKS**

48 CFR, Federal Acquisition Regulations System, Chapter 1, Part 31, et seq., shall be used to determine the allowability of individual PROJECT cost items.

I. Every sub-recipient receiving PROJECT funds under this AGREEMENT shall comply with 2 CFR, Part 200, 23 CFR, 48 CFR Chapter 1, Part 31, Local Assistance Procedures, Public Contract Code (PCC) 10300-10334 (procurement of goods), PCC 10335-10381 (non-A&E services), and other applicable STATE and FEDERAL regulations.

J. Any PROJECT costs for which ADMINISTERING AGENCY has received payment or credit that are determined by subsequent audit to be unallowable under 2 CFR, Part 200, 23 CFR, 48 CFR, Chapter 1, Part 31, and other applicable STATE and FEDERAL regulations, are subject to repayment by ADMINISTERING AGENCY to STATE.

K. STATE reserves the right to conduct technical and financial audits of PROJECT WORK and records and ADMINISTERING AGENCY agrees, and shall require its contractors and subcontractors to agree, to cooperate with STATE by making all appropriate and relevant PROJECT records available for audit and copying as required by the following paragraph:

ADMINISTERING AGENCY, ADMINISTERING AGENCY'S contractors and subcontractors, and STATE shall each maintain and make available for inspection and audit by STATE, the California State Auditor, or any duly authorized representative of STATE or the United States all books, documents, papers, accounting records, and other evidence pertaining to the performance of such contracts, including, but not limited to, the costs of administering those various contracts and ADMINISTERING AGENCY shall furnish copies thereof if requested. All of the above referenced parties shall make such AGREEMENT, PROGRAM SUPPLEMENT, and contract materials available at their respective offices at all reasonable times during the entire PROJECT period and for three (3) years from the date of submission of the final expenditure report by the STATE to the FHWA.

L. ADMINISTERING AGENCY, its contractors and subcontractors shall establish and maintain a financial management system and records that properly accumulate and segregate reasonable, allowable, and allocable incurred PROJECT costs and matching funds by line item for the PROJECT. The financial management system of ADMINISTERING AGENCY, its contractors and all subcontractors shall conform to Generally Accepted Accounting Principles, enable the determination of incurred costs at interim points of completion, and provide support for reimbursement payment vouchers or invoices set to or paid by STATE.

M. ADMINISTERING AGENCY is required to have an audit in accordance with the Single Audit Act of 2 CFR 200 if it expends \$750,000 or more in Federal Funds in a single fiscal year of the Catalogue of Federal Domestic Assistance.

N. ADMINISTERING AGENCY agrees to include all PROGRAM SUPPLEMENTS adopting the terms of this AGREEMENT in the schedule of projects to be examined in

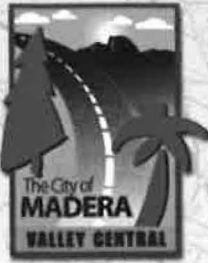
**SPECIAL COVENANTS OR REMARKS**

ADMINISTERING AGENCY's annual audit and in the schedule of projects to be examined under its single audit prepared in accordance with 2 CFR, Part 200.

O. ADMINISTERING AGENCY shall not award a non-A&E contract over \$5,000, construction contracts over \$10,000, or other contracts over \$25,000 [excluding professional service contracts of the type which are required to be procured in accordance with Government Code sections 4525 (d), (e) and (f)] on the basis of a noncompetitive negotiation for work to be performed under this AGREEMENT without the prior written approval of STATE. Contracts awarded by ADMINISTERING AGENCY, if intended as local match credit, must meet the requirements set forth in this AGREEMENT regarding local match funds.

P. Any subcontract entered into by ADMINISTERING AGENCY as a result of this AGREEMENT shall contain provisions B, C, F, H, I, K, and L under Section 2 of this agreement.





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## REPORT TO CITY COUNCIL

Approved By:  
  
Department Director

Council Meeting of October 17, 2018  
Agenda Item Number B-7

  
City Administrator

**SUBJECT:** CONSIDERATION OF A RESOLUTION APPROVING AN AGREEMENT WITH 2NDNATURE SOFTWARE INC FOR SOFTWARE SERVICE FOR STORM WATER QUALITY MANAGEMENT AND AUTHORIZING THE MAYOR TO EXECUTE THE AGREEMENT

### **RECOMMENDATION:**

Staff recommends that the City Council approve Resolution No. 18-\_\_\_:

- a. Approving the Agreement with 2ndnature Software Inc., for Software Service for Storm Water Quality Management
- b. Authorizing the Mayor to execute the agreement

### **SUMMARY:**

Staff presented a budget report to City Council regarding the purchase of the storm water quality management software on the July 05, 2018 Council Meeting. The software will assist the Engineering Department manage the Small Municipal Separate Storm Sewer System (Phase II MS4 Permit) issued by the State Water Resource Control Board's (SWRCB) on June 2013 and the Statewide Trash Provisions adopted by the SWRCB on April 2015. As part of the permit requirements, the City is required to submit annual reports to SWRCB on six minimal control measures and also achieve full compliance of the Statewide Trash Provision within a 10-year timeframe beginning December 2018. Funding for this software was outlined in the Drainage System Operations Fund, the latest Capital Improvement Plan (CIP) and the Adopted 2018/2019 Annual Budget.

### **Engineering**

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[www.cityofmadera.ca.gov](http://www.cityofmadera.ca.gov)

## **HISTORY:**

The City is subject to the State Water Resource Control Board's (SWRCB) National Pollution Discharge Elimination System (NPDES) Water Quality Permit for Small Municipal Separate Storm Sewer System (Phase II MS4) Permit. The State Water Resources Control Board is a state agency associated with the National Pollution Discharge Elimination System (NPDES) which operates on a national level.

As part of our MS4 Permit, the City is required to submit annual reports to the State Water Resource Control Board (SWRCB) that includes the following six minimal control measures (MCMs).

- Public Education, Outreach, and Involvement
- Illicit Discharge Detection and Elimination
- Construction Site Stormwater Runoff Control
- Post-Construction Storm Water Management in New Development and Redevelopment
- Pollution Prevention and Good Housekeeping for Municipal Operations
- Industrial Stormwater Sources

These minimal control measures must be developed by identifying and applying Best Management Practices (BMPs) and reporting annually to the SWRCB.

On April 2015, the State Water Resource Control Board's (SWRCB) adopted the Statewide Trash Provisions Amendment. The Trash Amendments prohibit the discharge of trash to surface waters of the State as well as depositing trash where it may be discharged into surface waters of the State. The SWRCB issued an order to submit a method to comply with the Statewide Provisions per Water Code Section 13383 on July 2017. Permittees were required to select one of the following compliance tracks.

### **Track 1**

- Install, operate, and maintain state-certified full-capture devices that capture stormwater runoff from Priority Land Uses.
- Demonstrate, on average, a 10% installation rate for ten consecutive years from the effective date of the first implementation of the MS4 Permit.

### **Track 2**

- Install, operate, and maintain a combination of full-capture devices, multi-benefit projects, Low Impact Development (LID) Best Management Practices (BMPs), or Institutional (source) controls.
- Demonstrate Full-Capture Equivalency through an Implementation Plan and annual Monitoring and Reporting.
- Provide baseline and annual assessments showing 10% annual trash load reductions for ten consecutive years starting from the effective date of the first implementing MS4 permit.

At a staff level, the City of Madera selected Track 2 as the Trash Implementation Procedure as it appeared to be the most reasonable method for which the City could attain compliance. This selection was also based on the recommendations contained in the City of Madera 2014 Storm Drainage System Plan. The Plan includes the installation of oil/water separators at new development outfall structures and existing outfall structures leading to the Fresno River, Madera Irrigation District (MID) Canals and City-owned storage basins. While the improvements at outfalls did not originally plan for capture

of trash, it was viewed as a reasonable upgrade subject to the devices ability to actually capture trash in the intended way.

### **DISCUSSION:**

The software developed by 2ndnature Software Inc. will enable the City to keep track of and record all necessary data for the minimal control measures as well as the Statewide Trash Provision Amendment mentioned above. The software will allow City inspectors or other staff to quickly perform inspections at a given site from their laptop or tablets and upload it to the software. The software is cloud based, therefore all of the data obtained in the field will be uploaded to 2ndnature's server as soon as the reports are submitted. The report will then be more readily available for viewing by office staff from any computer with internet access. The software will maintain and organize reports for submittal to the SWRCB. Additionally, the software is tied to a GIS (Geographic Information System) based map of the City that shows the locations and the types of BMP's installed at any given area in the City once all BMPs are added to software's database. The software has built-in tools to calculate and populate reports on trash load reduction for the Statewide Trash Provision Amendment for areas that Best Management Practices (BMP's) have been implemented. The tool will help the city determine the priority areas for BMP implementation and progress relative to the 10-year trash load reduction requirement.

In addition to the benefits describe above, the 2ndnature Software Inc. cloud-based software is currently an acceptable form of submittal by the SWRCB as part of the annual reports staff currently prepare. All the saved reports will be accessible by the SWRCB as soon as the City is ready to submit. This provides for the City to have the data required by the SWRCB readily available and save staff time on preparing reports.

The annual cost of the software is calculated based on the population of the City, the developer has offered an early adopter discount of 50% first year, 20% second year, and 5% third year as shown on Exhibit A of the agreement. The first, second, and third year cost of the software will be \$8,200.00, \$13,645.00, and \$16,851.00 respectably with the early adopter discount included. The cost is estimated based on a projected population growth of 4%.

### **FINANCIAL IMPACT:**

There is no adverse fiscal impact to the City's General Fund. Cost for the software is currently in the adopted budget FY 2018/19 Account No. 45003090

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

#### **A Quality Environment**

Strategy 434.6 – Adhere to NPDES (National Pollution Discharge Elimination System) requirements.

**RESOLUTION NO. 18 - \_\_\_\_\_**

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MADERA, CALIFORNIA,  
APPROVING AN AGREEMENT WITH 2NDNATURE SOFTWARE INC FOR SOFTWARE  
SERVICE FOR STORM WATER QUALITY MANAGEMENT AND AUTHORIZING THE  
MAYOR TO EXECUTE THE AGREEMENT**

**WHEREAS**, the Agreement must be executed with 2ndnature Software Inc. before the City is able to use the Software Service

**WHEREAS**, City wishes to delegate authorization to the Mayor of the City of Madera to execute the Agreement with 2ndnature Software Inc.

**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 Agreement by and between the City of Madera and 2ndnature Software Inc., a copy of which is on file in the office of the City Clerk and referred to for particulars, is approved.
3. The Mayor is authorized to execute the Agreement with 2ndnature Software Inc. on behalf of the City.
4. This resolution is effective immediately upon adoption.

\* \* \* \* \*

## SOFTWARE AS A SERVICE AGREEMENT

This software as a software license agreement ("Agreement") dated October 17, 2018 ("Effective Date"), is between **City of Madera** located at 205 W. Fourth Street, Madera, CA 93637 Madera, CA 93637 ("Client") and **2NDNATURE Software Inc.** located at 500 Seabright Ave #205, Santa Cruz, California 95062 ("2N"). The parties hereby agree as follows:

### 1. Access and Restrictions.

- 1.1 Subject to the terms of this Agreement, 2N grants to Client a limited, non-exclusive, non-transferable right during the Term to allow its Users (defined below) to access and use the online software applications described in Exhibit A of this Agreement ("2N Software") solely for Client's internal business purposes and may provide other services necessary for productive use of the 2N Software, including the provision of software updates, bug fixes, data monitoring, and technical support ("Support Services"). "User" means any Client employee, contractor, or agent, or any other individual or entity authorized by the Client to access and use the 2N Software. Client's rights to access the Service will be limited to those expressly granted in this Agreement, and 2N reserves all other rights, title, and interest therein.
- 1.2 Restrictions. Client is responsible for all activities conducted under its and its Users' logins on the 2N Software. Client shall not: (i) copy, rent, sell, lease, distribute, pledge, assign, or otherwise transfer, or encumber rights to the 2N Software, or any part thereof, or use it for the benefit of any third party, or make it available to anyone other than its Users; (ii) send or store any personally information; (iii) send or store infringing or unlawful material; (iv) send or store viruses, worms, time bombs, Trojan horses and other harmful or malicious code, files, scripts, agents or programs; (v) attempt to gain unauthorized access to, or disrupt the integrity or performance of, the 2N Software or the data contained therein; (vi) modify, copy or create derivative works based on the 2N Software, or any portion thereof; (vii) access the 2N Software for the purpose of building a competitive product or service or copying its features or user interface; or (viii) delete, alter, add to or fail to reproduce in and on the 2N Software the name of 2N and any copyright or other notices appearing in or on the 2N Software or which may be required by 2N at any time.
- 1.3 Professional Services. Additional professional services related to the initial set-up and ongoing use of the 2N Software such as training, data import/export, will be set forth and billed at 2N's current time and materials rates stated in Exhibit A.

### 2. Term and Termination.

- 2.1 Term. The term of this Agreement is stated in Exhibit A.
- 2.2 Termination for Cause. Without limiting the right of a party to immediately terminate this Agreement for cause as provided for in this Agreement, if either party materially breaches any of its duties or obligations hereunder and such breach is not cured within thirty (30) calendar days after written notice of the breach, the non-breaching party may terminate this Agreement for cause as of a date specified in such notice.

### 3. Proprietary Rights



- 3.1 2N Rights. Except for the rights expressly granted under this Agreement, 2N retains all right, title, and interest (including all related intellectual property rights) in and to the 2N Software, and all other products, works, software and technology created, used, or provided by 2N in connection with this Agreement.
- 3.2 Client Data. All right, title and interest in and to the Client Data is owned exclusively by Client and Client may use the 2N Software to create reports and other data exports as needed for the Client internal business purposes. Client grants 2N a license to use, aggregate, collect, process, store, generate, and display Client Data to the extent necessary to maximize the effectiveness of 2N Software.
4. Fees. Client will pay 2N the quarterly subscription fee as stated in Exhibit A for access to the 2N Software, Set-Up Services, and Support Services ("Subscription Fee"). Client shall pay the quarterly subscription fee within thirty (30) days of execution of this Agreement. Client shall pay 2N the quarterly subscription fee for any renewal term within thirty (30) days of the start of such renewal term. Client agrees to pay all sales, use, value-added, goods and services, consumption, withholding, excise and any other similar taxes or government charges, exclusive of 2N's income taxes.
5. Disclaimer of Warranties. THE 2N SOFTWARE IS PROVIDED "AS-IS" AND 2N AND ITS SUPPLIERS HEREBY DISCLAIM ALL (AND HAVE NOT AUTHORIZED ANYONE TO MAKE ANY) WARRANTIES RELATING TO THE 2N SOFTWARE, PROFESSIONAL SERVICES OR OTHER SUBJECT MATTER OF THIS AGREEMENT, EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, ANY WARRANTIES OF NON-INFRINGEMENT OF THIRD PARTY RIGHTS, AVAILABILITY OF THE 2N SOFTWARE, TITLE, MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE. THE PARTIES ARE NOT RELYING AND HAVE NOT RELIED ON ANY REPRESENTATIONS OR WARRANTIES WHATSOEVER REGARDING THE SUBJECT MATTER OF THIS AGREEMENT, EXPRESS OR IMPLIED.
6. Indemnification.
- 6.1 2N shall indemnify, defend, and hold harmless the Client, and any and all of its employees, officials and agents from and against any third party 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 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 performance of this Agreement by 2N or by any individual or agency for which 2N is legally liable, including, but not limited to, officers, agents, employees, or subcontractors of 2N. 2N shall not be responsible for warranties, guarantees, fitness for a particular purpose, breach of fiduciary duty, loss of anticipated profits or for economic, incidental or consequential damages to the Client or any third party arising out of breach of contract, termination, or for any other reason whatsoever. Additionally, 2N shall not be responsible for acts and decisions of third parties, including governmental agencies, other than 2N's subconsultants, that impact project completion and/or success.
- 6.2 Client will indemnify, defend, and hold 2N harmless from any and all claims, demands, suits or proceedings brought against 2N by a third party alleging a violation of a third party's rights arising from Client's provision of the Client Data.

7. Limitation of Liability. EXCEPT FOR CUSTOMER'S BREACH OF SECTION 1.2 OR AN OBLIGATION ARISING UNDER SECTION 6, NEITHER CUSTOMER, 2N, NOR 2N'S SUPPLIERS, SHALL BE RESPONSIBLE OR LIABLE WITH RESPECT TO ANY SUBJECT MATTER OF THIS AGREEMENT OR TERMS AND CONDITIONS RELATED THERETO UNDER ANY CONTRACT, NEGLIGENCE, STRICT LIABILITY OR OTHER THEORY (A) FOR ERROR OR INTERRUPTION OF USE, LOSS OR INACCURACY OR CORRUPTION OF DATA, (B) FOR COST OF PROCUREMENT OF SUBSTITUTE GOODS, SERVICES, RIGHTS, OR TECHNOLOGY, (C) FOR ANY LOST PROFITS OR REVENUES, OR FOR ANY INDIRECT, SPECIAL, INCIDENTAL, CONSEQUENTIAL OR PUNITIVE DAMAGES, WHETHER OR NOT A PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGE.
8. General
- 8.1 Authority. Client represents and warrants that it has all requisite corporate power, financial capacity, and authority to execute, deliver, and perform its obligations under this Agreement.
- 8.2 Confidentiality. Except as required by applicable laws or regulations, the parties agree that information deemed confidential at the time of disclosure and the terms of this Agreement shall not be disclosed to any third party.
- 8.3 Notices. Any notice given pursuant to this Agreement shall be in writing and shall be given via email (provided receipt is confirmed by the recipient), certified mail or courier, return receipt requested, to the addresses appearing in the preamble of this Agreement, or as changed through written notice to the other party. Notice is deemed effective on the date it is delivered to the addressee.
- 8.4 Governing law. This Agreement shall be governed by and construed in accordance with the laws of the California and the federal laws of the United States of America. 2N hereby consents and submits to the jurisdiction and forum of the state and federal courts in the Santa Cruz, CA in all questions and controversies arising out of this Agreement.
- 8.5 Force Majeure; Excused Performance. Neither party shall be liable for delays or any failure to perform the obligations under this Agreement due to causes beyond its reasonable control. Such delays include, but are not limited to, fire, explosion, flood or other natural catastrophe, governmental legislation, acts, orders, or regulation, strikes or labor difficulties, to the extent not occasioned by the fault or negligence of the delayed party.
- 8.6 Independent Contractor. 2N is an independent contractor with no authority to contract for Client or in any way to bind or to commit Client to any agreement of any kind or to assume any liabilities of any nature in the name of or on behalf of Client. Under no circumstances shall 2N, or any of its staff, if any, hold itself out as or be considered an agent employee, joint venture, or partner of Client.
- 8.7 Attorneys' Fees and Costs. In any arbitration, litigation, or other proceeding, informal or formal, by which one party either seeks to enforce this Agreement or seeks a declaration of any rights or obligations under this Agreement, the non-prevailing party shall pay the prevailing party's costs and expenses, including but not limited to, reasonable attorneys' fees.
- 8.8 No Waiver. The failure of either party at any time to require performance by the other party of any provision of this Agreement shall in no way affect that party's right to enforce such provisions,



nor shall the waiver by either party of any breach of any provision of this Agreement be taken or held to be a waiver of any further breach of the same provision.

- 8.9 Counterparts; Facsimile. This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same Agreement. The parties agree that a facsimile signature may substitute for and have the same legal effect as the original signature.
- 8.10 Entire Agreement. This Agreement and its attached exhibits constitute the entire agreement between the parties and supersede any and all previous representations, understandings, or agreements between Client and 2N as to the subject matter hereof. This Agreement may only be amended by an instrument in writing signed by the parties. Any terms and conditions included in a Client purchase order or a 2N invoice, as the case may be, shall be deemed to be solely for the convenience of the respective party, and no such term or condition shall be binding upon the parties.

Executed on the dates set forth below by the undersigned authorized representative of Client and 2N to be effective as of the Effective Date.

**Client**

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

\_\_\_\_\_  
Name:

\_\_\_\_\_  
Title:

\_\_\_\_\_  
Date

**2NDNATURE Software Inc.**

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

Name: Nicole Beck

\_\_\_\_\_  
Title: CEO

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

October 17, 2018

## EXHIBIT A

### 2N Software Subscription Fees

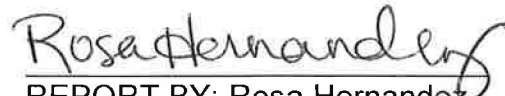
Term	This Agreement shall commence on the Effective Date and continue for three (3) months ("Term"). Upon expiration of the Term, the Agreement will automatically renew for additional Terms of three (3) months each ("Renewal Term"), unless either party gives the other notice of non-renewal at least thirty (30) days prior to the end of the then-current Term.
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2NFORM Stormwater Suite License Fees and User Support					
Permitee	Population	Current Annual Cost	FY2018-19	FY2019-20	FY2020-21
City of Madera	66,082	\$16,400	\$16,400	\$17,056	\$17,738
Early Adopter Discount			50%	25%	0%
Annual Fee			\$8,200	\$12,792	\$17,738
Quarterly Fee			\$2,050	\$3,198	\$4,435

REPORT TO CITY COUNCIL

MEETING DATE: October 17, 2018

AGENDA ITEM: B-8

  
REPORT BY: Rosa Hernandez  
Procurement Services Manager

  
APPROVED: Steve Frazier  
City Administrator

**SUBJECT:** CONSIDERATION OF A RESOLUTION APPROVING AN AGREEMENT WITH PITNEY BOWES FOR LEASE OF MAIL PROCESSING EQUIPMENT

**RECOMMENDATION:**

Staff recommends Council adopt the Resolution approving an Agreement for Pitney Bowes to provide mail processing equipment and authorizing the Mayor to sign all documents necessary to effectuate the agreement.

**SUMMARY:**

The City has an existing lease for mail processing equipment located within the Finance Department. This equipment is necessary to provide an efficient and economical method of dealing with the City's mailing needs. The current annual cost of the lease is \$1,470.72 and the term ends on November 7, 2018. The Finance Department has negotiated a new agreement which will cost the City \$1,627.80 annually for the next five years.

**DISCUSSION:**

The City has had onsite mail processing equipment for several years. The ability to process mail using this equipment has proven to be a cost-efficient method for all departments at City Hall and the Police Department. The U. S. Postal Service does not allow for the purchase of meters, and staff research has indicated that the lease of the meter and processing equipment such as feeders, sealers, and scale provides the best combination of time savings and cost efficiency.

There are a limited number of providers authorized by the Postal Service to supply postal equipment leases; the City has used Pitney Bowes because their pricing and lease terms are generated through cooperative contracting. Using cooperative contracting, states are able to leverage their spending through a single solicitation that obtains best value pricing and superior contract terms. The contracting facilitator

for the mailing equipment lease is the National Association of State Procurement Officials (NASPO). The contracts provided through NASPO are in accordance with the City's purchasing policy and are acceptable to the City's Procurement Services Manager.

The current five-year agreement ends November 7, 2018 and Pitney Bowes has contacted the City to request its renewal for a new five-year term. The annual charge for the lease is increasing from the \$1,470.72 current amount to \$1,627.80 per year (a 10% annualized increase from the existing cost). Cost of supplies represent an additional cost to the equipment lease and is estimated to be \$450.00 per year. Although we benefit from the NASPO pricing, staff compared Pitney Bowes' pricing with the other leading provider of such machinery and services in hopes of cutting costs. However, we found that Pitney Bowes still provides the best pricing.

**FINANCIAL IMPACT:**

This new agreement establishes a fixed cost for each item furnished to the City, with no built-in increases over the term of the agreement and will result in annual costs to the City of approximately \$2,078.00. Funding for this agreement has already been appropriated for this purpose in the individual departmental budgets.

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

Mail processing equipment is not addressed in the vision or action plans; the requested action is also not in conflict with any of the actions or goals contained in that plan.

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

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY  
OF MADERA, CALIFORNIA, APPROVING AN  
AGREEMENT WITH PITNEY BOWES FOR LEASE OF  
MAIL PROCESSING EQUIPMENT AND AUTHORIZING  
THE MAYOR TO EXECUTE THE AGREEMENT AND  
RELATED DOCUMENTS**

WHEREAS, the City of Madera (the "City") has need for mail processing equipment within the City of Madera; and

WHEREAS, Pitney Bowes (the "Provider") is in the business of providing such equipment; and

WHEREAS, there is a proposed agreement (the "Agreement") between Provider and City for mail processing equipment that is in the best interests of the parties.

NOW THEREFORE, THE COUNCIL OF THE CITY OF MADERA does hereby resolve, find and order as follows:

1. The above recitals are true and correct.
2. The Agreement with Pitney Bowes, which is on file in the Office of the City Clerk and is referred to for more particulars, is hereby approved.
3. The Mayor of the City of Madera is authorized to execute the Agreement and any and all documents necessary to effectuate the Agreement on behalf of the City.
4. This resolution is effective immediately upon adoption.

\*\*\*\*\*



NASPO ValuePoint FMV Lease Agreement (Option C)

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Agreement Number

Your Business Information

Full Legal Name of Lessee / DBA Name of Lessee	Tax ID # (FEIN/TIN)
CITY OF MADERA FINANCE DEPT	946000365

Sold-To: Address
205 W 4TH ST, MADERA, CA, 93637-3588, US

Sold-To: Contact Name	Sold-To: Contact Phone #	Sold-To: Account #
Rosa Hernandez	(559) 661-5463	0012204711

Bill-To: Address
205 W 4TH ST, MADERA, CA, 93637-3588, US

Bill-To: Contact Name	Bill-To: Contact Phone #	Bill-To: Account #	Bill-To: Email
Rosa Hernandez	(559) 661-5463	0012204711	rhernandez@cityofmadera.com

Ship-To: Address
205 W 4TH ST, MADERA, CA, 93637-3588, US

Ship-To: Contact Name	Ship-To: Contact Phone #	Ship-To: Account #
Rosa Hernandez	(559) 661-5463	0012204711

PO #
.

Your Business Needs

Qty	Item	Business Solution Description
1	DM400CGREEN	Green DM400C Mailing System
1	1FAE	Basic Accounting -50 Accounts
1	1FY9	DM400 70 LPM
1	1GW5	5lb Integrated Weighing Feature
1	G900	Meter for DM300/DM400/475 Series
1	G9SS	USPS Tracking Services Activation
1	MP9G	Integrated Weighing Platform
1	SJ40	SoftGuard for DM400
1	STDSLA	Standard SLA-Equipment Service Agreement (for Green DM400C Mailing System)
1	SVBB	Green DM400C Digital Mailing System

If any green products: The equipment covered by this Agreement includes remanufactured products that have gone through our factory certification testing process.

**Your Payment Plan**

Initial Term: 60 months	Initial Payment Amount:	
Number of Months	Monthly Amount	Billed Quarterly at*
60	\$ 135.65	\$ 406.95

\*Does not include any applicable sales, use, or property taxes which will be billed separately.

- ☐ Tax Exempt Certificate Attached
- ☐ Tax Exempt Certificate Not Required
- ☐ Purchase Power® transaction fees included
- ☒ Purchase Power® transaction fees extra

**Your Signature Below**

By signing below, you agree to be bound by your State's/Entity's/Cooperative's contract, which is available at [www.pb.com/states](http://www.pb.com/states) and is incorporated by reference. The terms and conditions of this contract will govern this transaction and be binding on us after we have completed our credit and documentation approval process and have signed below.

NASPO VALUEPOINT ADSP016-169897; 7-17-70-41-03  
State/Entity's Contract #

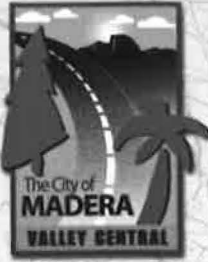
Lessee Signature  
Andrew J. Medellin  
Print Name  
Mayor  
Title  
Date  
c/o Rosa Hernandez   rhernandez@cityofmadera.com  
Email Address

Pitney Bowes Signature  
Print Name  
Title  
Date

**Sales Information**

Nicole Leyton   nicole.leyton@pb.com  
Account Rep Name   Email Address





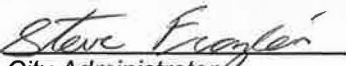
[Return to Agenda](#)

## REPORT TO CITY COUNCIL

Approved By:

  
Department Director

Council Meeting of October 17, 2018  
Agenda Item Number B-9

  
City Administrator

**SUBJECT:** CONSIDERATION OF A RESOLUTION APPROVING THE REVISED CONTRACT WITH KRAZAN & ASSOCIATES, INC., FOR ON-DEMAND TESTING SERVICES NOT TO EXCEED \$25,000 FOR THE MADERA TRANSIT CENTER CITY PROJECT NO. TRANS-1, AND AUTHORIZING THE MAYOR TO EXECUTE THE CONTRACT ON BEHALF OF THE CITY AND RESCINDING RESOLUTION 18-174

### **RECOMMENDATION:**

1. Adoption of a Resolution:
  - a. Approving the contract with Krazan & Associates for On-Demand Testing Services not to exceed \$25,000, as approved by the City Engineer.
  - b. Authorizing the Mayor to execute the contract on behalf of the City.
  - c. Rescinding Resolution No. 18-174.

### **SUMMARY:**

The contract for construction of the new City of Madera Transit Center was awarded on September 19, 2018, to BMY Construction Group. Krazan & Associates, Inc. will be providing the on-demand testing services required for the project.

### **DISCUSSION:**

The City Engineering Division will provide Construction Management for the overall project and Construction Inspection for the site work. The City's Building Division will provide building inspections for compliance with the Building Code and Building Permit requirements.

The site work will require testing services for installation of sewer, water and storm drain improvements, AC paving of street and installation of concrete improvements. Testing of the joint trench for installation of PG&E, AT&T and Comcast conduit to serve the facility is included. Inspections for construction of the new building will also require testing as required by the Uniform Building Code.

**Engineering**

205 W. Fourth Street • Madera, CA 93637 • TEL (559) 661-5418 • FAX (559) 675-6605

**[www.cityofmadera.ca.gov](http://www.cityofmadera.ca.gov)**

The testing will be performed on an on-demand basis as directed and approved by the City Engineer at a cost not anticipated to exceed \$25,000. Krazan & Associates, Inc., was selected to provide the Geotechnical Investigation for the project site and the project report is incorporated into the specifications.

### **SITUATION:**

The On-Demand Services Agreement was revised to include the new "Insurance Requirements for Consultants" provided by the City Risk Manager. It is necessary that the on-demand testing services contract be approved prior to the start of construction.

### **FINANCIAL IMPACT:**

The New Transit Operations Facility Project is included in the adopted FY 2018/19 City Budget–Capital Improvement Program with \$2,141,000 of PTMISEA funds, \$300,000 of FTA Section 5307 funds CA-90-Z193-00 grant and \$3,284,990 FTA Section 5307 funds CA-2018-061-00 grant. These funds are programmed for the design, construction and including and testing services required for the Project.

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

Meeting components of Strategy 121 to develop a city-wide multi-modal transportation plan and facilities to ensure safe, affordable and convenient transportation modes for residents and businesses within Madera.

**RESOLUTION NO. 18-\_\_**

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MADERA, CALIFORNIA, APPROVING THE REVISED CONTRACT WITH KRAZAN & ASSOCIATES, INC., FOR ON-DEMAND TESTING SERVICES NOT TO EXCEED \$25,000 FOR THE MADERA TRANSIT CENTER CITY PROJECT NO. TRANS-1 AND AUTHORIZING THE MAYOR TO EXECUTE THE CONTRACT ON BEHALF OF THE CITY AND RESCINDING RESOLUTION 18-174**

**WHEREAS**, The City of Madera is undertaking construction of the new Madera Transit Center City Project No. Trans-1, and

**WHEREAS**, The Engineering Department selected Krazan & Associates, Inc., to provide Professional Geotechnical Services for the Madera Transit Center City Project No. Trans-1, and

**WHEREAS**, Krazan & Associates has provided a Geotechnical Engineering Investigation report for the Madera Transit Center site that is incorporated in the specifications; and

**WHEREAS**, Krazan & Associates, Inc., shall provide Professional On-Demand Materials Testing Services for the Madera Transit Center City Project No. Trans-1, and

**WHEREAS**, The Contract has been revised to include the new "Insurance Requirements for Consultants" provided by the City Risk Manager, and

**WHEREAS**, Funding for project construction is programmed in the City's FY 2018/19 Budget, and

**WHEREAS**, the City Engineer has prepared the revised Agreement for such services with Krazan & Associates, Inc. that is on file in the office of the City Clerk of the City of Madera and the "Agreement" is referred to for more particulars.

**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 has reviewed and considered all information presented including the report to the City Council from the Engineering Department.
3. Resolution No 18-174 is hereby rescinded.
4. The revised Agreement for such services is approved in an amount not to exceed \$25,000 with Krazan & Associates, Inc. as approved by the City Engineer.
5. The Mayor is authorized to execute the contract on behalf of the City.
6. This Resolution is effective immediately upon adoption.

\* \* \* \* \*

# **AGREEMENT FOR PROFESSIONAL ON-DEMAND SERVICES FOR MATERIALS TESTING SERVICES FOR MADERA TRANSIT CENTER, CITY PROJECT NO. TRANS-1**

This Agreement made and entered into this 17th day of October, 2018 between the City of Madera, a municipal corporation of the State of California, hereinafter called "CITY", and Krazan & Associates, Inc., hereinafter called "ENGINEER".

## **WITNESSETH**

**WHEREAS**, CITY plans to construct the Madera Transit Center, City Project No. Trans-1, hereinafter called "the Project"; and

**WHEREAS**, CITY needs the services of the ENGINEER, for the Materials Testing Services of sewer, water and storm drain pipeline systems, roadway construction and undergrounding of PG&E, AT&T and Comcast utilities to provide services to the new Madera Transit Center, also to provide compaction and materials testing as specified for construction of the Madera Transit Center Building in accordance with the Caltrans Construction Manual and Materials Testing Manual and City of Madera Quality Assure Manual and Uniform Building Code; and

**WHEREAS**, ENGINEER is qualified and licensed to provide the required professional quality assurance and acceptance testing services required by Caltrans and CITY desires to hire ENGINEER for such purposes.

### **NOW THEREFORE:**

The parties hereto mutually agree as follows:

#### **1. SERVICES OF ENGINEER:**

CITY hereby hires ENGINEER to provide on-demand quality assurances and acceptance testing services for construction of sewer, water and storm drain pipeline systems, roadway construction and undergrounding of PG&E, AT&T and Comcast utilities to provide services to the new Madera Transit Center to support CITY as set forth herein in connection with the Project. Said work to be performed pursuant to this agreement is more particularly described in Section 2 – Scope of Work.

#### **2. SCOPE OF WORK:**

ENGINEER shall provide the professional on-demand quality assurance and acceptance testing services for quality control management of bridge construction and roadway materials set forth in EXHIBIT A – FEE SCHEDULE and EXHIBIT B – ON\_DEMAND QUALITY ASSURANCES AND ACCEPTANCE TESTING SERVICES, attached hereto and incorporated herein by reference. ENGINEER shall comply with all Caltrans and City of Madera construction engineering and inspection standards and requirements.

### **3. RESPONSIBILITIES:**

The City Engineer shall be the Responsible Engineer in charge of the Project. The ENGINEER shall report to the City's Construction Manager/Resident Engineer for the Project or other construction managers as designated by the CITY. The ENGINEER'S responsibility will only be related to the quality assurance and acceptance testing services of bridge construction and roadway materials for the Project.

### **4. COMPENSATION:**

The ENGINEER shall be reimbursed for actual costs based on hourly billing rates that include labor wages, employee benefits, overhead and net fee/profit and be reimbursed for direct costs for supplies, travel/mileage and printing reports and for actual materials testing lab cost for the total estimated amount of Twenty-five Thousand Dollars (\$25,000). The reimbursement for actual costs shall be paid at the hourly billing rates and itemized rates set forth in the ENGINEER'S FEE SCHEDULE, EXHIBIT "A" – attached here to and incorporated herein by reference.

CITY and ENGINEER agree that the hourly rates in EXHIBIT "A" shall remain in full force and effect through June 30, 2019. It is understood and agreed by both parties that all expenses incidental to ENGINEER'S performance of services and deliverables to be reimbursed are included in Other Direct Costs listed in the Cost Proposal. There shall be no compensation for any type of equipment purchase.

CITY and ENGINEER mutually agree that the on-demand quality assurance and acceptance testing services may change due to the contractor's schedule and selection of vendors and differing conditions encountered during construction. Therefore, the final compensation may be more or less than the ENGINEER'S estimated cost. However, the ENGINEER shall not be entitled to compensation for any expenses exceeding \$25,000 unless the parties enter into an approved amendment to this agreement which provides for such compensation.

### **5. COST PRINCIPLES AND PAYMENT:**

Allowable elements of cost shall comply with the Cost Principles and Procedures, 48 CFR, Federal Acquisition Regulations System, Chapter 1, Part 31 et seq. Also, compliance with the administrative requirements set forth in 49 CFR, Part 18, Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments is required.

Payments for all undisputed portions of each invoice as provided for hereunder shall be made within 30 days of receipt and approval of ENGINEER'S monthly invoices for the work performed as specified herein. ENGINEER'S invoice shall specify the billed hours and hourly rates for each employee classification. A 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.



The Cost Proposal is subject to an audit or Certified Public Account (CPA) Indirect Cost (Overhead) Audit Work Review. The Cost Proposal shall be adjusted by the ENGINEER and approved by the CITY to conform to the Workpaper Review recommendations or audit recommendations. The ENGINEER agrees that the individual terms of cost identified in the audit report shall be incorporated into the Agreement by this reference if directed by the CITY at its sole discretion. Refusal by the ENGINEER to incorporate the Workpaper Review recommendations or audit recommendations will be considered a breach of the Agreement terms and cause for termination of the Agreement.

Progress payments will be made monthly in arrears based on services provided and allowable incurred costs including the fixed fee percentage. If ENGINEER fails to submit the required deliverables specified in the Scope of Services, CITY shall have the right to delay payment and/or terminate this Agreement in accordance with the provisions of this Agreement.

ENGINEER shall submit invoices no later than 45 calendar days after the performance of work for which ENGINEER is billing. Invoices shall follow the format included in the ENGINEER'S cost proposal. Invoices shall include a detail of ENGINEER'S services related to the tasks listed in the Contractor's schedule. The final invoice shall be submitted within 60 days of the CITY'S acceptance of the Project. Invoices shall be mailed to the address listed in Section 25 of this Agreement.

#### **6. EXTRA SERVICES:**

Extra services not contemplated hereunder as set forth in this Agreement or for such services beyond the control of the CITY or ENGINEER as may be specifically requested by CITY or ENGINEER through the City Engineer in writing. Extra services shall be mutually agreed to and ENGINEER shall be compensated at the hourly rates in EXHIBIT "A", provided however, the City Engineer's authority is limited to expenditures not to exceed an additional amount of \$2,500.

#### **7. DOCUMENTATION & DELIVERABLES:**

ENGINEER shall provide to the City's Resident Engineer the appropriate documentation in a format specified in the Caltrans Construction Manual, of the work to be inspected and approved to the Resident Engineer. Such documentation and reports shall be consistent with the Caltrans Construction Manual and provided in a timely manner for the task at hand and per the contract documents.

Upon Completion and acceptance of the project by the CITY, ENGINEER shall deliver the original documents, files, records, drawings, final reports required by Caltrans and other documents prepared for the project.

#### **8. AUDITS AND INSPECTIONS ACCESS:**

For the purpose of determining compliance with Public Contract Code 10115, et seq. and Title 21, California Code of Regulations, Chapter 21, Section 2500 et seq., when applicable and other

matters connected with the performance of this Agreement pursuant to Government Code 8546.7; the CITY and ENGINEER shall maintain all books, documents, papers, accounting records, and other evidence pertaining to the performance of this Agreement, including but not limited to, the costs of administering this Agreement.

ENGINEER 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. ENGINEER 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. ENGINEER shall retain all of these documents for a period of three (3) years after final payment to ENGINEER.

#### **9. INSURANCE REQUIREMENTS FOR CONSULTANTS**

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.

##### *Minimum Scope and Limits of Insurance*

Consultant shall maintain limits no less than:

- **\$1,000,000 General Liability** (including operations, products and completed operations) per occurrence, \$2,000,000 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.
- **\$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.
- **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.

**10. OWNERSHIP OF DOCUMENTS:**

The responsible Professional Engineer shall sign and date all construction materials inspection documents and reports and other engineering reports furnished by ENGINEER and, where appropriate, indicate their registration number. The documents shall be prepared in a format consistent with the Caltrans Construction Manual.

If the Agreement is terminated at any time, the ENGINEER shall submit all project related documents, deliverables and correspondence whether in complete form, draft form or in progress. These items will become the sole property of the CITY which may use them to complete the Project.

Upon completion and acceptance of the Project, all documents required in performing services under this Agreement shall, be submitted to, and remain the sole property of CITY.

Reuse or modifications of documents for any purpose other than as intended under this Agreement shall be at CITY'S sole risk and without liability to ENGINEER. CITY shall indemnify, defend and hold harmless ENGINEER for any claims, loss, cost or damages arising out of, pertain to, or relate to such reuse or modification, including use of incomplete documents.

**11. CONFIDENTIALITY OF DATA:**

All financial, statistical, personal, technical, or other data and information relative to the CITY'S operations, which are designated confidential by the CITY and made available to the

ENGINEER, in order to carry out this Agreement, shall be protected by the ENGINEER from unauthorized use and disclosure. Permission to disclose information on one occasion, or public hearing held by the CITY relating to this Agreement, shall not authorize the ENGINEER to further disclose such information or disseminate the same on any other occasion.

The ENGINEER shall not comment publicly to the press or any other media regarding this Agreement or the CITY'S actions on the same, except to the CITY'S staff, ENGINEER'S own personnel involved in the performance of the Agreement, at public hearings or in response to questions from a Legislative committee. The ENGINEER shall not issue any news release or public relations item of any nature, whatsoever, regarding work performed or to be performed under this Agreement without prior review of the contents thereof by the CITY, and receipt of the CITY'S written permission.

#### **12. TIME OF COMPLETION:**

Based on the contractor's construction schedule, ENGINEER'S quality control and testing services should be completed by June 30, 2019. The final task will be the submittal of documents for the Final Report. This agreement may be extended by mutual written agreement.

#### **13. TERMINATION OF AGREEMENT:**

A. This agreement may be terminated at any time by either party upon thirty (30) calendar days written notice. In the event the Agreement is terminated by either party, ENGINEER 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 Engineer 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:

1. An illegal use of funds by ENGINEER;
2. A failure by ENGINEER to comply with any material term of this Agreement;
3. A substantially incorrect or incomplete report submitted by ENGINEER to CITY.

In no event shall any payment by CITY or acceptance by ENGINEER 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 ENGINEER the repayment to CITY of any funds disbursed to ENGINEER under this Agreement which, as determined by the appropriate court or arbitrator, were not expended in accordance with the terms of this Agreement.

**14. APPROVAL:**

CITY will give reasonably prompt consideration to all matters submitted by ENGINEER for approval to the end that there will be no significant delays in ENGINEER'S program of work. An approval, authorization or request to ENGINEER 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.

**15. HOLD HARMLESS:**

ENGINEER shall defend and indemnify the CITY, its officers, officials, employees and designated volunteers for claims that arise out of, pertain to, or relate to the negligence, recklessness, or willful misconduct of the ENGINEER, its officers, subconsultants, agents, employees or contractors, in performing or failing to perform any work, services or functions under this Agreement.

**16. RESPONSIBILITY FOR OTHERS:**

ENGINEER shall be responsible to CITY for its services and the services of its subconsultants. ENGINEER shall not be responsible for the acts or omissions of the CITY or 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:**

ENGINEER shall be obligated to comply with applicable standards of professional care in the performance of the Construction Engineering Services. Engineer 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, ENGINEER, and their successors in interest, legal representatives, executors, administrators and permitted assigns with respect to all covenants as set forth herein. ENGINEER 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 ENGINEER under this Agreement, it is mutually understood and agreed that ENGINEER, including any and all of ENGINEER'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, fiduciary, partner or associate of CITY. Furthermore, CITY shall have no right to control or supervise or direct the manner or method by which ENGINEER shall perform its work and function. However, CITY shall retain the right to administer this Agreement so as to verify that ENGINEER is performing its obligations in accordance with the terms and conditions hereof. ENGINEER 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, ENGINEER shall have absolutely no right to employment rights and benefits available to CITY employees. ENGINEER shall be solely liable and responsible for providing to, or on behalf of, its employees all legally required employee benefits. In addition, ENGINEER shall be solely responsible and hold CITY harmless from all matters relating to payment of ENGINEER'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 ENGINEER may be providing services to others unrelated to CITY or to this Agreement.

## **22. CONFLICT OF INTEREST**

The ENGINEER shall disclose any financial, business, or other relationship with CITY that may have an impact upon the outcome of the Agreement, or any ensuing CITY construction project. The ENGINEER shall also list current clients who may have a financial interest in the outcome of the Agreement, or ensuing CITY construction project. The ENGINEER hereby certifies that it does not now have, nor shall it acquire any financial or business interest that would conflict with the performance of services under this Agreement.

The ENGINEER hereby certifies that neither the ENGINEER, its employees, nor any firm affiliated with the ENGINEER providing services on this Project, prepared the Plans, Specification, and Estimates for any construction contract included within the Agreement. An affiliated firm is one, which is subject to the control of the same persons through joint-ownership, or otherwise. The ENGINEER further certifies that neither the ENGINEER, nor any firm affiliated with the ENGINEER, will bid on any construction subcontracts included within the construction contract.

Additional, ENGINEER certifies that no person working under this Agreement is also employed by the construction contractor for any project included within this Agreement.

**23. REBATES, KICKBACKS OR OTHER UNLAWFUL CONSIDERATION**

The ENGINEER warrants that this Agreement was not obtained or secured through rebates, kickbacks or other unlawful consideration, either promised or paid to any CITY employee. For breach or violation of this warranty, CITY shall have the right in its discretion; to terminate this Agreement without liability; to pay only for the value of the work actually performed; or to deduct from the contract price; or otherwise recover the full amount of such rebate, kickback or other unlawful consideration.

**24. 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.

**25. AMENDMENTS:**

Any changes to this Agreement requested either by CITY or ENGINEER 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.

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

Consistent with the professional standard of care, ENGINEER shall comply with all Federal, State, and local laws, ordinances, regulations and provisions applicable in the performance of ENGINEER'S services. ENGINEER 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. This includes compliance with prevailing wage rates and their payment in accordance with California Labor Code, Section 1775.

**27. ENGINEER'S LEGAL AUTHORITY:**

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

**28. 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 or that party or, in lieu of personal service, when deposited in the United States mail, first class postage prepaid, addressed as follows:

CITY  
Engineering Division  
205 W. 4th Street  
Madera, CA 93637  
Attention: Keith B. Helmuth, P.E.  
City Engineer

ENGINEER  
Krazan & Associates, Inc.  
215 West Dakota Avenue  
Clovis, CA 93612  
David R. Jarosz  
Managing Engineer

**29. COVENANT AGAINST CONTINGENT FEES**

The ENGINEER warrants that they have not employed or retained any company or person, other than a bona fide employee working for the ENGINEER; to solicit or secure this agreement; and that they have not paid or agreed to pay any company or person other than a bona fide employee, any fee, commission, percentage, brokerage fee, gift, or any other consideration, contingent upon or resulting from the award, or formation of this agreement. For breach or violation of this warranty, CITY shall have the right to annul this agreement without liability, or at its discretion; to deduct from the agreement price or consideration, or otherwise recover the full amount of such fee, commission, percentage, brokerage fee, gift or contingent fee.

**30. PROHIBITION OF EXPENDING CITY, STATE OR FEDERAL FUNDS FOR LOBBYING**

The ENGINEER certifies to the best of his or her knowledge and belief that:

1. No city, state or federal appropriated funds have been paid, or will be paid by or on behalf of the ENGINEER to any person for influencing or attempting to influence an officer or employee of any state or federal agency; a Member of the State Legislature or United States Congress; an officer or employee of the Legislature or Congress; or any employee



of a Member of the Legislature or Congress, in connection with the awarding of any state or federal contract; the making of any state or federal grant; the entering into of any cooperative agreement, and the extension, contribution, renewal, amendment, or modification of any state or federal contract, grant, loan or cooperative agreement.

2. If any funds other than federal appropriated funds have been paid, or will be paid to any person for influencing or attempting to influence an officer or employee of any federal agency; a Member of Congress; an officer or employee of Congress or an employee of a Member of Congress; in connection with this federal contract, grant, loan, or cooperative agreement; the ENGINEER shall complete and submit Standard Form-LL, "Disclosure Form to Report Lobbying" in accordance with its instructions.

This certification is a material representation of fact upon which reliance was place when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by Section 1352, Title 31, US. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure. The ENGINEER also agrees by signing this document the he or she shall require that the language of this certification be included in all lower-tier subcontracts, which exceed \$100,000, and that all such sub recipients shall certify and disclose accordingly.

### **31. CERTIFICATIONS**

The Exhibits and Certifications listed on the ATTACHMENTS page, incorporated herein and attached hereto, are a part of this agreement.

### **32. SOLE AGREEMENT:**

This instrument constitutes the sole and only agreement between ENGINEER and CITY respecting the Project and correctly sets the obligations of the ENGINEER 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**

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


**APPROVED AS TO FORM:**

By: \_\_\_\_\_  
Brent Richardson, City Attorney

**ATTEST:**

By: \_\_\_\_\_  
Sonia Alvarez, City Clerk

**ENGINEER**

By:   
\_\_\_\_\_  
77-0039491  
Taxpayer I.D. Number

# **ATTACHMENTS**

## **EXHIBIT A FEE SCHEDULE**

## **EXHIBIT B ON DEMAND MATERIALS TESTING SERVICES**

# EXHIBIT "A"



GEOTECHNICAL ENGINEERING • ENVIRONMENTAL ENGINEERING  
CONSTRUCTION TESTING & INSPECTION

## 2018 Fee Schedule (Prevailing Wage)

### *Central California*

Established 1982

#### Principals

**AUGUST HIOCO** ..... President  
**DEAN L. ALEXANDER, R.E.A., R.C.E., R.G.E.** ..... Principal Engineer  
**DAVE R. JAROSZ, II, R.C.E., R.G.E.** ..... VP Engineering Services  
**BYRON "KIP" WILLIAMSON** ..... Managing Partner

\*This Fee Schedule was developed based on **DETERMINATION NC-63-3-9-2017-1, ISSUE DATE:** August 22, 2017, **EXPIRATION DATE OF DETERMINATION:** June 30, 2018, with the **PREDETERMINED** rate increases for July 1, 2018 and July 2019. For projects continuing on beyond July 1, 2018, the billings rates presented herein shall increase by \$2.80 per hour on July 1, 2018; for services that continue on beyond July 1, 2019, the billings rates as adjusted on July 1, 2018 shall increase by \$3.40 per hour on July 1, 2019. The billing rates are subject to revision at the time of issuance of a new Determination and subsequent Determinations or Predetermined Increases for the duration of the project. The rates in effect at the time of a Determination or Predetermination shall be increased proportionally with respect to any labor and benefits rate increases mandated by the California Department of Industrial Relations.

# Rate Schedule



## **Terms of Payment**

Invoices shall be deemed delinquent if not paid within 30 days of the invoice date and will be subject to a late payment charge of 1.5% per month or the maximum percentage allowed by law, whichever is the lesser on the unpaid balance from the invoice date, including the undisputed portions of invoices with disputed charges, until the same is paid, as liquidated damages for additional credit and collection expenses incurred by Krazan & Associates, Inc.

## **Charges**

### **Minimum Charges**

Field services performed by our technicians are subject to a 4 hour minimum charge for each day of service, with services in excess of 4 hours subject to an 8-hour charge. Services in excess of 8 hours per day are billed in hourly increments. Field and office-based engineering and administrative services have a one-hour minimum charge and are billed in hourly increments. Expert Witness and Deposition services are billed on half- and full day (4 and 8 hour) basis and hourly after 8 hours. Sample pick-up services are subject to a 1 hour minimum charge during regular Hours Monday through Friday and a 2 hour minimum charge for pick-ups on weekends or holidays.

### **Regular Time Charges**

Regular time charges are applicable to services initiated Monday through Friday (excluding holidays), between 7 A.M. to 3 P.M. Premium charges are applicable on holidays and weekends.

### **Night Shift Differential**

For services initiated after 2:00 P.M. or before 4:00 A.M. during any twenty-four (24) hour period commencing at 12:01 A.M. shall be subject to a twelve and one-half (12.5) percent premium above the regular rate.

### **Time and One-Half Charges**

Time and one-half charges will be rendered on Regular Time weekdays for services extending beyond 8 hours and not exceeding 12 hours of total service that day. Services rendered on Saturdays will be charged at one and one-half (1.5) times the Regular Time rate for the first 8 hours.

### **Double Time Charges**

Services rendered on Holidays, Sunday, in excess of 8 hours on Saturday, or in excess of 12 hours on weekdays, will be charged at double the Regular Time rate.

### **Travel Time and Mileage Charges**

Field services are billed based on time charged portal-to-portal from the closest Krazan & Associates' office providing the required services. Projects in excess of 20 miles from our local offices are subject to mileage charges.

### **Reimbursable Expenses and Subcontractor Charges**

Direct expenses, including but not limited to shipping, overnight or expedited delivery beyond standard postage, photo processing, sublet reproduction, and consumable materials used in field services will be charged to the client at cost plus 20%.

Subcontractor, Subconsultant and equipment rental charges, including but not limited to backhoe rental or backhoe services, subcontracted drilling services, concrete pumping services, and subcontracted specialty laboratory testing and inspection services, will be charged to the client at cost plus 20%.

## **Travel and Subsistence**

On remote jobs or projects, travel and subsistence, when not furnished, will be charged to the client at cost plus 20%; the minimum per diem rate for subsistence is \$150.00.

## **Clerical and Engineer Review Charges**

All projects will incur clerical preparation and engineering review charges.

## **Supervisor Charges**

Supervisor charges are above and beyond hourly and unit rates quoted for testing and inspection services.

## **Cancellation**

All cancellations without a 12 hour notice of cancellation will be subject to 2 hour minimum charges per day cancelled. Notice of cancellation must be received by our office during our office hours of 7:30 A.M. to 5:00 P.M. Monday through Friday (excluding holidays) and cannot be left on the voice mail system.

## **Cost of Services**

Unless expressly stated in a project-specific Proposal or Agreement, services are provided on a time-and-expense basis, subject to the Basis of Charges presented above. Where provided, Cost Estimates are provided in good faith based on the scope of work and assumptions outlined in the Proposal. The term "Cost Estimate" does not imply a maximum contract amount, but only the extension value of our unit prices at the time of proposal preparation.

## **Insurance**

Krazan & Associates, Inc. carries in excess of all insurance required by law. Additional costs of extra insurance certificates, co-insurance endorsements or additional insurance will be charged to the client at cost plus 20%.

## **Cost-Of-Living Adjustment**

The rates presented in this fee schedule are applicable only through June 30, 2018. For services OTHER THAN services subject to Prevailing Wage in accordance with the requirements of the State of California Department of Industrial Relations, the rates presented herein for projects that will extend beyond June 30, 2018 are subject to an annual cost of living adjustment based on the consumer price index for the region where our services are being provided. Where Prevailing Wage is applicable for projects continuing on beyond July 1, 2018, the billings rates presented herein shall increase by \$2.80 per hour on July 1, 2018; for services that continue on beyond July 1, 2019, the billings rates as adjusted on July 1, 2018 shall increase by \$3.40 per hour on July 1, 2019. Furthermore, the billing rates are subject to revision at the time of issuance of a new Determination and subsequent Determinations or Predetermined Increases for the duration of the project. The rates in effect at the time of a Determination or Predetermination shall be increased proportionally with respect to any labor and benefits rate increases mandated by the California Department of Industrial Relations.

## GENERAL FEE SCHEDULE FOR PROFESSIONAL & TECHNICAL SERVICES

**Professional**

Principal Engineer .....	\$195.00/hour
Registered Senior Engineer .....	\$150.00/hour
Professional Geologist.....	\$135.00/hour
Certified Asbestos Inspector/Manager .....	\$115.00/hour
Project Engineer/Manager .....	\$115.00/hour
Project Geologist .....	\$115.00/hour
Environmental Specialist.....	\$110.00/hour
Staff Professional (engineer/geologist) .....	\$105.00/hour

**Expert Witness Testimony**

Consultation, Preparation for Court, Expert Witness – Principal Engineer .....	\$375.00/hour
Consultation, Preparation for Court, Expert Witness – Registered Senior Engineer .....	\$290.00/hour
Stand-By at Office (Waiting to be called to Court).....	By Quote

**Technicians/Technical Staff**

Construction Inspector and Field Soils and Materials Tester*	
Group 1 .....	\$150.00/hour
Group 2 .....	\$125.00/hour
Group 3 .....	\$115.00/hour
Group 4 .....	\$105.00/hour
Offsite Technician / Inspector .....	\$75.00/hour
Draftsman (AutoCAD) .....	\$75.00/hour
Mileage (Portal to Portal from nearest Krazan Office) .....	\$0.55/mile

**Administrative**

Administrative Support .....	\$55.00/hour
Word Processing/Reproduction .....	\$55.00/hour

**Geotechnical Exploratory Drilling and Sampling**

Drilling (continuous flight, hollow stem auger or rotary wash, w/2 operators)	
CME 45 Drill Rig (truck mounted) .....	\$225.00/hour
CME 55 Drill Rig (truck mounted) .....	\$225.00/hour
Mobile Drill B-61 (truck mounted) .....	\$275.00/hour
Mobile Drill B-61/HDX Drill Rig (truck mounted) .....	\$275.00/hour
Mileage (support vehicles) .....	\$0.75/mile
Mileage (drill rig) .....	\$0.85/mile



## CONSTRUCTION TESTING AND INSPECTION SERVICES

*Specialized Services Are Available On Request*

### Geotechnical Field Services

- Fill Placement Observation
- Soil In-Place Density (Compaction) Testing
- Pile Driving Observation
- Foundation Excavation Observation including piers and caissons
- Soil Nailing and Tieback Installation Observation
- Soil Sampling

### Special Inspection Services

- Reinforced Concrete
- Pneumatically Placed Concrete (Shotcrete/Gunite)
- Post-Tensioned Concrete
- Structural Masonry
- Structural Steel Welding
- Structural Steel High-Strength Bolting
- Spray-Applied Fire-Resistive Coatings
- Structural Wood Diaphragm Nailing/Stapling
- Epoxy-set Bolts or Dowels

### Plant Inspection

- Structural Steel Fabrication
- Steel Joist Fabrication
- Concrete Batch Plant
- Asphalt Batch Plant
- Pipe Plant (Reinforced Concrete, Clay, etc)
- Glue-Laminated Beam Fabrication (subcontracted service)
- Wood Truss Fabrication (subcontracted service)

### Nondestructive Examination

- Ultrasonic, Magnetic Particle, Dye Penetrant
- Radiographic (subcontracted service)
- Pachometer
- Schmidt Hammer
- Ground Penetrating Radar (subcontracted service)
- Ferroskan (subcontracted service)

### Specialty Inspections and Services

- Paint/Coating Thickness
- Build-up Roofing
- Welder Qualification

### Coring Services

- Asphalt Concrete, Portland Cement Concrete, Masonry

## Aggregates and Soils

### Laboratory Tests

Absorption, ASTM C 127, 128 .....	\$50.00/each
Abrasion (L.A. Rattler 100 & 500 cycles), ASTM C 131 .....	\$225.00/each
Atterberg Limits, ASTM D 4318 .....	\$175.00/each
California Bearing Ratio (CBR), ASTM D 1883 .....	\$750.00/each
Clay Lumps and Friable Particles, ASTM C 142 .....	\$115.00/each
Cleanness Value, CAL. 227 .....	\$130.00/each
Consolidation Test ASTM D 2435 .....	\$225.00/each
Crushed Particles, Calif. 205 .....	\$105.00/each
Direct Shear Test, ASTM D 3080, Unconsolidated, Undrained, 3 point .....	\$215.00/each
Durability Index, CAL 229 .....	\$195.00/each
Expansion Index, UBC-29-2 .....	\$195.00/each
Flat or Elongated Particles, CRD C 119 .....	\$130.00/each
Hydrometer Analysis, ASTM D 422 .....	\$200.00/each
Material Finer than No. 200 Sieve, ASTM C 117 .....	\$65.00/each
Moisture Content .....	\$20.00/each
Moisture Content and Dry density (Liner Sample) .....	\$30.00/each
Moisture-Density Relations of Soils, ASTM D 698, D 1557, Cal 216 .....	\$200.00/each
Organic Impurities, ASTM C 40 .....	\$80.00/each
Percent Flat or Elongated Particles, CRD C 119 .....	\$130.00/each
Percent Crushed Particles, Calif. 205 .....	\$105.00/each
Permeability, Constant Falling Head, ASTM 2434 .....	\$275.00/each
Permeability, Failing Head/Flexible Wall, (ASTM D5084), 1.4"-4" .....	\$325.00/each
Permeability, Failing Head/Flexible Wall, (ASTM D5084), 6" .....	\$450.00/each
Permeability Sample Remold .....	\$40.00/each
Plate Bearing Test, ASTM D 1195, D 1196 .....	By Quote
Potential Reactivity (Chemical Method 3 Determinations), ASTM C 289 .....	By Quote
Potential Reactivity (Mortar Bar Method, ASTM C 227 .....	By Quote
Sand Equivalent (Average of 3), CAL. 217 .....	\$95.00/each
Sieve Analysis - Processed (Each Size), ASTM C 136 .....	\$175.00/each
Sieve Analysis Fine (including wash), ASTM C 137, C 177 .....	\$125.00/each
Specific Gravity, Coarse, ASTM C 127 .....	\$115.00/each
Specific Gravity, Fine, ASTM C 128 .....	\$195.00/each

## Rate Schedule



Soft Particles, ASTM C 235 .....	\$80.00/each
Soluble Chloride Content .....	\$75.00/each
Soluble Sulfate Content.....	\$75.00/each
Soundness - Sodium or Magnesium (5 cycles), ASTM C 88.....	\$750.00/each
"R" (Resistance) Value, CAL. 301, ASTM D 2844 .....	\$250.00/each
"R" (Resistance) Value, Lime Treated or Requiring Recombining .....	\$325.00/each
Triaxial Compression Test, ASTM D 2850	
Unconsolidated, Undrained .....	\$235.00/each
Consolidated, Undrained .....	\$325.00/each
Consolidated, Undrained with Pore Pressure .....	\$500.00/each
Unconfined Compression Test, ASTM D 2166 .....	\$85.00/each
Unit Weight Per Cubic Foot, ASTM C 29 .....	\$55.00/each
Additional Tests Not Listed.....	By Quote

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**Concrete, Shotcrete and Guniting**

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**Cylinder, Beams & Cores**

Compression Test, 6" x 12" Cylinders, Including Hold, ASTM C 39 (set of 4).....	\$100.00/set
Compression Test, 6" x 12" Cylinders, Including Hold, ASTM C 39 (set of 5).....	\$100.00/set
Compression Test, Cores, ASTM C 42 (Does Not Include Special Prep. time).....	\$40.00/each
Core Cutting (In Laboratory).....	\$40.00/each
Flexure Test, 6" x 6" Beams, ASTM C 78 .....	\$95.00/each
Splitting Tensile, 6" x 12" Cylinders, ASTM C 496 .....	\$50.00/each
Modulus of Elasticity Test - Static, ASTM C 469 .....	\$85.00/each
Unit Weight Determination .....	\$25.00/each

**Shrinkage**

Length Change (3 Beams, 4 Readings, Up to 90 Days), ASTM C 157 Modified .....	By Quote
Additional Reading.....	\$30.00/3-bar set
Storage Over 90 days, Per set of 3 Beams.....	\$20.00/month

**Mix Design****Aggregate Tests for Concrete Mix Designs Only:**

Sieve Analysis, Specific Gravity, No. 200 Wash, Organic Impurities, and Weight Per Cubic Foot (Per Aggregate Size).....	\$500.00/each
Mix Design (Calculation Only) .....	\$500.00/each
Review of Mix Design Prepared by Others.....	\$290.00/each
Trial Batch, ASTM C192 .....	\$900.00/each

**Coring**

Technician and Equipment .....	\$185.00/hour
Bit Charge.....	\$7.00/inch

**Nozzleman Qualification**

Certification of Shotcrete/Guniting Nozzleman in accordance with ACI 506, administer knowledge test, observe test panel production, coring of test panel, laboratory testing of cores.....	Quote on Request
--	------------------

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**Masonry Materials**

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**Brick ASTM C 67**

Modulus of Rupture (Flexure).....	\$80.00/each
Compressive Strength.....	\$100.00/each
Absorption - 5 Hour or 24 Hour .....	\$50.00/each
Initial Rate of Absorption .....	By Quote
Efflorescence .....	By Quote
Dimensions, Overall, Coring, Shell and Web Thickness .....	\$25.00/brick
Coefficient of Friction (Slip Test) .....	By Quote
Cores, Compression.....	\$60.00/each
Cores, Shear, 6" and 8" Diameter, 2 Faces.....	\$80.00/core

**Concrete Block ASTM C 140**

Moisture Content as Received .....	\$40.00/each
Absorption .....	\$65.00/each
Compression .....	\$100.00/each
Tension .....	By Quote
Shrinkage, Modified British, ASTM C 426 .....	By Quote
Compression, 3"- 6" diameter Cores.....	\$50.00/each

**Masonry Prisms ASTM E 447**

Compression Test, Grouted Prisms .....	\$150.00/each
Cutting Prisms .....	By Quote

**Mortar & Grout UBC Standard 24-22**

Compression, 2" x 4" Mortar Cylinder.....	\$25.00/each
Compression, 3" x 6" Grout Prisms.....	\$40.00/each
Compression Test, 2" Cubes, ASTM C 109.....	\$30.00/each

**Unreinforced Masonry Building Tests**

In-Place Shear (Push) Tests.....	By Quote
Wall Anchors.....	By Quote

## Reinforcing and Structural Steel

### Reinforcing Steel ASTM A 615

Tensile & Bend Test, No. 11 Bar or Smaller .....	\$75.00/each
Tensile & Bend Test, No. 12 Bar or Larger .....	By Quote
Receive and Distribute Mill Certificates .....	\$10.00/each

### Prestress and Post-tension Tendons (7-Wire Strands) (Attachments To Be Furnished by Client)

#### Prestress (Attachments To Be Furnished by Client)

Tensile Test and Elongation In 24" for Prestress Strand, ASTM A 416 .....	By Quote
Tensile Test and Elongation In 10" for Prestressing Wire, ASTM A 421 .....	By Quote
Modulus of Elasticity (Prestressing Wire) .....	By Quote

### Welded Specimens

Tensile Test, Welded, No. 8 Bar or Smaller .....	By Quote
Tensile Test, Welded, No. 11 .....	By Quote
Tensile Test, Welded, No. 14 and 18 Bar .....	By Quote
Tensile Test, Mechanically Spliced Bar .....	By Quote
Nick Break, Welded Re-Bar .....	By Quote

### Welder Qualifications/Welding Procedure Specifications

Prepare Welding Procedure Specification (WPS) in accordance with AWS D1.1 .....	By Quote
Prepare Procedure Qualification Record (PQR) in accordance with ASME .....	By Quote
Observe Welder perform Qualification Test single qualification test (at Krazan facility) .....	By Quote
Observe Welder perform Qualification Test single qualification test (at job site) .....	By Quote
Test Plates/Pipe	
3/8" Carbon steel plate .....	\$20.00/set
1" Carbon steel plate .....	\$30.00/set
2" diameter Schedule 160 pipe .....	\$35.00/set
Machining of test specimen .....	By Quote
Bend Test (set of 2) .....	\$50.00/set
Macroetch .....	\$25.00/each
X-ray examination .....	By Quote
Prepare Welder Qualification Report/Certification .....	\$140.00/each

## Asphalt Concrete

Asphalt Concrete Mix Design (Hveem or Marshall) ..... By Quote

Asphalt Content Of Bituminous Mixtures By Solvent Extraction,  
ASTM D 2172 (Method B) or CAL 310 (Excluding Ash Correction) ..... \$250.00/each

Asphalt Content Of Bituminous Mixtures By The Ignition, CAL 382 ..... \$200.00/each

Correction Factor Determination for Asphalt Content, CAL 382 ..... \$450.00/each

Aggregate Gradation on Extracted Sample (Including Wash) ..... \$200.00/each

### Swell, Stability and Moisture Vapor Susceptibility Tests

#### *California Test Methods*

Lab Trial Batch/ Sample Preparation (per point) ..... \$60.00/each

Lab Compaction of Test Specimen Pre-Mixed, CAL 304 ..... \$200.00/each

Lab Compaction of Test Specimen, Lab-Mixed, CAL 304 ..... \$300.00/each

Hveem Stability CAL 304 and CAL 366 ..... \$290.00/each

Specified Gravity (Lab Compacted) CAL 308..... \$35.00/each

#### *Marshall Method*

Lab Trial Batch/ Sample Preparation (per point) ..... \$60.00/each

Lab Compaction of Test Specimen, Pre-Mixed, ASTM D 1559 ..... \$200.00/each

Lab Compaction of Test Specimen, Lab-Mixed, ASTM D 1559 ..... \$300.00/each

Stability and Flow (including lab compaction of sample)..... \$290.00/each

Specified Gravity (Lab Compacted)..... \$35.00/each

Maximum Theoretical Unit Weight (Rice Gravity) ASTM 204 ..... \$250.00/each

Asphalt Concrete Core Density ..... \$35.00/each

### Stability Tests

Hveem, Pre-Mixed, CAL. 304 ..... \$225.00/each

Hveem, Lab-Mixed, CAL. 304..... \$300.00/each

Marshall, Pre-Mixed, ASTM D 1559..... \$225.00/each

Marshall, Lab-Mixed, ASTM D 1559..... \$300.00/ each

### Maximum Density

Hveem, Pre-Mixed, CAL. 304 ..... \$225.00/each

Hveem, Lab-Mixed, CAL. 304..... \$300.00/each

Marshall, Pre-Mixed, ASTM D 1559..... \$225.00/each

Marshall, Lab-Mixed, ASTM D 1559..... \$300.00/each



## Miscellaneous Materials Tests and Equipment Charges

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**Gypsum Roof Fill ASTM C 495**

Compression Test .....	\$25.00/each
Density .....	\$50.00/each

**Fireproofing Tests**

Thickness, Field Sampling by Technician .....	Billed at Field Rates
Oven Dry Density .....	\$55.00/sample

**Equipment**

Air Meter (Concrete) – Pressure .....	\$25.00/day
Air Meter (Concrete) – Volumetric .....	\$45.00/day
Calibrated Torque Wrench (max. capacity 200 ft-lb) .....	\$25.00/day
Calibrated Torque Wrench (capacity exceeding 200 ft-lb) .....	\$50.00/day
F-Meter Profiler (floor flatness) .....	\$250.00/day
Nuclear Density Gauge .....	\$25.00/day
Pachometer .....	\$50.00/day
Paint Thickness Gauge (electronic) .....	\$50.00/day
Proof-load Equipment (testing of anchor bolts, no specialized fixtures) .....	\$50.00/day
Schmidt Hammer .....	\$50.00/day
Skidmore-Wilhelm device .....	\$100.00/day
Ultrasonic Testing Equipment (structural steel inspection) .....	\$10.00/hour
Vehicle Mileage .....	\$0.75/mile

## EXHIBIT "B"



GEOTECHNICAL ENGINEERING • ENVIRONMENTAL ENGINEERING  
CONSTRUCTION TESTING & INSPECTION

September 18, 2018

TISP #18695CAF

Mr. Jerry Martinez  
City of Madera Engineering  
205 West 4<sup>th</sup> Street  
Madera, California 93637

**RE: Special Inspections and Materials Testing of**  
**Madera Transit Operations Facility**  
3550 Independence Drive  
Madera, California

Dear Mr. Martinez:

In accordance with your request, we are submitting our procedures for the special inspections and materials testing concerning the Madera Transit Operations Facility, located in Madera, California. The following lists the special inspections and materials testing which our firm has been requested to perform at the project site in accordance with the approved project plans and specifications and the 2016 CBC during construction of integral structural components:

<b>Steel Reinforcement</b>	Inspection of steel bar reinforcement before concrete placement. Inspection shall consist of confirming details of the reinforcing steel including grade, size, orientation, distribution, lengths, bends, splices, clearances, cleanliness, stability, embed items, anchor bolt size, welded connections and continuity. Mill certifications shall be obtained for all steel reinforcement. All unidentified steel reinforcement shall be tested in accordance with the applicable reference standard.
----------------------------	---

<b>Concrete</b>	Forms and excavations will be inspected for cleanliness and stability prior to the concrete placement. The approved concrete mix design will be used to verify batched concrete-making materials and the water-to-cement ratio for each delivered load of concrete. The time limitation of freshly batched concrete to placement will be monitored. Along with slump and temperature determinations of the freshly batched concrete, a set of four cylindrical concrete test samples will be molded in intervals of 150 cubic yards or fraction thereof on a daily basis for compressive strength determinations. Verify the consolidation method of the concrete placement. Inspection of finishing and curing methods are excluded from our services.
-----------------	---

<b>Masonry</b>	Periodic to continuous inspection of the placement of concrete masonry units, mortar, wire joint reinforcement, reinforcing steel bar and anchor bolt assemblies, and grout. Verification of mortar-making materials proportioning and grout mixture to the approved mix designs shall be performed. Sample and test materials representing masonry construction. Compressive strength tests can be performed on block & mortar, grout, and prism assemblages used in the masonry construction.
<b>Shop Welding</b>	Perform material, filler metal, welding procedure specification and welder certification verifications. Single Pass fillet welds should be inspected periodically. Multi-pass welding and full-penetration welds shall be continuously inspected during welding and ultrasonic inspection provided as applicable after welding in completed. Mill test reports shall be obtained for all structural steel.
<b>Field Welding</b>	Filler metal, welding procedure specification and welder certification verifications. Single Pass fillet welds should be inspected periodically. Multi-pass welding and full-penetration welds shall be continuously inspected during welding and ultrasonic inspection provided as applicable after welding in completed
<b>Spray-Applied Fireproofing</b>	Verify Spray Applied Fire Resistive Material (SRFM) to be used. Perform visual inspection of substrate surfaces. Perform thickness tests, density tests and cohesion/adhesion tests on the spray-applied fireproofing material.
<b>High-Strength Bolt Inspection</b>	High-strength bolt inspections will be performed on a periodic basis after bolt installation. Proper bolt installation will be verified, along with the appropriate tension value, at slip-critical joints or connections subject to direct tension. Tension values will be verified with a Skidmore apparatus. A calibrated torque wrench will be used to test 10 percent or at least two bolts per joint or connection. If one bolt is found to be below required tension value, then all bolts at that joint or connection shall be checked.
<b>Concrete Anchor Inspection</b>	Special inspection will be provided for epoxy or expansion anchor operations, either by continuous inspection during installation or by conducting torque or pull-test with a calibrated torque wrench or a tensile load-proving apparatus as referred by ICBO Evaluation Reports. Post installation testing (torque or pull-test) will be performed randomly on a minimum of 10% percent of the bolts or as indicated on the approved plans. Failures within the test group may result in 100% of the anchors being tested.
<b>Special Cases – Non Shrink Grout</b>	Special Inspection of Non Shrink Grout under Column base plates will include verification of cleanliness and observation of placement per manufactures recommendations, specifications or ICC evaluation reports. Samples may be obtained for laboratory compressive strength testing.


<b>Ceiling Wire Inspection</b>	Conduct observation of ceiling wire anchor installation. Typical methods of attachment are expansion anchor into concrete or screw/bolt into wood member. Inspections performed to verify type, size, location and embedment depth per plans and specifications. Perform proof load testing of wires at locations and frequency stated in plans and specifications
<b>Earthwork (Special Grading Excavation and Filling)</b>	The purpose of earthwork observation and testing is to verify that the work is done in compliance with the approved plans and specifications, and in particular, the recommendations of the project geotechnical report. The materials engineering laboratory will be provided with representative samples of the subgrade, native-fill, imported materials, and any additive materials (lime, cement, sand, pozzolan, etc.). Laboratory testing may include soils classification and properties tests, moisture density relationships, and admixture analysis. Field testing will include in-place density and moisture testing at intervals to allow for representative coverage of each lift. Additional tests and observations will be made, as necessary, in order to verify compliance with specification requirements.
<b>Compaction Testing</b>	Special inspection will include observation of over-excavation activities to verify all unsuitable material has been removed. During backfill activities, backfill material will be qualified to verify suitability for re-use as Engineered Fill. Compaction testing will be performed during backfill operations to verify the fill has been placed in accordance with the recommendations in the soils report and specifications.

The qualifications for our certified special inspectors and testing technicians who will be performing the inspections and materials testing are attached.

Formal reports will be issued to all parties in concern which document the special inspection and material testing services.

We trust that this report will satisfy your needs. Should you have any questions or if we can be of further assistance, please contact our office.

Respectfully Submitted,  
**KRAZAN & ASSOCIATES, INC.**

  
David Jarosz  
Managing Engineer  
Testing & Inspection Division



[Return to Agenda](#)

## REPORT TO CITY COUNCIL

Approved By:

Department Director

City Administrator

Council Meeting of October 17, 2018

Agenda Item Number B-10

**SUBJECT: CONSIDERATION OF A RESOLUTION RATIFYING THE ADOPTION OF CHAPTER 10 OF THE LOCAL ASSISTANCE PROCEDURES MANUAL (LAPM)**

### RECOMMENDATION:

Staff recommends that the City Council adopt a resolution:

1. Ratifying the adoption of Chapter 10 of the Local Assistance Procedures Manual (LAPM)

### SUMMARY:

The City was recently notified by Caltrans of a requirement to submit a letter attesting to the City of Madera's adoption of Chapter 10, "Consultant Selection", of the Local Assistance Procedures Manual (LAPM). This requirement is based on deficiencies found in the Federal-Aid Highway Program determined by the Office of Inspector General (OIG) when they reviewed the Federal Highway Administration's (FHWA) oversight of Federal-Aid Recovery Act projects administered by local agencies in California.

Section C.9 of Exhibit 10-C of the LAPM requires a formal adoption of policies and procedures by local agencies, or adopt Chapter 10 – "Consultant Selection", of the LAPM.

Without this letter, the City would not be able to award a contract to Consultants for various professional services.

### Engineering

205 W. Fourth Street • Madera, CA 93637 • TEL (559) 661-5418 • FAX (559) 675-6605

[www.cityofmadera.ca.gov](http://www.cityofmadera.ca.gov)

## **DISCUSSION:**

City receives State and Federal funds that are used to compensate Consultants hired to provide professional services. City is required to follow the procedures outlined in Chapter 10 of the LAPM when processing the selection of Consultants.

New rules set by the Federal Highway Administration (FHWA) require that a completed Exhibit 10-C, "Architectural and Engineering Consultant Contract Reviewers Checklist" for new and amended federal and/or state funded consultant contracts must be accepted by Caltrans prior to contract award.

Caltrans provided options for the City to comply with the above requirement as follows:

1. City can adopt LAPM Chapter 10 through City Council Resolution, or
2. A letter from City Manager or Public Works Director addressed to the LAPM Chief (Rihui Zhang) stipulating that City will implement Chapter 10, "Consultant Selection", of the LAPM.

Since an Exhibit 10-C for one of the Federally funded projects needs to be submitted soon, a letter was prepared by Engineering Division and was signed by the City Administrator, and mailed to Caltrans headquarters in Sacramento.

While the signed letter by the City Administrator meets the needs of Caltrans, staff still recommend that City Council approve the resolution ratifying the adoption of Chapter 10 of the LAPM because formal adoption must be made through Council action as advised by the City Attorney.

## **FINANCIAL IMPACT:**

There is no adverse fiscal impact to the City's General Fund or other Funds.

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

Managed Growth: Strategy 101.6 - Ensure infrastructure can sustain population growth in the development of the General Plan.

## **RESOLUTION NO. 18 - \_\_\_\_\_**

### **RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MADERA, CALIFORNIA, RATIFYING THE ADOPTION OF CHAPTER 10 OF THE LOCAL ASSISTANCE PROCEDURES MANUAL (LAPM)**

**WHEREAS**, the City is required by Caltrans to have a formal adoption of City policies and procedures related to consultant selection; and

**WHEREAS**, Caltrans also allowed the City to formally adopt Chapter 10 of the LAPM; and

**WHEREAS**, the City chose to adopt Chapter 10 of the LAPM; and

**WHEREAS**, the letter signed by the City Administrator to formally adopt Chapter 10 of the LAPM needs to be ratified by City Council;

**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. Adoption of Chapter 10 of the LAPM, a copy of which is on file with the office of the City Clerk and referred to for more particulars is ratified.
3. This resolution is effective immediately upon adoption.

\* \* \* \* \*



Chapter 10 **Consultant Selection**

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## Exhibits

Exhibits applicable to this chapter can be found at:

<http://www.dot.ca.gov/hq/LocalPrograms/lam/forms/lapmforms.htm>

*Exhibit 10-A: A&E Consultant Audit Request Letter and Checklist*

*Exhibit 10-B: Suggested Consultant Evaluation Sheet*

*Exhibit 10-C: A&E Consultant Contract Reviewers Checklist*

*Exhibit 10-H: Sample Cost Proposal (Example#1 thru #3)*

*Exhibit 10-I: Notice to Proposers DBE Information*

*Exhibit 10-K: Consultant Certification of Contract Costs and Financial Management System*

*Exhibit 10-01: Consultant Proposal DBE Commitment*

*Exhibit 10-02: Consultant Contracts DBE Commitment*

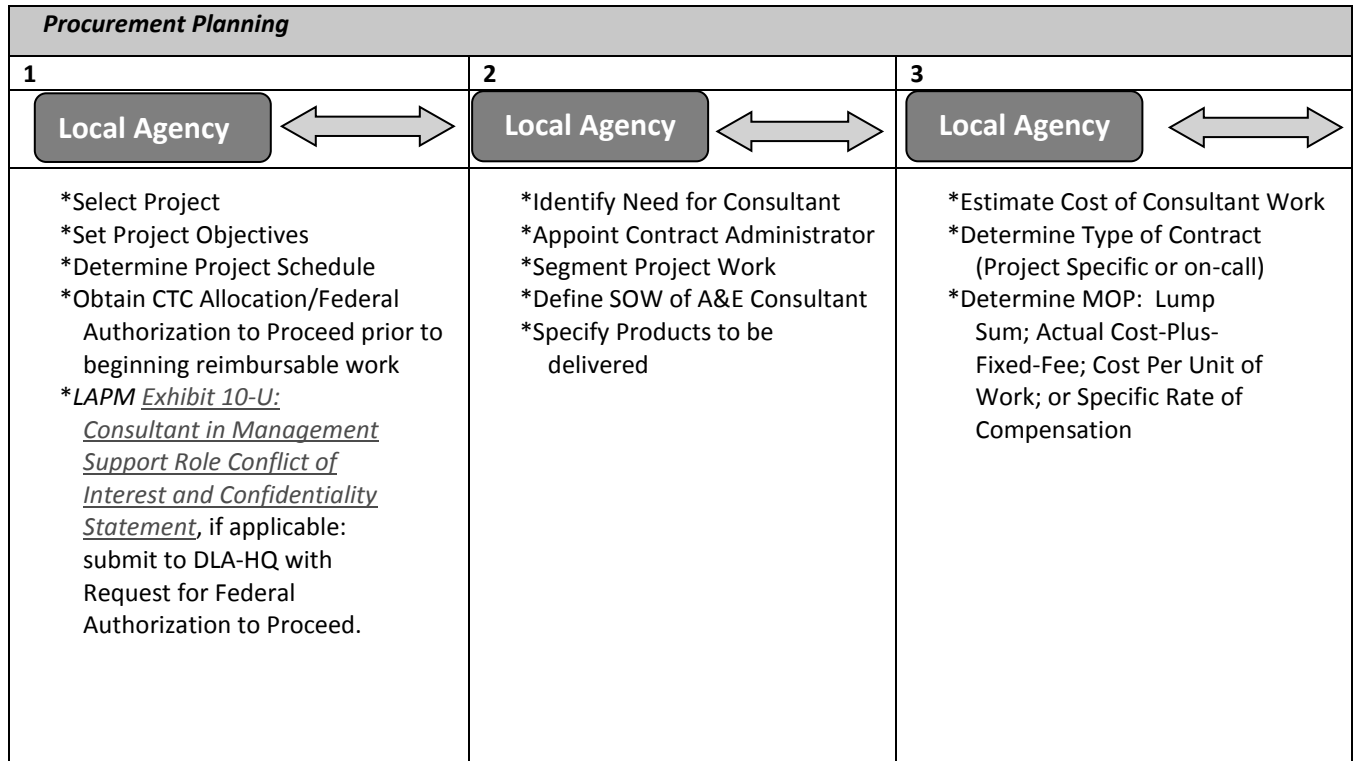
*Exhibit 10-Q: Disclosure of Lobbying Activities*

*Exhibit 10-R: A&E Sample Contract Language*

*Exhibit 10-S: Consultant Performance Evaluation*




*Exhibit 10-T: Panel Member Conflict of Interest & Confidentiality Statement*

*Exhibit 10-U: Consultant in Management Support Role Conflict of interest and Confidentiality Statement*



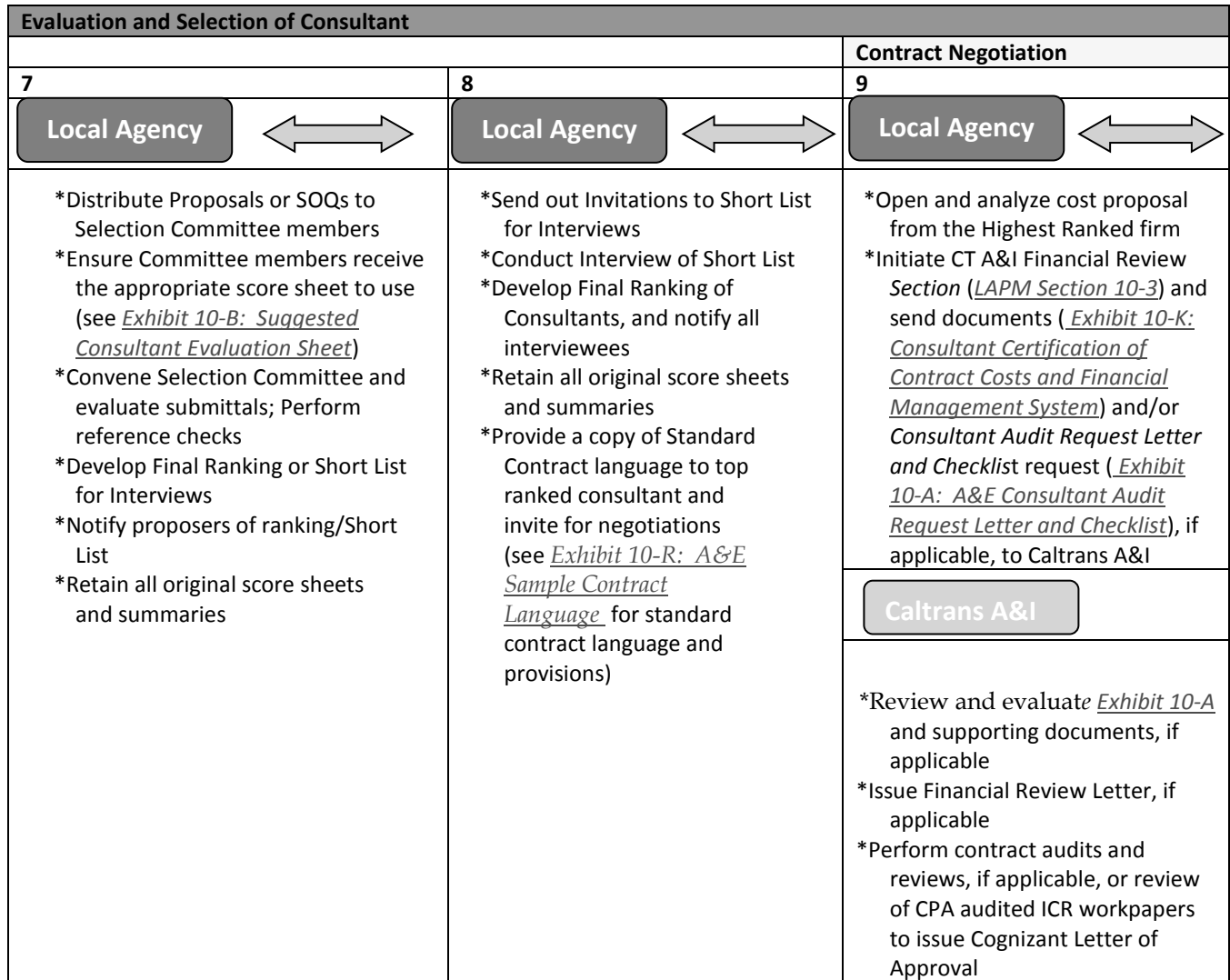
**A&E = Architectural and Engineering**  
**A&I = Caltrans Audits and Investigations**  
**CT = Caltrans**  
**DBE = Disadvantaged Business Enterprise**  
**DLA = Division of Local Assistance**  
**DLAE = District Local Assistance Engineer**  
**DLA-HQ = Division of Local Assistance-Headquarters**  
**LAPG = Local Assistance Program Guidelines**  
**LAPM = Local Assistance Procedures Manual**  
**MOP = Method of Payment**  
**RFP = Request for Proposal**  
**RFQ = Request for Qualifications**  
**SOQ = Statement of Qualifications**  
**SOW = Statement/Scope of Work**

**Figure 10-1: A&E Contract Procurement Process Workflow Diagram**

Solicitation Documents and Advertisement		
4	5	6
		
<ul style="list-style-type: none"> <li>*Determine Solicitation Document; RFP or RFQ</li> <li>*Appoint Consultant Selection Committee</li> <li>*Collect signed Conflict of Interest forms and Confidentiality Statements (see <u>Exhibit 10-T: Panel Member Conflict of Interest &amp; Confidentiality Statement</u>) from all committee members</li> <li>*Determine Procurement Schedule</li> <li>*Develop Technical Criteria with level of importance (weights) for Evaluation of Proposals or the SOQ</li> </ul>	<ul style="list-style-type: none"> <li>*Prepare RFP or RFQ documents</li> <li>*Include SOW, evaluation process/criteria, DBE goals, MOP and cost proposal format (see <u>Exhibit 10-H: Sample Cost Proposal</u>) minimum requirement of Proposal or SOQ, Notice to Proposers DBE Information (see <u>Exhibit 10-I: Notice to Proposers DBE Information</u>), submittal deadline</li> <li>*Advertise RFP or RFQ on public forum (newspaper, technical publications, Web Hosting Site, other local websites)</li> <li>*Issue RFP or RFQ (direct mailing, web posting)</li> </ul>	<ul style="list-style-type: none"> <li>*Prepare to respond to RFP/RFQ questions</li> <li>*Conduct Proposers Conference, if applicable</li> <li>*Receive Proposals or SOQs</li> </ul>

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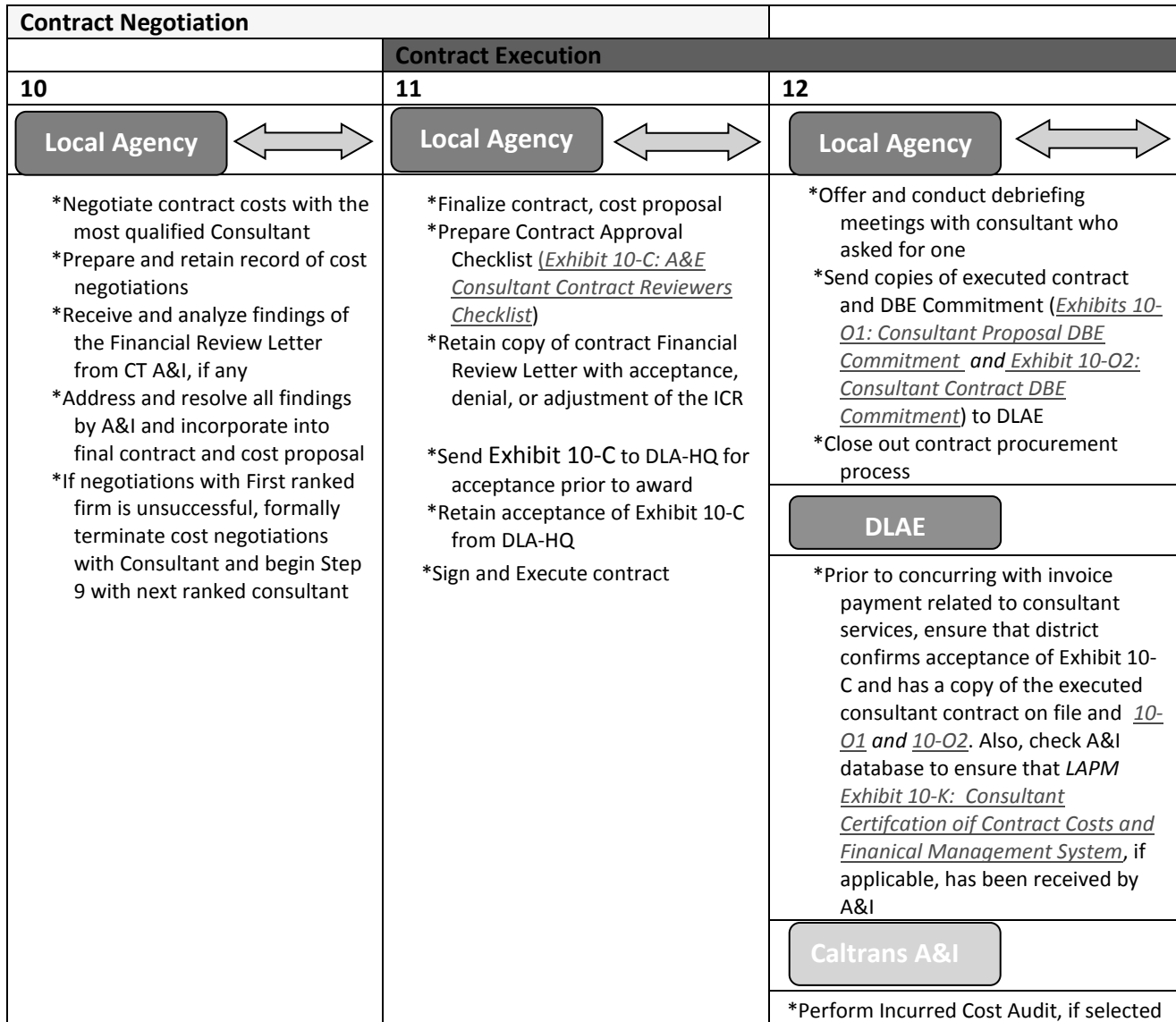
**Figure 10-1: A&E Contract Procurement Process Workflow Diagram- continued**



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Figure 10-1: A&amp;E Contract Procurement Process Workflow Diagram- continued





A&E = Architectural and Engineering  
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Figure 10-1: A&amp;E Contract Procurement Process Workflow Diagram- continued

## Chapter 10 **Consultant Selection**

### 10.1 **GENERAL**

#### **Introduction**

A local agency may engage consultants to perform architectural, engineering, and related services to develop a federal-aid or state funded project. Those private consulting firms providing architectural, landscape architectural, engineering, environmental, land surveying, construction engineering, or construction project management services are termed Architectural and Engineering (A&E) Consultants. Local agencies requesting federal or state funds to reimburse A&E Consultants must follow the selection and contracting procedures detailed in this chapter.

#### **Architectural and Engineering Consultants**

The Brooks Act (40 USC, Section 1104) requires local agencies to award federally funded engineering and design related contracts based on fair and open competitive negotiations, demonstrated competence, and professional qualifications (23 Code of Federal Regulations (CFR), Part 172), at a fair and reasonable price (48 CFR 31.201-3).

Cost proposals submitted to the local agency, if above the small purchase procurement threshold, must be sealed and may not be included as a criterion for rating such consultants. After ranking, cost negotiations may begin with the most qualified consultant and only their cost proposal will be opened. Should negotiations fail or result in a price that the local agency does not consider fair and reasonable, negotiations must be formally terminated and the local agency must then undertake negotiations with the second most qualified consultant.

If the negotiations with the second most qualified firm are not successful, negotiations must be formally terminated and the local agency must then undertake negotiations with the third most qualified consultant, and so on, until the price is determined to be fair and reasonable by the local agency.

In selecting an A&E consultant, a detailed technical proposal or qualifications proposal, and a proposed contract will be required.

Depending upon the scope of work, the required contract provisions may need to include the California State Prevailing Wages (Federal Payment of Predetermined Minimum Wage applies only to federal-aid construction contracts). Prevailing wages will apply if the services to be performed will involve land surveying (such as flag persons, survey party chief, rodman or chainman), materials sampling and testing (such as drilling rig operators, pile driving, crane operators), inspection work, soils or foundation investigations, environmental hazardous materials and so forth. California State Prevailing Wage information is available through the California Department of Industrial Relations websites below:

- DIR FAQ website:  
[http://www.dir.ca.gov/OPRL/FAQ\\_PrevailingWage.html](http://www.dir.ca.gov/OPRL/FAQ_PrevailingWage.html)
- DIR Wage Determination website:  
<http://www.dir.ca.gov/oprl/DPreWageDetermination.htm>

## Non A&E Consultants

Consultants other than A&E consultants may be selected using cost, cost and qualifications (best value) or other critical selection criteria. The procedures outlined in this chapter can be modified for selecting non-A&E consultants by adding a cost item to the contract proposal. The Brooks Act and the audit and review process for approving ICR's described in [\*Section 10.3: A&E Consultant Audit and Review Process\*](#) of this chapter are optional for non A&E Consultant contracts.

Non-A&E contract procurement on highway projects must also comply with California State Public Contract Code, Section 10335-10381.

For more details on non-A&E consultants, see Section 10.10 [\*Section 10.10: Non-A&E Consultants\*](#) of this chapter.

## Selecting the Project

The local agency is responsible for selecting and initiating a federal-aid or state financed transportation project. The decision to begin project development is influenced by the project needs, its acceptability, the timing of studies, financing, and construction. The local agency must identify the project's objectives including the general level of improvement or service, operating standards, maximum cost and the target date for project completion before commencing any consultant selection process.

## Subcontracted Services

The consultant is responsible for performing the work required under the contract in a manner acceptable to the local agency. The consultant's organization and all associated consultants and subconsultants must be identified in the proposal. If the consultant wishes to use a subconsultant not specified in the proposal, prior written approval must be obtained from the local agency. The subcontract must contain all required provisions of the prime contract.

## Organizational and Consultant Conflicts of Interest

In the procurement of contracts for engineering services by private consulting firms using federal-aid highway or state funds, local agencies must take all the steps necessary to prevent fraud, waste, and abuse. The local agency must develop and maintain a written code of conduct governing the performance of its employees engaged in the award and administration of federal-aid highway funded contracts, including the prevention of conflicts of interest.

A conflict of interest occurs when a public official's private interests and his or her public duties and responsibilities diverge or are not consistent. Conflicts of interest may be direct or indirect (e.g., as result of a personal or business relationship). The appearance of a conflict of interest should be avoided as an apparent conflict may undermine public trust if not sufficiently mitigated.

### Federal Regulation Governing Conflict of Interest (23 CFR 1.33) Requires that:

- No contracting agency employee who participates in the procurement, management, or administration of federal or state funded contracts or

subcontracts shall have, directly or indirectly, any financial or other personal interest in connection with such contract or subcontract;

- No person or entity performing services for a contracting agency in connection with a federal or state funded project shall have, directly or indirectly, any financial or other personal interest, other than employment or retention by the contracting agency, in any contract or subcontract in connection with such project;
- No person or entity performing services for a contracting agency in connection with a federal-aid highway funded project shall have, directly or indirectly, any financial or other personal interest in any real property acquired for the project.

### **Consultants Performing Work on Multiple Phases of Federal-aid Projects**

Local agencies sometimes wish to hire the same consultant firm to perform construction engineering and/or inspection services on the same project on which the firm also performed design services. This can cause project delivery efficiencies, as the design firm is well-suited to verify that the project is being constructed in accordance with the design and can resolve issues related to the design on behalf of the contracting agency. However, this may also pose a potential conflict of interest if the firm has a vested financial interest in failing to disclose deficiencies in its design work product and seeks to insulate itself from pecuniary liability in subsequent phases of the project, such as minimizing or ignoring design errors and omissions, rather than serving the best interests of the contracting agency and the public. Procuring a different firm from the design firm to provide the construction engineering and/or inspection services provides another level of review and reduces the risk of, or potential for, a conflict of interest.

Although federal regulations do not expressly prohibit the same firm from providing services on subsequent phases, the local agencies are responsible for ensuring the public interest is maintained throughout the life of a project and that a conflict of interest, direct or indirect, does not occur or is sufficiently mitigated by appropriate public agency controls. Prior to allowing a consulting firm to provide services on subsequent phases of the same project, the contracting agency must establish appropriate compensating controls in policies, procedures, practices, and other safeguards to ensure a conflict of interest does not occur in the procurement, management, and administration of consultant services.

When design and construction phase services are procured under a single solicitation, the selection of the consulting firm must be based on the overall qualifications to provide both design and construction phase services, which require different skill sets, experience, and resources. Procuring these services under different solicitations may result in selection of a more qualified firm to perform services in each phase, as the most qualified firm to perform design phase services may not be the most qualified firm to provide construction phase services. Similarly, the qualifications and capacity of a firm may change over time. As such, it may not be appropriate to contract with a consulting firm to provide construction phase services at the outset of a design phase, knowing that these services may not be needed for an

extended period until the preconstruction phase of the project is complete and construction funding authorized. The contract with a consulting firm providing design phase services on a project may not be amended to include construction phase services unless the desired construction phase services were included within the original advertised scope of services and evaluation criteria of the solicitation from which a qualifications based selection was conducted. All consultants acting in a management support role must complete Exhibit 10-U: Consultant in Management Support Role Conflict of Interest and Confidentiality Statement (see Section 10.9: Miscellaneous Considerations in this chapter) and retain it in the local agency files.

### **Section 10.9: Miscellaneous Considerations Authorization to Proceed**

The Federal Highway Administration (FHWA) must give the local agency an Authorization to Proceed (E-76) with the work prior to performing of any work for which federal reimbursement is to be requested, (see the LAPM Chapter 3: Project Authorization). For state funded projects see the Local Assistance Program Guidelines (LAPG), Chapter 23: Local Agency State Transportation Improvement Program Projects, for guidance on when work may proceed.

Copies of the Authorization to Proceed and the consultant contract must be retained in the local agency project files for future audit.

## **10.2 IDENTIFYING & DEFINING A NEED FOR CONSULTANTS**

The need for a consultant is identified by comparing the project's schedule and objectives with the local agency's capabilities, its staff availability of the required expertise, and its funding resources. If the local agency does not have sufficient staff capabilities, it may solicit assistance from another agency, or use a qualified private consultant to perform the required work.

If the local agency determines that there is a need to solicit assistance from another local agency, or to use a consultant, the District Local Assistance Engineer (DLAE) should be notified if federal-aid or state funds are to be requested for the project segment to be contracted out.

### **Appointing the Contract Administrator**

The Contract Administrator is responsible for ensuring the quality of consultant contract products or services. The Contract Administrator is appointed as soon as the need for consultant services is identified. The Contract Administrator is involved throughout the development of the selection process and the contract provisions, and in the administration of the consultant's work. The Contract Administrator must be a qualified local agency employee, or have staff that is qualified to ensure the consultant's work is complete, accurate, and consistent with the terms and conditions of the consultant contract. On federal-aid contracts, the Contract Administrator or staff members must be a full time employee and familiar with the work to be contracted out and the standards to be used. The Contract Administrator must also abide by the laws, regulations and policies required as part of accepting federal or state funding for their project. Non-compliance with the laws, regulations, and policies may result in loss of project funding.

The Contract Administrator's duties include, but are not limited to:

- Ensures that all records, files and other documents related to contract procurement and management activities are retained in contract/project files;
- Provides direction to ensure the proposed work is advertised properly;
- Prepares and distributes the Request for Qualifications (RFQ), description of work, and Request for Proposals (RFP), if used;
- Prepares the draft contract;
- Arranges for preparation before an independent estimate of the value of the work to be contracted out;
- Ensures that the selection procedures are followed;
- Analyzes the selected/best-qualified consultant's cost proposal;
- Ensures contract audit and review procedure is followed;
- Ensures that fee/profit negotiation is conducted and keeps records
- Serves as the local agency's primary contact person for the successful consultant;
- Monitors the consultant's progress and provides direction;
- Reviews and approves the consultant's invoices and/or progress payments to ensure that billings are in accordance with the terms and conditions of the contract, and correspond accurately to the work performed during the billing period;
- Identifies other local agency staff for the consultant to contact, if needed;
- Closes out the contract at completion, by processing the final invoice; completing a mandatory consultant evaluation, and final DBE utilization reports (*Exhibit 17-F: Final Report Utilization of Disadvantaged Business Enterprises (DBE) and First-Tier Subcontractors*).

### **Determining the Project Schedule**

The local agency develops a schedule for performance of work and completion of the project. The schedule must include sufficient time to allow for:

- Selecting the consultant;
- Developing the consultant contract;
- Completing the A&E consultant contract audit process;
- Conducting meetings and project reviews.

## Segmenting Consultant Work

Consultant services are most effective when consultant work is segmented appropriately. The extent of segmenting depends upon the type and complexity of the work. Combining preliminary engineering tasks with the preparation of the required environmental analysis is normally desirable. Preparing an Environmental Assessment (EA) or Environmental Impact Statement (EIS) is more than simply writing a report. Assessment and impact reports include preliminary engineering needed to analyze project alternatives and produce an engineering and planning assessment. Initial project studies include only as much traffic and engineering analysis of alternatives, as is needed to produce a sound EA or EIS (see [LAPM Chapter 6: Environmental Procedures](#) and [Standard Environmental Reference \(SER\) Chapters 31: Environmental Assessment \(EA\) and Finding of No Significant Impact \(FONSI\)](#) and [Chapter 32: Environmental Impact Statement \(EIS\)](#)). Final detailed design shall not begin until environmental clearance has been received if federal reimbursement is desired.

Refer to Figure 10-2: Segmenting Consultant Work below, which illustrates several satisfactory ways to segment consultant activities.

	Well-structured Projects With Simple Right of Way Requirements	Well-structured Projects With Complex Right of Way Requirements	More Difficult Projects	Very Complex Projects
Preliminary Engineering				
Environmental Analysis				
Plans, Specifications & Estimates				
Right of Way Activities				
Utility Relocation				
Construction Engineering				

**Figure 10-2: Segmenting Consultant Work**

## Specify Products to be Delivered

The Contract Administrator identifies the products and services to be delivered as a result of consultant contract work, and minimum qualification of consultant professionals and staff. These vary depending upon the type of projects and the phase of project development being addressed.

## Scope of Consultant Work

The scope of work, which the contract must include, is a detailed description of the products or



services the consultant is to provide. From a detailed scope of work, consultants respond to a project advertisement; determine personnel and time requirements; and develop a technical proposal. Therefore, the scope of work must be clear, concise, complete, and describe the deliverables, standards for design and other work, quality control measures, acceptance criteria and deadlines.

### **Non-Discrimination Clause**

The Non-Discrimination Clause (*Exhibit 10-R: A&E Sample Contract Language*, Article XVI Statement of Compliance) must be included in each consultant contract. The consultant must include the nondiscrimination and compliance provisions of the Non-Discrimination Clause in all subcontracts to perform work under the contract.

### **Disadvantaged Business Enterprise (DBE) Participation**

When administering federal-aid projects, federal regulations (49 CFR, Part 26) require a local agency to comply with the DBE program, and take necessary steps to ensure that DBE firms have the opportunity to participate in the projects. Such steps include the setting of goals to ensure DBE firms are considered by the proposing consultants and, when feasible, organizing the project schedule and task requirements to encourage participation in the contract by DBE firms. Local agencies should be fully aware of all of the subcontracting opportunities in their consultant contracts. For detailed information and requirement on the DBE Program, see *LAPM Chapter 9: Civil Rights and Disadvantaged Business Enterprises*.

The consultant must ensure that certified DBE firms have the opportunity to participate in the performance of the contract and must take all necessary and reasonable steps to facilitate participation by DBE firms for such assurance.

A DBE goal must be established by the local agency for each contract.. *Exhibit 10-I: Notice to Proposers DBE Information* must be included in the RFQ or RFP if the proposed contract will include federal-aid funds. The consultant must meet the goal by using DBEs, or if not able to meet the DBE goal, document that a good faith effort was made to meet the contract goal. Good faith efforts must be documented by the consultant and approved by the local agency (see *Exhibit 15-H: DBE Information-Good Faith Efforts*). If the consultant's documented good faith efforts are found to be inadequate by the local agency, the consultant must be offered an opportunity for reconsideration.

If a DBE subconsultant is unable to perform its subcontracted services and the goal is not otherwise met, the consultant must make a good faith effort to replace it with another DBE subconsultant to the extent needed to meet the DBE goal. For more detailed information see *Exhibit 10-I*. A contract provision for DBE Participation must be included in all consultant contracts with federal-aid funds. For sample contract clauses with and without specified DBE goals see *Exhibit 10-R*, Article XX Disadvantaged Business Enterprise (DBE) Participation.

### **Reporting DBE Commitments and DBE Information**

For Contracts with DBE Goals: If the local agency has set a DBE goal, *Exhibit 10-O1: Consultant Proposal DBE Commitment* must be included in the proposal package provided to the local agency by each (prime consultant) proposer. The purpose of *Exhibit 10-01* is to demonstrate the

proposer's commitment to meet the DBE goal set by the local agency. Exhibit 10-O2: Consultant Contract DBE Commitment, must be completed at the conclusion of cost negotiations, incorporated into the final agreement and a copy sent the DLAE. The purpose of this form is to capture DBE participation in accordance with 49 CFR, Part 26. This form must include the names, addresses, and phone numbers of DBE firms that will participate with a complete description of work or supplies to be provided by each, and the dollar value of each DBE transaction. When 100 percent of a subcontracted item of work is not to be performed or furnished by the DBE firm, a description of the exact portion of work to be performed or furnished by that DBE must be included in the DBE commitment, including the planned location of that work. A proposer certified as a DBE firm must describe the work it has committed to be performed with its own forces, as well as any other work that it has committed to be performed by the DBE subconsultant, suppliers, and trucking companies.

The winning proposer must provide written confirmation from each DBE firm participating in the contract. A copy of a DBE's quote will serve as written confirmation that the DBE is participating in the contract. If a DBE is participating as a joint venture partner, the proposer must submit a copy of the joint venture agreement.

#### **For Contracts with No DBE Goals:**

For contracts with no DBE contract goal, Exhibit 10-O1: Consultant Proposal DBE Commitment is not necessary and only Exhibit 10-O2: Consultant Contract DBE Commitment must be included in the award package and provided by the winning proposer.

#### **Reporting DBE Final Utilization (Contracts with or without Goals):**

Upon completion of the contract a summary of the DBE final utilization must be prepared, certified correct, and submitted on Exhibit 17-F: Final Report-Utilization of Disadvantaged Business Enterprise (DBE) and First-Tier Subcontractor or equivalent to the local agency showing total dollars paid to each subconsultant and supplier. Exhibit 17-F is reviewed by the local agency and certified as complete and accurate. The local agency must send the original, plus one copy of the completed Exhibit 17-F with the final invoice to the DLAE within 30 days after completion of the contract.

#### **Estimated Cost of Consultant Work**

An independent estimate for cost or price analysis is needed for all consultant contracts (23 CFR 172.7(a)(1)(v)(B)) to ensure that consultant services are obtained at a fair and reasonable price.

The estimate is prepared in advance of requesting a cost proposal from the top-ranked consultant, so the local agency's negotiating team has a cost analysis of the project to evaluate the reasonableness of the consultant's cost proposal. The estimate, which is specifically for the use of the local agency's negotiating team, is to be kept confidential and maintained for records.

A good cost estimate can be prepared only if the scope of work is defined clearly. The scope of work must include a list of the products or services which the consultant is required to deliver, and a time schedule of when they must be delivered.

It should be stressed that all work to be derived from the consultant services, such as preliminary design, environmental or final design, must be clearly identified in the solicitation

of consultant services (RFQ or RFP) and included in the cost estimate. The addition of work to the original scope by amendment should be avoided whenever possible.

Some of the costs estimating techniques are:

**Analogous Estimating:**

Analogous cost estimating is using the actual cost of a previous, similar contract as the basis for estimating the cost of the current contract. Analogous cost estimating is frequently used to estimate costs when there is a limited amount of detailed information about the project. Analogous cost estimating is generally less accurate and it is most reliable when previous projects are similar in fact, and not just in appearance, and it uses expert judgment.

**Parametric Estimating:**

Parametric estimating is a technique that uses statistical relationship between historical data and other variables to calculate a cost estimate for an activity resource. This technique can produce a higher level of accuracy depending upon the sophistication, as well as underlying resource quantity and the cost data. A cost example would involve multiplying the planned quantity of work by the historical cost per unit to obtain the estimated cost of the contract.

**Bottom-up Estimating:**

This technique involves estimating the cost for individual work in the contract with the lowest level of detail. This detailed cost is then summarized or rolled up to determine a total cost of contract. Cost detail should include estimated hours per task, labor hourly cost for professional and non-professional classifications, subconsultant costs, other project direct costs, and profit. Labor costs should be broken down to direct labor and indirect cost rates, if possible.

If more than one project or phase of work is to be developed within the consultant contract, separate cost estimates are required for each project or phase of work. Separate cost estimates are required for each milestone and portion of the work expected to be subcontracted.

For on-call (as-needed) contracts, the cost estimate/analysis should include at minimum, a historical analysis of annual needs for consultant work, professional labor cost and market analysis, and reasonable profit analysis.

**Determine Type of Contract**

Types of contracts to be used are described as follows:

- Project-specific contract is between the local agency and consultant for the performance of services and a defined scope of work related to a specific project or projects.
- Multi-purpose or Multi-phased contract is a project-specific contract where the defined scope of work is divided into phases which may be negotiated and executed individually as the project progresses. On-call contract is a contract for a number of projects, under which task or work orders are issued on an as-needed basis, for an established contract period. On-call contracts are typically used when a specialized service of indefinite delivery or indefinite quantity are needed for a number of different projects, such as construction engineering, design, environmental analysis, traffic studies, geotechnical studies, and field surveying, etc. Many agencies use

these contracts to address peaks in workload of in-house engineering staff and/or to perform a specialized service which the agency does not have. On-call contracts shall specify a reasonable maximum length of contract, not to exceed 5 years, and a maximum total contract dollar amount (23 CFR 172).

- To maintain the intent of the Brooks Act (40 USC 1101-1104) in promoting open competition and selection based on demonstrated competence and qualifications, on-call consultant contracts established through the RFQ process must meet the following requirements:
  - Must define a general scope of work, complexity, and professional nature of services.
  - Specify a task order procedure the local agency uses to procure project specific work under the contract.
  - No task order is valid unless the on-call contract is still enforced. For example, if the on-call contract is expired, all task orders will become invalid.
  - If multiple consultants are to be selected and multiple on-call contracts awarded through a single solicitation for specific services:
  - Identify the number of consultants that may be selected or contracts that may be awarded.
- Specify procedures in the contracts the local agency will use to award/execute task orders among the consultants:
- Either through an additional qualification-based selection process (see the Two-Step RFQ/RFQ process later in this chapter), OR
  - On regional basis whereby the region is divided into areas identified in the solicitation, and consultants are selected to provide on-call services for assigned areas only.

### Determine Method of Payment

The method of payment of contract must be specified. Four methods are permitted depending on the scope of services to be performed:

- Actual Cost-Plus-Fixed Fee (see *Exhibit 10-H: Sample Cost Proposal*, Example #1);
- Cost Per Unit of Work (see *Exhibit 10-H*, Example #3);
- Specific Rates of Compensation (see *Exhibit 10-H*, Example #2);
- Lump Sum (see *Exhibit 10-H*, Example #1).

### Actual Cost-Plus-Fixed Fee

The consultant is reimbursed for actual costs incurred and receives an additional predetermined amount as a fixed fee (profit). Federal regulations require that profit be separately negotiated

from contract costs. The determination of the amount of the fixed fee shall take into account the size, complexity, duration, and degree of risk involved in the work. The fixed fee is not adjustable during the life of the contract. The fixed fee dollar amount must be clearly stated in the contract.

This method of payment is appropriate when the extent, scope, complexity, character, or duration of work cannot be precisely predicted. Fixed fees apply to the total direct and indirect costs. The contract shall specify a reasonable maximum length of contract period and a maximum total contract dollar amount (see Exhibit 10-H: Sample Cost Proposal Example #1 and Exhibit 10-R: A&E Sample Contract Language, Article V, *Option 1* in this chapter). The contract cost proposal must identify all key employees and/or classifications to be billed. New key employees and/or classifications must be approved before they incur work on the contract or the costs can be questioned or disallowed.

### **Cost Per Unit of Work**

The consultant is paid based on specific item of work performed. The item of work must be similar, repetitious and measurable, such as geotechnical investigation and material testing. This method of payment is appropriate when the cost per unit of work can be determined with reasonable accuracy in advance; but the extent or quantity of the work is indefinite. Contract payment provisions must specify what is included in the price to be paid for each item. Any item of work not identified in the contract cost proposal is not eligible for reimbursement. New items of work (those within the original scope of work only) must be amended into the contract before work is performed. The contract shall also specify a reasonable maximum length of contract period and a maximum total contract dollar amount (see Exhibit 10-H, Example #3 and Exhibit 10-R, Article V *Option 2*).

### **Specified Rates of Compensation**

The consultant is paid at an agreed and supported specific fixed hourly, daily, weekly or monthly rate, for each class of employee engaged directly in the work. Such rates of pay include the consultant's estimated costs and net fee (profit). Federal regulations require that profit be separately negotiated from contract costs. The specific rates of compensation, except for an individual acting as a sole proprietor, are to include an hourly breakdown, direct salary costs, fringe benefits, indirect costs, and net fee. Other direct costs may be included, such as travel and equipment rentals, if not already captured in the indirect cost rate.

This method of payment should only be used when it is not possible at the time of procurement to estimate the extent or the duration of the work, or to estimate costs with any reasonable degree of accuracy. This method is recommended for on-call contracts for specialized or support type services, such as construction engineering and inspection, where the consultant is not in direct control of the number of hours worked, and it also requires management and monitoring of consultant's level of effort and the classification of employees used to perform the contracted work. The contract shall also specify a reasonable maximum length of contract period and a maximum total contract dollar amount (see Exhibit 10-H, Example #2 and Exhibit 10-R, Article V, *Option 3*).

### Lump Sum or Firm Fixed Price

The consultant performs the services stated in the contract for an agreed amount as compensation, including a net fee or profit. This method of payment is appropriate only if the extent, scope, complexity, character, duration, and risk of the work have been sufficiently defined to permit fair compensation to be determined and evaluated by all parties during negotiations (see *Exhibit 10-H: Sample Cost Proposal, Example #1* and *Exhibit 10-R: A&E Sample Contract Language, Article V, Option 4*).

Normally, a lump sum contract will be paid in full at end of the contract when completed. However, a lump sum contract can be negotiated with progress payment if feasible. The progress payment shall be based on percent of work complete or completion of clearly defined milestones. The contract cost proposal shall document the agreed upon progress payment and include the necessary milestones costs, or the percent work complete schedule.

## 10.3 A&E CONSULTANT AUDIT AND REVIEW PROCESS

This section outlines the audit and review process for A&E contracts that at any time use state or federal funds. All proposed A&E contracts and supporting documents are subject to audit or review by Caltrans' Independent Office of Audits and Investigations (A&I), other state audit organizations, or the federal government. Not all proposed contracts will be audited or reviewed; rather, they will be selected on a risk-based approach.

### APPLICABLE STANDARDS

State and federal requirements listed below, and specific contract requirements, serve as the standards for audits and reviews performed. The local agencies, consultants, and subconsultants are responsible for complying with state, federal and specific contract requirements. Local agencies are responsible for determining the eligibility of costs to be reimbursed to consultants. Applicable standards include, but are not limited to:

- Caltrans Local Assistance Procedures Manual (LAPM);
- State and Federal agreements between the local agency and Caltrans, i.e. Master Agreements;
- Project Program Supplemental Agreements;
- 23 United States Code (U.S.C.), Section 112 – Letting of Contracts;
- 40 U.S.C., Chapter 11: the Brooks Act;
- 23 CFR, Chapter 1, Part 172 - Procurement, Management, and Administration of Engineering and Design Related Services;
- 23 CFR, Chapter 1- Federal Highway Administration, Department of Transportation;
- 48 CFR, Federal Acquisition Regulation, Chapter 1, Part 31- Contract Cost Principles and Procedures;
- 48 CFR, Chapter 99 – Cost Accounting Standards (CAS), Subpart 9900;

- 2 CFR, Part 200 – Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards;
- United States Government Accountability Office, Government Auditing Standards
  - Generally accepted government auditing standards (GAGAS);
- California Government Code sections 4525-4529; and
- Proposed contract terms and conditions.

See section 10.10 “References” of this Chapter for links to above referenced standards.

### AUDIT GUIDANCE AVAILABLE

The American Association of State Highway Officials, Uniform Audit & Accounting Guide (AASHTO Audit Guide), which is referred to frequently in this section, is an invaluable tool to guide local agencies, consultants and certified public accountants (CPA) through the requirements for establishing, and audits of, FAR compliant Indirect Cost Rate (ICR). The AASHTO Audit Guide is used extensively as an industry guide in the audit and review process.

The local agency may seek financial and accounting assistance from its own internal audit staff and independent CPAs for compliance. The consultant may seek professional guidance in selecting its independent CPA. See also the AASHTO Audit Guide, Ch 2.5 C. *Selection of CPA Firm as Overhead Auditor* for guidance in the selection process. Training is also offered by FHWA’s National Highway Institute (see <http://www.nhi.fhwa.dot.gov/default.aspx>). Courses offered include:

- Using the AASHTO Audit Guide for the Procurement and Administration of A&E Contracts (FHWA-NHI-231028)
- Using the AASHTO Audit Guide for the Development of A&E Consultant Indirect Cost Rates (FHWA- NHI-231029)
- Using the AASHTO Audit Guide for the Auditing and Oversight of A&E Consultant Indirect Cost Rates (FHWA-NHI-231030)

If consultants seek training that provides resources on how to build an ICR and basic timekeeping, there are Indirect Cost Rate and Timekeeping webinars created by the Washington State Department of Transportation (WA DOT). The link to the webinars is available at <http://www.dot.ca.gov/hq/audits/>. For training and additional information provided by the Caltrans Local Assistance, visit Caltrans Local Assistance Blog at <http://www.localassistanceblog.com/>. For FHWA’s Q&A for ICRs and audits, and A&E related services, visit FHWA at <http://www.fhwa.dot.gov/programadmin/172qa.cfm>.

### ALLOWABLE COSTS

23 USC 112 (b)(2)(B) provides that any A&E contract or subcontract awarded, whether funded in whole or in part with Federal-aid highway funds in furtherance of highway construction projects, shall be performed and audited in compliance with the Federal cost principles. Local agencies are required to perform a cost analysis to ensure all costs are

allowable in compliance with federal and state requirements and retain documentation of negotiation activities and resources. Hourly rate(s) for each key personnel and/or classification of employee(s) proposed in cost proposals must be reasonable for the work performed and actual, allowable, and allocable in accordance with the Federal cost principles. Costs shall be allowable only if the cost is incurred and cost estimates included in negotiated prices are allowable in accordance with the federal and state regulations and procedures, and contract provisions. Local agency may use a sample Cost Analysis Worksheet (See Exhibit 10-H1 through 4).

Indirect costs incurred by local agencies are required to apply consultant or subconsultant's ICR, which has been accepted by Caltrans to contracts. An ICR is valid for the one-year applicable accounting period. ICRs shall be updated on an annual basis in accordance with the consultant's annual accounting period and in compliance with the Federal cost principles. For further guidance, refer to 23 CFR Part 172.11(b)(1). If the firm is subject to CAS, the firm must use the applicable indirect cost rate for the contract.

A consultant's accepted ICR for its one-year applicable accounting period shall be applied to contracts; however, once an ICR is established for a contract, it may be extended beyond the one-year applicable period, through the duration of the specific contract, provided all concerned parties agree. Agreement to the extension of the one-year applicable period shall not be a condition or qualification to be considered for the work or contract award. The contract must clearly specify the ICR period if it is beyond the one-year applicable period and agreed by all concerned parties.

Consultants shall account for costs appropriately and maintain records, including supporting documentation, adequate to demonstrate that costs claimed have been incurred, are allocable to the contract, and comply with the Federal cost principles.

A&I and representatives of the Federal Government have the right to conduct an audit of all costs. If the costs are subsequently determined to be unallowable, these costs are subject to repayment. For further guidance, refer to 23 CFR Part 172 and 48 CFR Part 31.

Generally, whenever the local agencies, consultants and contractors are unable to provide requested information, it shall be viewed that the required actions were either never performed or not properly recorded. Therefore, retention of all the relevant documents is not only required but also important as it minimizes negative findings, **disallowed costs** and assumptions. For more references, refer to Applicable Standards in this chapter.

## **APPROVAL OR ACCEPTANCE OF INDIRECT COST RATES**

### **Cognizant Letters of Approval**

A cognizant approved ICR refers to the ICR established by an audit in accordance with GAGAS or CPA Workpaper Review in accordance with GAGAS to test compliance with the Federal cost principles and accepted by a cognizant agency.

Once reasonable assurance is obtained, the cognizant agency establishes and approves the ICR and a cognizant approval letter is issued. A cognizant agency may be the home state Department of Transportation (DOT) (the state where the consultant's accounting and financial records are located), a federal agency, or a State transportation agency to which



cognizance for the particular ICRs of a consulting firm has been delegated or transferred in writing. When providing cognizant ICR approval, the cognizant agency may perform either an ICR audit or review of an audit report and related work performed by, and the workpapers prepared by a CPA in accordance with GAGAS.

### Caltrans Acceptance of Indirect Cost Rate

When the ICRs have not been established by a cognizant agency, Caltrans shall perform an audit or review of a consultant's and subconsultant's ICR to provide reasonable assurance of compliance with the Federal cost principles. An audit or review may consist of one or more of the following:

- Conduct a risk-based review of the ICR calculation and supporting documents;
- Perform an audit in accordance with GAGAS and issuing an audit report;
- Review and accept an audit report and related workpapers prepared by a CPA or another State Transportation Agency;

The outcome of an audit or review is for Caltrans to approve or accept the ICR so that it can be relied upon for future contracts with the consultant for a given one-year accounting period and for reliance by other contracting agencies using the same consultant. Local agencies shall ensure that only approved or accepted ICRs of consultants for the applicable one-year accounting period be applied to contracts, if rates are not under dispute. Local agencies may check A&I's website for consultant's approved or accepted ICRs. All approved or accepted ICRs are issued an Acceptance Identification (ID) number by A&I that is posted to A&I's website at <http://www.dot.ca.gov/hq/audits/>. This ID number should be referenced on all future contracts that use the same fiscal year ICR.

ICRs that have not been accepted by Caltrans will not be eligible for indirect cost payment. An ICR approved by a cognizant agency may be used across states for the one-year applicable accounting period but an ICR accepted by Caltrans may only be applied to A&E contracts entered into with the Caltrans and local agencies. Local agencies include Cities, Counties, Metropolitan Planning Organization, Special Districts, and Regional Transportation Planning Agency that receive federal funds from Caltrans.

### Financial Review Performed Prior to Contract Execution

All consultants, including prime and subconsultants, on a proposed contract with a dollar value greater than \$150K are subject to a financial review of the ICR by A&I. The financial documents required are detailed in the Exhibit 10-A, *A&E Consultant Financial Review Request Letter and Exhibit 10-A Checklist*. A&I will review the ICR financial documents to either accept, adjust, or reject the rate **prior to contract execution** using a risk-based approach as dictated by factors that include but are not limited to:

- History of satisfactory performance and professional reputation of consultant;
- Prior FAR compliant history and audit frequency;
- Financial stability;
- Conformance to terms and conditions of previous contracts;
- General responsiveness and responsibility;
- The approximate dollar amount of all A&E contracts awarded to the consultant by

- Caltrans or a local agency in California within the last three calendar years;
- The number of states in which the consultant does business;
- The type and complexity of the consultant's accounting system;
- The relevant professional experience of any CPA performing audits of the consultants indirect cost rate;
- Assessment of consultant's internal control. Responses to internal control questionnaire, see AASHTO Audit Guide, Appendix B;
- Stability of organizational staffing.

For ICRs that have been adjusted or rejected by A&I, the consultant must provide a revised cost proposal that reflects the adjusted or excluded indirect costs.

### **Local Agencies' Responsibilities**

Local Agencies are responsible for obtaining all required ICR supporting documentation from A&E prime consultants and sub-consultants as outlined in Exhibit 10-A (*A&E Consultant Audit Request Letter*) and the Exhibit 10A-Checklist. Local Agencies are responsible for forwarding these documents to A&I for review and acceptance of the ICR. Local agencies are also required to ensure that A&I has copies of the Exhibit 10-K "*Consultant Certification of Contract Costs and Financial Management System*" and Exhibit 10-H "*Cost Proposal*" for all consultants, both prime and sub-consultants. The ICR included in Exhibit 10-H must match the ICR included in the Exhibit 10-K and the consultant's ICR schedule. For contracts spanning more than one year, local agencies are responsible for ensuring the Exhibit 10-K and cost proposals are updated annually unless all concerned parties agree to fix the ICR for the term of contract, and this is clearly specified in the contract.

The Exhibit 10-H "*Cost Proposal*" includes contract costs: direct salary or wage rates, fixed fees, other direct costs, indirect costs, total costs, and certification for the costs. Local agencies must perform and retain documentation of activities and resources used to support that a cost analysis has been performed to establish that costs and elements were determined to be fair and reasonable in accordance with Federal cost principles.

All contract supporting documentation must be retained by the local agency in project files for the required retention period. Unsupported costs may be disallowed and required to be returned to Caltrans. Having proper documentation policy and procedures, trained staff and organized project files are essential for demonstrating that costs claimed and reimbursed have been incurred, are eligible, allowable, and allocable to the contract and comply with federal cost principles.

Contracts below \$150,000 are not subject to the Caltrans Financial Document Review but local agencies are required to establish that all costs are in compliance with the Federal cost principles, 23 CFR Part 172 and other applicable requirements are met. All documents listed above and cost analysis documents are required to be retained in the project files to demonstrate compliance.

### **Consultants' Responsibilities (Both prime consultants and subconsultants)**

A&E prime consultants and sub-consultants in contract with local agencies using state or federal-aid highway fund should refer to Exhibit 10-A and the 10-A Checklist for the ICR

financial documents required to be submitted to their local agency for forwarding to A&I. Consultants must complete the “Annual Certification of Indirect Costs and Financial Management System” (Exhibit 10-K) that attests that the ICR rate proposed is in compliance with FAR (48 CFR Part 31) and that the consultant’s financial management system is adequate to accumulate and segregate, reasonable, allowable and allocable direct and indirect project costs. For all future contracts in one fiscal year, the consultant need only provide a copy of the Exhibit 10-K to the Local Agency. The Exhibit 10-A and 10-K should be submitted to the local agency who will forward a copy to A&I along with all other related and required financial documents.

Consultants must also follow all the federal, state, and contract requirements outlined above in the Section above, “*Applicable Standards*”. Each contracting consultant must ensure its ICR is not combined with any parent company’s or subsidiaries’ ICR.

ICR schedules should be prepared using the accrual basis of accounting and presented in compliance with the Federal cost principles for both the prime consultant and subconsultants.

All workers employed on public works project must be paid the prevailing wage rate determined by the Director of the Department of Industrial Relations according to the type of work and location of the project. <http://www.dir.ca.gov/Public-Works/Prevailing-Wage.html>. Prime and subconsultant consultants must include prevailing wage rate information in the cost proposal (see Exhibit 10-H1-3 for example) and provide a Prevailing Wage Rate Policy on company letterhead, signed and dated. The policy must document their accounting treatment for prevailing wage deltas and including the following information:

- Description of types of work they perform which require payment of prevailing wage rates
- Explanation of how the firm pays prevailing wage deltas to affected employees (e.g. pay directly to employee as single amount to cover delta base and delta fringe, pay delta base to employee and pay delta fringe amount to a third party plan, etc.)
- Accounting method used for prevailing wage delta base costs
- Accounting method used for prevailing wage delta fringe costs
- Effect on firm’s most recently completed indirect cost rate

For guidance see Caltrans’ Prevailing Wage Interpretive Guidance on A&I’s website [www.dot.ca.gov/audits](http://www.dot.ca.gov/audits)

Consultant’s labor distribution summary report is a labor expense report that detail all hours worked (paid and unpaid), wages earned, and benefits accrued by all of the consultant’s employees. The labor summary report should detail, but not be limited to, employee names, salaries, hourly rates, total hours worked, direct hours, indirect hours by type, general ledger accounts, paid time off hours, uncompensated hours and amounts, etc.

Executive compensation analysis is an evaluation by the consultant to determine the allowability and reasonableness of executive compensation in compliance with the Federal cost principles and AASHTO Audit Guide. The executive compensation analysis using the

National Compensation Matrix or independent compensation surveys demonstrates and supports the allow ability and reasonableness of executive compensation.

### **Audits and Investigations' Responsibilities**

After A&I receives a complete financial document packet (per Exhibit 10-A) from the local agency, A&I will review the consultants' proposed ICR and supporting documents and then notify consultants and local agencies in writing whether the proposed ICRs are accepted, adjusted, or denied.

Caltrans A&I and representatives of the federal government have the right to conduct a final audit of all costs. If the costs are subsequently determined to be unallowable, these costs are subject to repayment.

Contracts will be executed after A&I either accepts, adjusts, or rejects the ICR and a revised final cost proposal (if applicable) is received. Correction of the final cost proposal, however, does NOT need to be cleared through Caltrans A&I before executing the contract. The letter of acceptance along with the executed contract shall be retained in the project file. Failure to reflect the adjusted or denied ICR in a revised final cost proposal may result in the disallowance of costs.

Instructions are provided in the Exhibit 10-A on how to submit a complete Financial Review packet. Submit documents for Financial Review requests to [conformance.review@dot.ca.gov](mailto:conformance.review@dot.ca.gov).

Alternatively, if you do not have Internet access, you can mail Financial Review packets to Caltrans' A&I mailing address:

Department of Transportation  
Independent Office of Audits and  
Investigations, MS 2 Attention:  
External Audit Manager  
P.O. Box 942874 Sacramento, CA 94274-0001

### **AUDITS AND REVIEWS TO BE PERFORMED**

An audit, as defined in 23 CFR 172.3, is defined as a formal examination, in accordance with professional standards of a consultant's accounting systems, incurred cost records, and other cost presentations to test the reasonableness, allow ability, and allocability of costs in accordance with the Federal cost principles (as specified in 48 CFR part 31.) AASHTO Audit Guide Chapter 1.3 defines an audit as a formal examination, in accordance with professional standards, of accounting systems, incurred cost records, and other cost presentations to verify their reasonableness, allowability, and allocability for negotiating agreement fees and for determining allowable costs to be charged to government contracts. Audit objectives include the identification and evaluation of all activities that contribute to, or have an impact on, proposed or incurred costs related to government contracts.

## Indirect Cost Rate Audits

During an ICR audit, the auditors (A&I or independent CPAs) will examine the consultant's proposed ICR for the applicable one-year accounting period on the proposed contract to ensure that unallowable costs have been removed from the indirect costs, that allowable costs have been correctly measured and properly charged and allocated, and that the ICR has been developed in accordance with the Federal cost principles (as specified in 23 U.S.C. Section 112(b)(2)(B), 23 CFR Part 172.11, 48 CFR Part 31 and other FAR and State requirements. As a result of the audit, the local agency will work with the consultant to adjust the ICR and contract costs, if applicable, where disallowed costs are identified based on audit recommendations.

For guidance regarding the existing policies and procedures set forth in the federal regulations, and acceptable ICR schedules, refer to the AASHTO Audit Guide, Chapter 5, and Figure 10-3 Standard Indirect Cost Rate Schedule in this Chapter. The review program in the AASHTO Audit Guide, Appendix A, should be used as a guide in performing ICR audits. This review program is used for reviews of CPA audited ICR workpapers.

## CPA Workpaper Reviews

During a workpaper review of a CPA audit of an ICR, A&I will review the CPA's audit workpapers to determine whether it is appropriate to issue a Cognizant Letter of Approval or accept the ICR. The CPA Workpaper Review is conducted to determine whether: (a) the CPA's audit of the ICR was conducted in accordance with generally accepted government auditing standards (GAGAS), (b) the CPA adequately considered the auditee's compliance with the Federal cost principles and related federal and state laws and regulations, and (c) the audit report format and contents are acceptable. Figure 10-3 Standard Indirect Cost Rate Schedule provided at the end of this chapter provides required format and contents. Chapter 11 of the AASHTO Audit Guide provides information for the audit and required disclosures. CPAs are required to furnish copies of their workpapers as requested. A CPA Workpaper Review may apply to all contracts selected for review. The outcome of the CPA Workpaper Review is a Cognizant Letter of Approval or Caltrans Acceptance of ICR. The review program in the AASHTO Audit Guide, Appendix A, is used in performing CPA Workpaper Reviews.

**IMPORTANT NOTE FOR CPAs:** Contracts receiving state or federal funds are highly scrutinized. Materiality levels tend to be lower and more testing is required. GAGAS provides that auditors may find it appropriate to use lower materiality levels as compared with the materiality levels used in non-GAGAS audits because of the public accountability of government entities and entities receiving government funding, various legal and regulatory requirements, and the visibility and sensitivity of government programs. Use of the AASHTO Audit Guide should be used as a tool for performing audits and attestations of A&E firms.

## Contract Audits

During a Contract Audit or Review, auditors will review contracts and the consultants' financial management system and contract cost proposal to determine if:

- The consultants' accounting system is adequate to accumulate and segregate costs;

- Costs are reasonable, allowable, and allocable and are supported adequately;
- The contract contains all required fiscal provisions and the provisions are verbatim;
- Proper state and federal procurement requirements were followed; and
- Other audits/reviews of the contract as necessary.

### **Incurred Cost Audits**

During an Incurred Cost Audit auditors will review incurred contract costs to determine if:

- Cost data are maintained in an acceptable accounting control system that gathers, records, classifies, analyzes, summarizes, and report accurate and timely financial data, which includes subsystems such as project and other direct costs, compensation, billing, and labor.
- Costs are adequately supported;
- Reasonable, allowable, and allocable;
- Compliance with state and federal laws and regulations;
- Compliance with the Master Agreement and Supplemental Agreement;
- Compliance with the fiscal provisions stipulated in the contract; and
- The terms required by the Master Agreement and federal laws and regulations are in the contract.

### **AUDIT FINDINGS AND REVIEW DEFICIENCIES**

If audited or reviewed, local agencies are responsible for ensuring contracts, cost proposals, and ICR(s) are modified to conform to audit and review recommendations as necessary, and to ensure that audit findings and review deficiencies are resolved in a timely manner. Failure to do so may result in costs being disallowed.

The local agencies may be subject to sanctions outlined in LAPM Chapter 20: *Deficiencies and Sanctions* if the state or federal government determines that any reimbursements to the consultant are the result of the lack of proper contract provisions, unallowable charges, unsupported activities, or an inadequate financial management system.

**FAR Compliant, Inc. - Statement of Direct Labor, Fringe Benefits, and General Overhead For the year ended December 31, 20xx**

Description	General Ledger Balance	Unallowable	FAR Reference	Total Proposed	Home Office	Field Office
Direct Labor	\$123,456,789	(\$934,568)	(1)(15)	\$122,522,221	\$85,765,555	\$36,756,666
<b>Fringe Benefits</b>						
Vacation/Paid Leaves	\$17,283,950			\$17,283,950	\$12,098,765	\$5,185,185
Payroll Taxes	\$1,530,864	(\$30,617)	(15)	\$1,500,247	\$1,050,173	\$450,074
Medical Insurance	\$10,864,197			\$10,864,197	\$7,604,938	\$3,259,259
401K Match	\$4,938,272			\$4,938,272	\$3,456,790	\$1,481,481
Incentives and Bonus	\$15,308,642	(\$3,123,456)	(2)	\$12,185,186	\$8,529,630	\$3,655,556
Other Employee Benefits	\$2,515,280	(\$553,433)	(3)	\$1,961,847	\$1,373,293	\$588,554
<b>Total Fringe Benefits</b>	\$52,441,206	(\$3,707,506)		\$48,733,700	\$34,113,590	\$14,620,110
<b>General &amp; Administrative Overhead</b>						
Indirect Overhead Labor	\$72,696,030	(\$4,452,541)	(1)(2)(4)(15)	\$68,243,489	\$65,790,948	\$2,452,541
Purchased Labor/Subconsultants	\$22,433,019	(\$22,433,019)	(5)	\$ -	\$ -	\$ -
<b>Office Rent</b>	\$12,345,679	(\$987,654)	(6)	\$11,358,025	\$11,038,025	\$320,000
Supplies & Utilities	\$5,753,086			\$5,753,086	\$4,027,160	\$1,725,926
Postage and Shipping	\$1,770,000	\$321,456	(5)	\$2,091,456	\$1,464,019	\$627,437
Equipment and Maintenance	\$3,812,346			\$3,812,346	\$2,512,789	\$1,299,557
Depreciation Expense	\$6,202,469	(\$1,345,678)	(7)	\$4,856,791	\$3,205,482	\$1,651,309
Interest	\$123,456	(\$123,456)	(8)	\$ -	\$ -	\$ -
Dues and Subscription	\$123,456	(\$12,345)	(9)	\$111,111	\$77,778	\$33,333
Advertising & Marketing	\$427,406	(\$45,678)	(10)	\$381,728	\$267,210	\$114,518
Vehicles	\$5,896,123	(\$147,403)	(5)(11)(14)	\$5,748,720	\$4,024,104	\$1,724,616
Bad debts	\$12,345	(\$12,345)	(12)	\$ -	\$ -	\$ -
<b>Legal and Accounting Services</b>	\$3,713,580	(\$222,815)	(13)	\$3,490,765	\$3,490,765	\$ -
Fines and Penalties	\$80,000	(\$80,000)	(16)	\$ -	\$ -	\$ -
<b>Total General &amp; Admin. Overhead</b>	\$135,388,995	(\$29,541,478)		\$105,847,517	\$95,898,280	\$9,949,237
Total Indirect Costs				\$154,581,216	\$130,011,870	\$24,569,347
Indirect Cost Rates				126.17%	151.59%	66.84%

**Figure 10.3: Standard Indirect Cost Rate Schedule**

**FAR References:**

- (1) FAR 31.202: Uncompensated overtime.
- (2) FAR 31.205-6: Profit distribution and excess of the reasonable compensation.
- (3) FAR 31.205-46, 31.205-14 & 31.205-51: Meals not for valid business purposes and associated with lobbying and lacking adequate support
- (4) FAR 31.201-2: Administrative staff costs billed to projects/clients.
- (5) FAR 31.201-2: Subconsultant labor and other direct costs billed to and paid by contracts/clients.
- (6) FAR 31.205-36 and 31.205-17: Capital lease costs, rent paid in excess of reasonable costs, and idle facilities and capacity costs.
- (7) FAR 31.201-2 & 31.205-6: Costs relates to personal use by employees and luxury vehicles.
- (8) FAR 31.205-20: Interest and other financial costs not allowable.
- (9) FAR 31.201-2: Non-business related dues and subscriptions.
- (10) FAR 31.205-1: Costs for advertisement and public relations costs and trade show expense including labor.
- (11) FAR 31.205-46(d) and 31.205-6(m)(2): Personal use of vehicle and lack of mileage logs and business purpose.
- (12) FAR 31-205-3: Bad debts and collection costs.
- (13) FAR 31.205-27 and 31.205-47: Reorganization and capital raising related costs and costs incurred in connection with violation of a law or regulation by the consultant.
- (14) FAR 31.205-46: Unreasonable costs and costs not supported by documents and lack of business purpose.
- (15) FAR 31.201-6(a) & CAS 405-40: Labor costs associated with unallowable costs.
- (16) FAR 31.205-15: Fines and penalties resulting from violations of laws and regulations.



## 10.4 CONSULTANT SELECTION METHODS

Figure 10-4: Consultant Selection Flowchart shows the three methods normally used in selecting a consultant. They are:

- One-Step RFP;
- One-Step RFQ;
- Two-Step RFQ/RFP.

The method used depends upon the scope of work, the services required, the project's complexity, and the time available for selection of the consultant.

In addition, there are other methods used in special situations such as noncompetitive procurement and small purchases under \$150,000.

Beginning with Section 10.5: Consultant Selection Using the One-Step RFP Method Using the One-Step RFP Method each of the selection methods is explained in detail. Regardless of the method used, the local agency shall retain all consultant selection documentation in their project files as required by 23 CFR Part 172.

### One-Step RFP

The One-Step RFP method may be used for Project-specific contracts when the scope of work is well defined or for Multi-phased contracts where the defined scope of work is divided into phases. Other considerations include when the consultant's services are highly specialized and there are few qualified consultants.

### One-Step RFQ

The One-Step RFQ method is used when the requested services are specialized, or the scope of work is defined broadly and may include multiple projects. Typical services are preliminary engineering, surveying, environmental studies, preparation of Plans Specifications and Estimate (PS&E) and environmental documents, or construction management. This method or the two step selection process is used for procurement of on-call contract(s).

### Two-Step (RFQ Followed by RFP)

The Two-Step RFQ/RFP method may be used when the scope of work is complex or unusual. This method also may be preferred by local agencies that are inexperienced about negotiations and procedures for establishing compensation. However, the Two-Step RFQ/RFP method is recommended for procurement of multiple on-call contracts, or on-call list, through a single solicitation. For more information, refer to description of on-call contract in Section 10.2: Identifying & Defining a Need for Consultants. This method requires substantially more work and time than the other two methods described above.

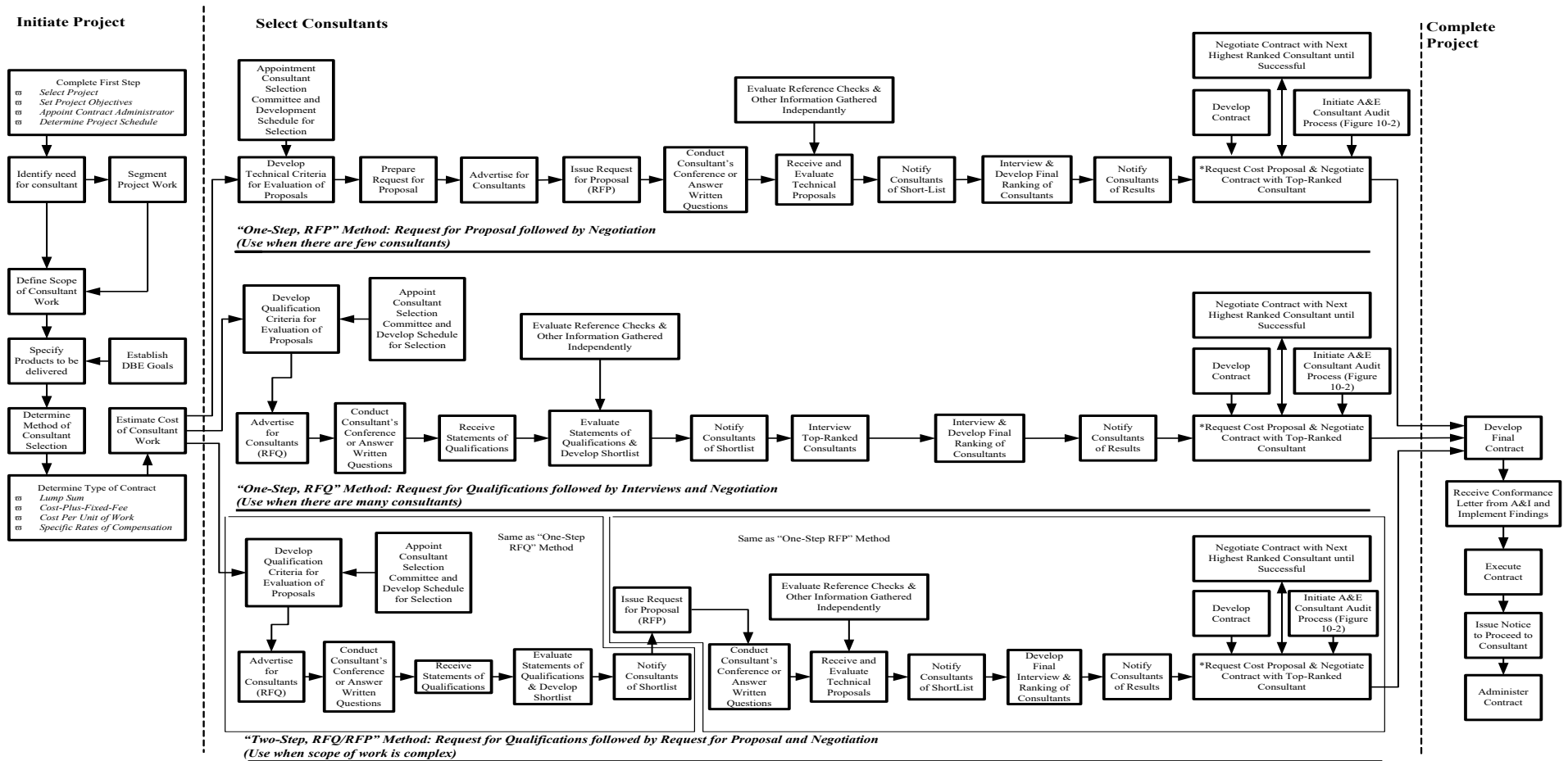


Figure 10-4: Consultant Selection Flowchart

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## 10.5 CONSULTANT SELECTION USING THE ONE-STEP RFP METHOD

Of the three methods discussed, this one is most easily modified for non-A&E consulting contracts. For non-A&E consulting contracts, a cost proposal shall be part of the RFP and the selection criteria. For A&E contracts, the cost proposal is not requested until the consultants have been final ranked based upon their submitted technical proposal.

### Appoint Consultant Selection Committee

A consultant selection committee with a minimum of three members is appointed at the beginning of the consultant selection process. The committee reviews materials submitted by consultants, develops a shortlist of qualified consultants, and develops a final ranking of the most qualified proposals. Representation on the committee includes the Contract Administrator and subject matter experts from the project's functional area. The members should be familiar with the project/segment to be contracted out and with the local agency standards that will be used in the contract. Participation by a Caltrans district representative is at the option of the agency and subject to availability of the DLAE staff. Caltrans participation on the interview panel does not relieve the local agency of its responsibility to ensure that proper procurement procedures are followed and all requirements are met.

Local agency Contract Administrator ensures that all committee members meet the conflict of interest requirements (23 CFR 172) by completing and signing a conflict of interest statement prior to selection process initiation. A sample conflict of interest form is provided in *Exhibit 10-T: Panel Member Conflict of Interest & Confidentiality Statement*.

### Develop Technical Criteria for Evaluation of Proposals

The Contract Administrator is responsible for developing the technical criteria, and their relative importance which are used to evaluate and rank the consultant proposals.

The criteria and relative weights must be included in the RFP, and the same criteria and relative weights must be used in the evaluation sheets. Failure to include criteria and relative weights and to use the same criteria and weights during the evaluation will result in the contract costs being ineligible for federal or state reimbursement. *Exhibit 10-B: Suggested Consultant Evaluation Sheet* is a recommended evaluation sheet with criteria and rating points for A&E consultants, where cost is not used as a rating factor. This format is not mandatory, but it is recommended in the interest of developing consistency among the hundreds of agencies and consultants operating in the state. The local agency should consult with the DLAE before making major changes to the suggested approach.

### Develop Schedule for Consultant Selection

Before the contract is advertised, the Contract Administrator completes a contract procurement schedule including key dates for consultant selection activities. The Contract Administrator should confirm key dates with all selection committee members before completing the schedule.

### Prepare RFP

The information required in a RFP includes the following:

- Description of project;
- Scope of work;
- Schedule of work (including estimated start and end dates of the contract);
- Method of payment, and cost proposal requirements. The cost proposal is submitted in a separate sealed envelope. See Exhibit 10-H: Sample Cost Proposal (Example 3) for sample cost proposal formats;
- Contract audit and review process requirements (see Section 10.3: A&E Consultant Audit and Review Process);
- Proposal format and required contents;
- Method, criteria and weighting for selection;
- A DBE contract goal is specified (see Exhibit 10-I: Notice to Proposers DBE Information), if a federal-aid contract;
- Consultants acting in a management support role requirements Exhibit 10-U: Consultant in Management Support Role Conflict of Interest and Confidentiality Statement;
- Protest procedures and dispute resolution process per 2 CFR Part 200.318(k).

The RFP specifies the content of a proposal, the number of copies required, due date, mailing address, and a physical address where the submittals may be hand delivered if different from the mailing address. Two to four weeks is usually allowed between the time the RFP is published and time that proposals must be submitted. More time may be required for complex contracts or projects.

Items typically required in a technical proposal include:

- Work plan (specify what is to be covered);
- Organizational chart;
- Schedule and deadlines;
- Staffing plan;
- Proposed Team—complete for prime consultant and all key subconsultants;
- Key personnel names and classifications—key team members identified in the original proposal/cost proposal shall not change (be different than) in the executed contract;
- Staff resumes;
- Names of consultant's project manager and the individual authorized to negotiate the contract on behalf of the consulting firm;
- Consultant DBE Commitment document, see Exhibit 10-O1: Consultant Proposal DBE Commitment;

- References.

### **Financial Management and Accounting System Requirements**

The local agency must ensure that consultant contract solicitation and advertising documents (RFPs) clearly specify that contracts shall not be awarded to a consultant without an adequate financial management and accounting system as required by 48 CFR Part 16.301-3, 2 CFR Part 200, and 48 CFR Part 31. The local agency must ensure the selected consultants have adequate financial management systems as required by the applicable federal regulations.

### **Advertise for Consultants**

The solicitation process for consultant services shall be by public advertisement, or by any other public forum or method that assures qualified in-State and out-of-State consultants are given a fair opportunity to be considered for award of contract. The minimum length of advertisement is 14 calendar days.

Advertisement of the RFP in a major newspaper of general circulation, technical publications of widespread circulation, professional associations and societies, recognized DBE organizations, web hosting or clearing houses known for posting government contract solicitations such as BidSync, Planetbids, or posting the RFP on the local agency's or other widely used websites are all acceptable methods of solicitation.

To document website postings, the local agency should retain copies of screen shots displaying the posted begin/end dates.

### **Issue/Publish RFP**

The local agency shall publish the RFP on line and also issue the RFP to all consultants responding to newspaper advertisement. The local agency shall keep a record of all consultants that have downloaded RFP on line as well as those receiving an RFP through other means, to ensure that any inquiry responses, addendums, or amendments to the RFP are given to all consultants that received the RFP.

### **Conduct Proposer's Conference or Answer Written Questions**

The local agency may allow for clarification of the RFP by inviting submittal of written questions or by conducting a proposer's conference, or by doing both. The local agency must publish or mail their responses to any written questions to all consultants receiving the RFP. No response should be given to verbal questions. It is important that all competing consultants receive the same information. If a proposer's conference is to be held, the exact time and place must be specified in the RFP. Attendance at a proposer's conference normally is not mandatory. However, consultants not attending the conference do not receive notes from the meeting unless they request the notes.

### **Receive and Evaluate Technical Proposals**

The Contract Administrator must verify that each proposal contains all of the forms and other information required by the RFP. If all required information is not provided, a proposal may be

considered nonresponsive and rejected without evaluation. Late submittals, submittals to the wrong location, or submittals with inadequate copies are considered nonresponsive and shall be rejected. Submittal of additional information after the due date shall not be allowed.

Documentation of when each proposal was received must be maintained in the project files. Copies of date stamped envelope covers or box tops are recommended. The members of the consultant selection committee must evaluate each proposal according to the technical criteria listed in the RFP. Minimum of three proposals must be received and evaluated. If only two proposals are received, a justification must be documented to proceed with the procurement. If only one proposal is received, a Non Competitive process must be justified and a Public Interest Finding (PIF) must be documented and signed by the DLAE. In either case, the re-advertisement of the RFP should be considered as an option.

The committee must also evaluate reference checks and other information gathered independently. Reference checks shall be completed and other information gathered before the interviews are conducted. If necessary, the results of the reference checks or other information may be discussed with the highest ranked qualified consultants at the interviews.

### **Develop Final Ranking and Notify Consultants of Results**

The selection committee discusses and documents the strengths and weaknesses of each proposal; interviews the three or more highest ranked consultants (short listed); and develops a final ranking of the highest ranked consultants. All consultants that submitted proposals must be informed about the final ranking of consultants. It is important that all competing consultants receive the same information.

Most consultants will request information as to why they were not the highest ranked. Therefore, the selection committee should keep notes as to why a particular consultant was not selected. When a consultant requests debriefing, the reasons for not being selected must be objective reasons. The consultant should not be compared to others, and should not be provided with information about other consultants during this debriefing. Normally, the Contract Administrator does the debriefing; however, any member of the selection committee may be designated to do the debriefing.

### **Negotiate Contract with Top-Ranked Consultant**

Cost proposal (for both Prime and all Subconsultant), and contract audit and review documents such as *Exhibit 10-K: Consultant Certification of Contract Costs and financial Management System of Costs and Financial Management System* and *Exhibit 10-A: A&E Consultant Audit Request Letter and Checklist*, whichever applicable (see *Section 10.3: A&E Consultant Audit and Review Process*) should be submitted in a separate sealed envelope. Typically, the cost proposals are submitted by the short listed consultants only, at time of interview. However, if time is of the essence and it can be justified, or if no interviews are planned, the cost proposal can be requested from all consultant with their technical proposal.

The cost proposal for the most qualified consultant will be opened and used to begin negotiations. If agreement cannot be reached, then negotiations proceeds to the next most qualified consultant. Each consultant's cost proposal must remain sealed until negotiations

commence with that particular consultant. The goal of negotiations is to agree on a final contract that delivers the services, or products required at a fair and reasonable cost to the local agency. At the completion of successful cost negotiations, all remaining sealed envelopes containing cost proposals shall be returned to consultants.

Cost proposals in electronic form shall be submitted separately from the RFP and contained in a secure database that is inaccessible to the members involved in the A&E consultant contract procurement process. Only the cost proposal of the most qualified consultant will be requested to be sent to the members. Cost proposals of unsuccessful consultants are confidential and shall not be opened by the local agency or any private entity that the local agency uses to store the cost proposals. Any concealed cost proposals of the unsuccessful consultants must be properly disposed of by permanently deleting the cost proposals and/or any copy of the cost proposals.

The independent cost estimate, developed by the local agency in advance of requesting a cost proposal from the top-ranked consultant, is an important basis and tool for negotiations or terminating unsuccessful negotiations with the most qualified consultant. It can be revised, if needed, for use in negotiations with the next most qualified consultant. A contract audit and review may be required (see *Section 10.3: A&E Consultant Audit and Review Process* in this chapter). Local agency Contract Administrator ensures that all required documentations are provided to Caltrans A&I within 10 days of written request, including all documents for a Financial Review, if applicable. Caltrans A&I will not proceed with a Financial Document Review until all required documentation is completed correctly and submitted. Negotiations should be finalized after addressing all deficiencies noted in the Caltrans A&I Financial Review Letter if applicable. An indirect cost audit may be performed within the record retention period of the contract.

Items typically negotiated include:

- Work plan;
- Schedule and deadlines (for deliverables and final duration of contract);
- Products to be delivered;
- Classification, wage rates, and experience level of personnel to be assigned;
- Cost items, payments, and fees. Fee is required to be negotiated as a separate element
- Hours, level of effort by task and/or classification

The consultant's ICR is not a negotiable item. A lower rate cannot be negotiated by the local agency. The local agency and the consultant will agree on the final cost proposal and incorporate into final contract.

Before executing the consultant contract, the local agency must review contract to ensure that all federal and state requirements have been met (see *Exhibit 10-C: A&E Consultant Contract Reviewers Checklist*), and adjustment or denial of ICR as identified in the Financial Review Letter has been included in the final cost proposal, if applicable.



Prior to contract award, the local agency must submit a completed Exhibit 10-C signed by the Contract Administrator for all new or amended federal and/or state funded A&E consultant contracts to [aeoversight@dot.ca.gov](mailto:aeoversight@dot.ca.gov) for Caltrans review and acceptance. If there are any changes to the contract after Caltrans acceptance of Exhibit 10-C, the local agency must notify Caltrans and provide a copy of an updated Exhibit 10-C and all contract amendments to [aeoversight@dot.ca.gov](mailto:aeoversight@dot.ca.gov). Execution of an A&E consultant contract without Caltrans acceptance may result in ineligibility for reimbursement. Submission of Exhibit 10-C to Caltrans HQ for acceptance is not required for non-A&E consultant contracts.

## 10.6 CONSULTANT SELECTION USING THE ONE-STEP RFQ METHOD

The RFQ method is used when the services being procured are specialized, or the scope of work is defined broadly and may include multiple projects.

### Appoint Consultant Selection Committee

A consultant selection committee with a minimum of three members is appointed at the beginning of the consultant selection process. The committee reviews and scores the materials submitted by consultants in response to the RFQ, develops a shortlist of qualified consultants, interviews those consultants, and develops a final ranking of the most qualified consultants. Representation on the committee includes the Contract Administrator and subject matter experts from the project's functional area. The members should be familiar with the scope of work to be contracted out and with the local agency standards that will be used in the contract.

Participation by a Caltrans district representative is at the option of the local agency and subject to the availability of the DLAE staff. Caltrans participation on the interview panel does not relieve the local agency of its responsibility to ensure that proper procurement procedures are followed and all requirements are met.

Local agency Contract Administrator ensures that all committee members meet the conflict of interest requirements (23 CFR 172) by completing and signing a conflict of interest statement prior to selection process initiation. A sample conflict of interest form is provided in Exhibit 10-T: Panel Member Conflict of Interest & Confidentiality Statement.

### Develop Technical Criteria for Evaluation of Qualifications

The Contract Administrator is responsible for developing the technical criteria, and their relative importance which are used to evaluate and rank the consultant qualifications. The criteria and relative weights must be included in the RFQ, and the same criteria and relative weights must be used in the evaluation sheets. Failure to include criteria and relative weights and to use the same criteria and weights during the evaluation will result in the contract costs being ineligible for federal or state reimbursement. Exhibit 10-B: Suggested Consultant Evaluation Sheet is a recommended evaluation sheet with criteria and rating points for A&E consultants, where cost is not used as a rating factor. This format is not mandatory, but it is recommended in the interest of developing consistency among the hundreds of agencies and consultants operating in the state. The local agency should consult with the DLAE before making major changes to the suggested approach.

## Develop Schedule for Consultant Selection

Before a contract is advertised, the Contract Administrator completes a contract procurement schedule including key dates for consultant selection activities. The Contract Administrator should confirm target dates with all selection committee members before completing the schedule.

## Prepare RFQ

As a minimum, the RFQ generally includes the following:

- General description of the services or project(s);
- Scope of work;
- Schedule of work (including contract begin and end dates);
- Method of payment, and cost proposal requirements. The cost proposal is submitted in a separate sealed envelope. See Exhibit 10-H: Sample Cost Proposal for sample cost proposal formats;
- Contract audit and review process requirements (see Section 10.3: A&E Consultant Audit and Review Process);
- Statement of Qualification (SOQ) format and required content to be submitted;
- Method and criteria and weights for selection;
- A DBE contract goal is specified (see Exhibit 10-I: Notice to Proposers DBE Information), if a federal-aid contract;
- Consultants acting in a management support role requirements Exhibit 10-U: Consultant in Management Support Role Conflict of Interest and Confidentiality Statement; Protest procedures and dispute resolution process per 2 CFR Part 200.318(k).

The RFQ specifies the content of the SOQ, the number of copies required, due date, mailing address, and a physical address where the submittals may be hand delivered if different from the mailing address. Two to four weeks is usually allowed between the time the RFQ is published and time that SOQs must be submitted. More time may be required for complex contracts or scope of work.

Items typically required in a statement of qualification include:

- Qualifications of key personnel (including consultant project manager) proposed for the contract. Key team members identified in the original proposal/cost proposal shall not change (be different than) in the executed contract;
- Staff resumes;
- Related projects that key personnel have worked on;
- Qualifications/experience of the firm;

- Organizational chart;
- Forecast or Schedule of work;
- Consultant DBE Commitment document, see *Exhibit 10-O1: Consultant Proposal DBE Commitment*;
- References.

### **Financial Management and Accounting System Requirements**

The local agency must ensure that Consultant contract solicitation and advertising documents (RFQs) clearly specify that contracts shall not be awarded to a consultant without an adequate financial management and accounting system as required by 48 CFR Part 16.301-3, 2 CFR Part 200, and 48 CFR Part 31. The local agency must ensure the selected consultants have adequate financial management systems as required by the applicable federal regulations.

### **Advertise for Consultants**

The solicitation process for consultant services shall be by public advertisement or any other public forum or method that assures qualified in-State and out-of-State consultant are given a fair opportunity to be considered for award of contract. The RFQ must contain sufficient project work information, so that interested consultants can submit an appropriate SOQ.

Advertisements for RFQ may take one of two approaches. The most common is an advertisement or publication of the RFQ in a major newspaper of general circulation, technical publication of widespread circulation, professional associations and societies, recognized DBE organizations, web hosting or clearing houses known for posting contract solicitations such as Bid Sync, PlanetBids, or posting the RFQ on other widely used websites. To document website postings, the local agency should retain copies of screen shots displaying the posted begin/end dates.

In the second approach, the local agency advertises the availability of the RFQ in a major newspaper of general circulation, technical publications of widespread circulation, professional associations and societies, recognized DBE organizations, or through a web hosting or clearing houses known for posting contract solicitations such as BidSync or PlanetBids, and requests that interested consultants send a letter of interest to the local agency for the RFQ. The RFQs shall then be sent to those firms who indicated interest in the RFQ. In some cases, it may be desirable to advertise nationwide for a particular project or service. This approach provides a registry for firms who received the RFQ and therefore facilitates the broadcast of any revisions or addenda to the RFQ, if necessary.

### **Issue/Publish RFQ**

The local agency shall publish the RFQ online and also issue the RFQ to all consultants responding to newspaper advertisement. The local agency shall keep a record of all consultants that have downloaded the RFQ on line as well as those receiving an RFQ through other means, to ensure that any inquiry responses, addendums, or amendments to the RFQ are given to all consultants that received the RFQ.

**Receive/Evaluate Statements of Qualifications and Develop Shortlist**

The first step in the evaluation process is to determine that each SOQ contains all forms and other information required by the RFQ. Otherwise, the submittals may be considered nonresponsive and rejected without evaluation. Late submittals, submittals to the wrong location, and submittals with inadequate copies are considered nonresponsive and shall be rejected. Submittal of additional information after the due date shall not be allowed. Documentation of when each proposal was received must be maintained in the project files. Copies of date stamped envelope covers or box tops are recommended.

Minimum of three proposals must be received and evaluated. If only two proposals are received, a justification must be documented to proceed with the procurement. If only one proposal is received, a Non-Competitive process must be justified and a Public Interest Finding (PIF) must be documented and signed by the DLAE. In either case, the re-advertisement of the RFP should be considered as an option.

The consultant selection committee reviews the submitted SOQ according to the published evaluation criteria and weighting factors. The committee makes an independent random check of one or more of the consultant's references. This check applies to major subconsultants also. The committee establishes a shortlist of consultants who are considered to be best qualified to perform the contract work. The shortlist includes enough qualified consultants to ensure that at least three consultants are interviewed.

**Notify Consultants of Shortlist**

All consultants that submitted an SOQ must be notified of the results of the review. The notification also identifies those consultants (short list) that will be requested to attend interviews. Most consultants will request information as to why they were not placed on the shortlist. Therefore, the selection committee should keep notes why a particular consultant was not selected for the shortlist. When a consultant requests a debriefing, the reasons given for not being selected must be objective reasons. Consultants should not be compared with each other during the debriefing. Normally, the Contract Administrator does the debriefing; however, any member of the selection committee may be designated to do the debriefing.

**Interview Top-Ranked Consultants**

Each consultant to be interviewed is given a copy of the draft of the proposed contract, defining the detailed scope of work, and/or description of required services, and other information. This should be sent with the initial notification of the interview.

Between the time of the notification of the shortlist and interviews, the local agency may answer any questions concerning the scope of work to be contracted out, if not done earlier during the solicitation. In addition, the local agency may conduct additional reference checks for each consultant to be interviewed. Consultants should submit their questions about the RFQ and receive their answers from the local agency in writing. It is required that all consultants on the shortlist receive the questions and answers and are given the same information.

The committee should evaluate reference checks and other information that is gathered independently. Reference checks shall be completed and other information gathered before the

interviews are conducted. If necessary, the results of the reference checks and other information may be discussed with the consultant at the interview.

Interviews are to be structured and conducted in a formal manner. Each consultant shall be allowed the opportunity to make a presentation if desired; however, a time limit should be specified. Interview questions are prepared in advance.

Two types of questions may be asked:

- Questions that are to be asked of all competing consultants, and
- Questions relating to each specific consultant, based upon the reference checks, and the strengths and weaknesses identified during evaluation of the SOQ

The agency can request competing consultants to bring additional information or examples of their work to the interviews; if the additional information facilitates the interview or evaluation process. Additional information requested should be kept at a minimum, that is, only information required to select the most qualified consultant for the contract. The selection committee or local agency shall not gather additional information concerning the consultants after the interviews are completed.

### **Develop Final Ranking and Notify Consultants of Results**

All consultants interviewed must be informed about the final ranking of consultants. It is important that all competing consultants receive the same information.

Most consultants will request information as to why they were not selected as the most qualified. Therefore, the selection committee should keep notes as to why a particular consultant was not selected. When a consultant requests debriefing, the reasons for not being selected must be objective. Consultants should not be compared with each other or provided with information about other consultants during the debriefing.

Normally, the Contract Administrator does the debriefing; however, any member of the selection committee may be designated to do the debriefing. The next two sections provide guidance when the RFQ is solicited for specialized services and additional information is required prior to cost negotiations with consultant. For on-call contracts, skip the next two sections and begin Negotiation phase.

### **Conduct Scoping Meeting**

The Contract Administrator meets with the first-ranked consultant's project manager to review the project, and to ensure that the consultant has a complete understanding of the work that is required. The consultant is shown as much material as is available regarding the project. Any technical questions regarding the project are answered for the consultant.

### **Request Cost Proposal**

The first-ranked consultant is asked to provide a cost proposal to perform the work described in the draft contract and discussed at the scoping meeting. The work is to be performed according to the conditions described in the draft contract using the payment method described therein.

Alternatively, if time is of the essence and it can be justified, sealed cost proposals may be requested from all of the consultants on the shortlist.

If the contract involves more than one project, the consultant must provide a separate cost proposal for each project in addition to a summary cost proposal for the total contract. If the contract involves milestones, the consultant must furnish a separate cost proposal for each milestone with a summary cost proposal for the total costs. If the contract involves subconsultants, the prime consultant must include a separate cost proposal for each subconsultant. Each subconsultant's cost proposal must follow the same format as the prime consultant's cost proposal.

### **Negotiate Contract with Top-Ranked Consultant**

Cost proposal (for both Prime and all Subconsultant), and contract audit and review documents such as *Exhibit 10-K: Consultant Certification of Contract Costs and Financial Management System* and *Exhibit 10-A: A&E Consultant Audit Request Letter and Checklist*, whichever applicable (see *Section 10.3: A&E Consultant Audit and Review Process*) will be submitted in a separate sealed envelope. Typically, the cost proposals are submitted by the short listed consultants only, at time of interview. However, if time is of the essence and it can be justified, or if no interviews are planned, the cost proposal can be requested from all consultant with their statements of qualification.

After the top-ranked consultant submits a sealed cost proposal, the local agency reviews the cost proposal and compares it with the local agency's confidential detailed independent cost estimate and enters into negotiations. The goal of negotiation is to agree on a final contract that delivers to the local agency the services or products required at a fair and reasonable cost. The independent cost estimate, developed by the local agency in advance of requesting a cost proposal from the top-ranked consultant, is an important basis and tool for negotiations.

Negotiations should commence with the most qualified consultant. If agreement on a fair and reasonable price cannot be reached, negotiations should then be formally terminated. Negotiations then proceed to the next most qualified consultant, and so on. Each consultant's cost proposal must remain sealed until negotiations commence with that particular consultant.

At the completion of successful cost negotiations, all remaining sealed envelopes containing cost proposals shall be returned to consultants.

Cost proposals in electronic form shall be submitted separately from the RFQ and contained in a secure database that is inaccessible to the members involved in the A&E consultant contract procurement process. Only the cost proposal of the most qualified consultant will be requested to be sent to the members. Cost proposals of unsuccessful consultants are confidential and shall not be opened by the local agency or any private entity that the local agency uses to store the cost proposals. Any concealed cost proposals of the unsuccessful consultants must be properly disposed of by permanently deleting the cost proposals and/or any copy of the cost proposals.

A contract audit and review may be required (see *Section 10.3: A&E Consultant Audit and Review Process* earlier in this chapter). Local agency Contract Administrator is responsible for the submittal of all required documentations to Caltrans A&I in a timely fashion, including all

documents for a Financial Review, if applicable. Caltrans A&I will not proceed with a Financial Review until all required documentation is completed correctly and submitted. Negotiations may be completed after receipt of the Caltrans A&I Financial Review Letter. An indirect cost audit may be performed within the record retention period of the contract.

The items typically negotiated include:

- Work plan;
- Staffing plan;
- Schedule (including contract begin and end dates);
- Products to be delivered;
- Classification, wage rates, and experience level of personnel to be assigned;
- Cost items, payments and fee. Fee is required to be negotiated as a separate element.

The consultant's ICR is not a negotiable item. A lower rate cannot be negotiated by the local agency. For on-call contracts, typically a price agreement is reached based on specific rate of compensation for the term of the contract. The subsequent task orders (or mini agreements for individual project work) is negotiated based on actual cost plus fee, or lump sum, which is derived from the wage rates agreed upon earlier for the on-call contract.

Before executing the consultant contract, the local agency must review contract to ensure that all federal and state requirements have been met (see Exhibit 10-C: A&E Consultant Contract Reviewers Checklist), and receive Caltrans A&I's Financial Review acceptance letter, if applicable.

Prior to contract award, the local agency must submit a completed Exhibit 10-C signed by the Contract Administrator for all new or amended federal and/or state funded A&E consultant contracts to [aeoversight@dot.ca.gov](mailto:aeoversight@dot.ca.gov) for Caltrans review and acceptance. If there are any changes to the contract after Caltrans acceptance of Exhibit 10-C, the local agency must notify Caltrans and provide a copy of an updated Exhibit 10-C and all contract amendments to [aeoversight@dot.ca.gov](mailto:aeoversight@dot.ca.gov). Execution of an A&E consultant contract without Caltrans acceptance may result in ineligibility for reimbursement. Submission of Exhibit 10-C is not required for non-A&E consultant contracts..

## 10.7 CONSULTANT SELECTION USING THE TWO-STEP RFQ/RFP METHOD

### Combined RFQ and RFP

Selecting consultants using the Two-Step RFQ/RFP method requires combining certain steps from each of the other two methods previously described. The consultants are rated based upon both their qualifications and their technical proposals.

The initial steps in this method (up to the development and notification of the shortlist) are the same as the steps followed when using the One-Step RFQ method. At this point, the consultants from the shortlist are issued an RFP. The remaining steps are the same as the later steps followed in the One-Step RFP method. The combination of these steps is indicated in

Figure 10-4: Consultant Selection Flowchart. Because it is a combination of the One-Step RFQ and One-Step RFP methods, this method of consultant selection requires more work and time than the other two methods. Consequently, the combined RFQ/RFP method is recommended for use only when the scope of work is very complex or unusual. The Two-Step RFQ/RFP is also well suited for procuring multiple on-call contracts through single solicitation. The outcome of the first step - RFQ will be multiple contracts, or on-call list of consultants with cost/price agreements. The subsequent project work will be procured thru individual competition or mini-RFPs amongst the on-call consultants. The mini-RFP or the task order will be negotiated with first ranked firm from each competition. Task order (mini-RFP) cost will be based on wage rates established in the master on-call contract, and the time and deliverable requirements in the task order.

## 10.8 COMPLETING THE PROJECT

### Develop the Final Contract

The Contract Administrator requests a revised cost proposal from the consultant after: (1) negotiations have been completed, (2) the local agency and consultant have agreed to a fair and reasonable price, and (3) a letter, if applicable, is released by Caltrans A&I that accepts, denies or makes an adjustment to the proposed ICR. The Contract Administrator should review the revised cost proposal to ensure that all the items and changes discussed during negotiation were included. This revised cost proposal then becomes the final cost proposal, is attached to and made a part of the consultant contract. For informational purposes, sample contract language and format have been included as Exhibit 10-R: A&E Sample Contract Language.

The Contract Administrator has responsibility to ensure that the final negotiated contract is complete and has verified that all required backup documents have been provided. Copies of the contract are sent to the consultant for signature first.

### Review and Approval of Contracts

Proposed contracts for consultant services (including subcontracted work) exceeding \$150,000, must be reviewed by the local agency to verify that:

- Compensation is fair and reasonable and includes prevailing wage rates, if applicable;
- Work activities and schedules are consistent with the nature and scope of the project;
- DBE goal Exhibit 10-O2: Consultant Contract DBE Commitment is included for all contracts regardless of goal.;
- Exhibit 10-K: Consultant Certification of Contract Costs and Financial Management System (for Prime and Subs), and Exhibit 10-A: A&E Consultant Audit Request Letter and Checklist and all supporting documents, if applicable, have been submitted to Caltrans A&I;



- If applicable, adjustment or denial of the ICR identified in the Financial Review Letter have been included in the final cost proposal;
- Exhibit 10-C: A&E Consultant Contract Reviewers Checklist must be used to ensure that required documentation has been provided;
- A cost proposal (see Exhibit 10-H: Sample Cost Proposal), must include the costs of materials, direct salaries, payroll additions, other direct costs, indirect costs, fees, and backup calculations.

Before approving a contract for consulting services, the Contract Administrator must be satisfied that the consultant's organization:

- Is qualified to perform the services required;
- Is in a position, considering other work commitments, to provide competent and experienced personnel to perform the services in the time allowed;
- Is fully aware of all applicable federal and state laws including implementing regulations, design standards, specifications, previous commitments that must be incorporated into the design of the project, and administrative controls including those of Caltrans and FHWA.
- Has an adequate financial management system as required by the applicable federal regulations.

The contract must provide for a defined level of acceptability and a statement to the effect that the consultant may be required to modify its work as necessary; to meet that level of acceptability as defined in the contract. The contract shall provide for local agency reviews at appropriate stages during performance of the work, to determine if any changes or other actions are warranted.

The contract shall also provide that the consultant establish a working office at a place acceptable to the local agency. The contract shall provide that the consultant and subconsultants shall maintain all books, documents, papers, accounting records, and other information pertaining to costs incurred. Such materials must be available for inspection and audit by federal, State, and local agency authorized representatives; and copies thereof shall be furnished, if requested.

Following final settlement of the contract accounts with the State or FHWA, such records and documents may be archived at the option of the local agency, but in any event shall be retained for a three-year period after processing of the final voucher by the State or FHWA.

### **Execute Contract and Issue Notice to Proceed to Consultant**

The Contract Administrator sends the consultant a fully executed copy of the contract with an original signature and issues a notice to proceed. Funds may not be used to reimburse the agency for any work or costs incurred before the Authorization to Proceed is issued, or for consultant costs incurred prior to the execution of the consultant contract. Local agency consultant selection and contract execution costs may be reimbursable.

For on-call contracts, a fully executed copy of the contract with original signatures will be send to the consultant. Each subsequent task order (for individual project) will be accompanied with a copy of the signed task order and a Notice to Proceed, once it is negotiated and approved.

### **Administer the Contract**

Project work begins as specified in the contract after the notice to proceed is issued to the consultant. Thereafter, the local agency manages and administers the contract to ensure that a complete and acceptable product is received on time, within standards, and within budget and terms of the contract.

Contract administration activities help to ensure that contractual obligations are completed satisfactorily. Generally, these activities include:

- Monitoring project progress and compliance with contract requirements;
- Receiving, reviewing and assessing reports, plans, and other required products/deliverables;
- Receiving and reviewing state prevailing wages. (See Department of Industrial Relations websites below.
  - DIR FAQ website:  
[http://www.dir.ca.gov/OPRL/FAQ\\_PrevailingWage.html](http://www.dir.ca.gov/OPRL/FAQ_PrevailingWage.html)
  - DIR Wage Determination website:  
<http://www.dir.ca.gov/oprl/DPreWageDetermination.htm>
- Reviewing invoices to ensure costs claimed are in accordance to the method of payment and contract cost proposal, approving payments;
- If new consultant personnel are added or substituted, labor rates must be verified prior to approving invoices.
- Record keeping and reporting;
- Controlling costs;
- Identifying changes to the scope of work and preparation of amendments (must ensure that any changes to the scope is within the constraints of the original RFP/RFQ;
- Completing the consultant performance evaluations (see Exhibit 10-S: Consultant Performance Evaluation).

### **Substitution of Consultant Personnel and Subconsultants**

After contract execution the consultant should not substitute key personnel (project manager and others listed by name in the cost proposal) or subconsultants without prior written approval from the local agency. To do so can result in the costs being ineligible for federal or state reimbursement. The consultant must request and justify the need for the substitution and obtain approval from the local agency prior to use of a different subconsultant on the contract.

The proposed substituted person must be as qualified as the original, and at the same or lower cost. For engineering types of consultant contracts, the consultant's project manager must be a registered engineer in the State of California.

### **Invoicing (or Progress Payments)**

The frequency and format of the invoices/progress payments are to be determined by the contract. Program Supplement Agreements (see [\*LAPM Chapter 3: Project Authorization\*](#)) need to have been prepared prior to any payments being requested. Payments to the consultant are to be in arrears. In other words, the consultant must have actually incurred and paid the costs before invoicing the local agency.

For federal or state reimbursement of consultant costs on a project, the local agency must submit the following to the DLAE, for each consultant or consulting firm used on the project (failure to do so will result in the consultant's invoices for reimbursement being returned to the agency unprocessed):

- Copy of Executed Consultant contract;
- [\*Exhibit 10-O1: Consultant Proposal DBE Commitment\*](#) (federally funded projects only);
- [\*Exhibit 10-O2: Consultant Contract DBE Information\*](#) (federally funded projects only);

DLAE must confirm that the local agency has submitted copies of [\*Exhibit 10-K: Consultant Certification of Contract Costs and Financial Management System\*](#) (for Prime and Subconsultants) to Caltrans A&I and received acceptance of [\*Exhibit 10-C: Consultant Contract Reviewers Checklist\*](#) from Caltrans.

Invoices should include the following:

- Prepared on the consultant's letterhead;
- Signed by the consultant's project manager;
- Have a unique invoice number;
- Appropriate documentation attached;
- If the contract involved milestones, each milestone should be invoiced separately;
- If the contract involved subconsultants, a separate invoice for each subconsultant should be attached in the same format as the prime consultant's invoice and should be included in the summary of the prime consultant's invoice.

The following are requirements associated with each invoice that the local agency should include:

- A summary of the reimbursements to-date and a summary of the funds remaining in the contract. This should be compared to the local agency's own record of reimbursements to-date and a summary of the funds remaining in the contract.
- A summary of all payments to-date and funds remaining in the contract for each subconsultant.

The local agency is to follow the procedures given in *LAPM Chapter 5: Invoicing*, to obtain reimbursement of federal or state funds.

### **Contract Amendments**

Contract amendments are required to modify the terms of the original contract for changes such as extra time, added work, or increased costs. Only work within the original advertised scope of services shall be added by amendment to the contract. The addition of work outside the original advertised scope will make that work ineligible for federal or state reimbursement (see Q&As at: [http://www.fhwa.dot.gov/programadmin/172qa\\_01.cfm](http://www.fhwa.dot.gov/programadmin/172qa_01.cfm)).

There is no prescribed format for contract amendments. They may take the form of letter-type agreements meeting the legal requirements of the local agency, clearly outlining the changes and containing a mutually agreed upon method of compensation. Such agreements must conform to the requirements of this manual with regard to payment.

A consultant contract may be amended at any time prior to the expiration date of the original contract. The most common amendment is to extend the ending date of the contract. All contract amendments must be fully executed before the ending date of the contract. Failure to amend a contract prior to the ending date will make the subsequent costs ineligible for federal and state reimbursement.

For on-call consultant contracts, the amendment is restricted to the work (task order) that has already been started by the consultant and can not include any new work.

All contract amendments must be in writing and fully executed by the consultant and local agency before reimbursable work begins on the amendment. If an emergency exists of such magnitude that a delay cannot be tolerated, the local agency and the consultant may agree on an amendment initiating the work, so that reimbursable work may begin. The initiating amendment is then followed by a final amendment once the full scope of the emergency work is known and agreed to by both parties. In both cases, sufficient funding should be included in the amendments to pay for all work to be performed by the consultant. The final amendment must be executed as quickly as possible. Failure to fully comply with this section may result in the loss of local agency funding. *Section 10.3: A&E Consultant Audit and Review Process* of this chapter shall apply to the entire contract and must be completed prior to execution of the contract amendment.

### **Performance Evaluation**

Pursuant to 23 CFR §172.9(d) agencies are required to prepare an evaluation of the consultant when the project has been completed. The Contract Administrator evaluates the consultant's performance after the consultant's final report has been submitted, and the Contract Administrator has conducted a detailed evaluation with the consultant's project manager. See *Exhibit 10-S: Consultant Performance Evaluation* for a suggested format for use by the local agency.

## Project Records

Federal-Aid Highway Program funding recipients and sub-recipients must maintain adequate and readily accessible project performance and financial records, supporting documents, and other records considered pertinent to the grant agreement and in compliance with Federal laws and regulations (e.g., 23 USC 112; 40 USC 1101-1104, 23 CFR 172, 48 CFR 31, and 2 CFR Part 200). These records shall be maintained for a minimum of three (3) years following issuance of the final voucher from FHWA (forwarded by Caltrans) and the closure of all other pending matters (2 CFR Part 200.333).

For audit purposes, project records and documentation shall be kept for three (3) years after payment of the final federal or state voucher. Among the records to be retained are as follows (not an all-inclusive list):

- Copies of RFPs and RFQs, changes, addendums, etc. and bidder's list;
- Documentation of DBE participation (including Exhibit 10-O1: Consultant Proposal DBE Commitment and Exhibit 10-O2: Consultant Contract DBE Commitment);
- Solicitation and advertisement records;
- Identification of selection committee members;
- Record of receiving proposals, statement of qualifications;
- Evaluation and ranking records such as original score sheets from all panel members, short list questions and other documentation (see Exhibit 10-B: Suggested Consultant Evaluation Sheet);
- Independent cost estimate (prepared in advance of requesting a cost proposal from the top-ranked consultant);
- Record of negotiations (to include a separate negotiation of profit in accordance with federal guidelines);
- Financial Review Letter and Cognizant Agency Letter, when applicable;
- CPA-audited ICR Audit Report or Approved State DOT Cognizant Indirect Rate Letter, if any;
- Consultant Certification of Costs and Financial Management (Exhibit 10-K: Consultant Certification of Contract Costs and Financial Management System) for contracts over \$150,000 or more;
- A&E Consultant Audit Request Letter and Checklist (Exhibit 10-A: A&E Consultant Audit Request Letter and Checklist) for contracts over \$150,000 and all supporting documentation.
- Executed consultant contracts, cost proposals and amendments (see Exhibit 10-R: A&E Sample Contract Language and Exhibit 10-H: Sample Cost Proposal);
- Contract oversight and progress meeting documents;
- Progress and final payments, and supporting documentation;

- Performance evaluation (see *Exhibit 10-S: Consultant Performance Evaluation*);
- Consultant contract checklists (see *Exhibit 10-C: A&E Consultant Contract Reviewers Checklist*);
- Accounting records documenting compliance with State and federal administrative requirements;
- Certifications and Conflict of Interest forms (*Exhibit 10-T: Panel Member Conflict of Interest & Confidentiality Statement*, *Exhibit 10-U: Consultant in Management Support Role Conflict of Interest and Confidentiality Statement* and *Exhibit 10-Q: Disclosure of Lobbying Activities*, as appropriate).

### Retention Clauses

At the option of the local agency, a retention clause may be included in the consultant contract. The usual retained amount is five percent; appropriate securities on deposit may be substituted for the retention. A retention clause in the consultant contract is recommended (see *Exhibit 10-R: A&E Sample Contract Language*, Article XXXI).

### Review of Local Agency Actions

Federal-aid or state reimbursement is contingent on meeting the federal or state requirements and can be withdrawn, if these procedures are not followed and documented. The local agency files are to be maintained in a manner to facilitate future FHWA or Caltrans process reviews and audits. As specified in the Review and Approval of Contracts above, the Contract Administrator must review the proposed consultant contract before execution.

*Exhibit 10-C: A&E Consultant Contract Reviewers Checklist* is to be completed and signed. A copy shall be emailed to Caltrans at [aeoversight@dot.ca.gov](mailto:aeoversight@dot.ca.gov) prior to contract award for acceptance. This acceptance of *Exhibit 10-C* must be retained in the local agency project files.

## 10.9 MISCELLANEOUS CONSIDERATIONS

### Engineering Services Under \$150,000

The procurement of consultant services by Small Purchase Procedures is in accordance with 23 CFR 172.7(a)(2) and 48 CFR 2.101.

Local agencies should be fully aware that consultant services costing in aggregate no more than \$150,000 per contract may be obtained through a relatively simple and informal method of procurement. This informal method must be sound and appropriate for the consulting services procured and the project files must contain justification for the selection. The method of procurement shall be an open and competitive process in selecting consultants and should consider a minimum of three different consultants whenever possible. The Brooks Act and the consultant audit process described in *Section 10.3: A&E Consultant Audit and Review Process* of this chapter do not apply to consultant service contracts under \$150,000. Although this method of procurement is informal, it must still comply with *Sections 10.1: General*, *10.2: Identifying & Defining a Need for Consultants Completing the Project*, and *Section 10.9: Miscellaneous Considerations*, of this chapter.

Project splitting should not be used to take advantage of the small purchase procedure in order to circumvent the Brooks Act.

**Table 10-1: Summary of Required/Non-Required Activities for Small Purchase Procedure**

REQUIRED	NOT REQUIRED
<ul style="list-style-type: none"> <li>• Competitive process (collect three bids)</li> <li>• Conflict of interest determination</li> <li>• Assigned Contract Administrator</li> <li>• Defined scope of work/schedule of deliverables/start and end dates for contract</li> <li>• Defined deliverables/Prime and Subconsultant responsibilities</li> <li>• DBE goal for contract; <u>Exhibit 10-O1: Consultant Proposal DBE Commitment</u>, <u>Exhibit 10-O2: Consultant Contract DBE Commitment</u></li> <li>• Cost estimate prior to receiving bids</li> <li>• Best method of payment determination</li> <li>• Contract provisions/clauses</li> <li>• Evaluation of consultant, justification of selection</li> <li>• Contract management responsibilities</li> </ul> <p><u>Exhibit 10-C: A&amp;E Consultant Contract Reviewers Checklist</u></p>	<ul style="list-style-type: none"> <li>• No RFP/RFQ</li> <li>• No Selection/Evaluation Panel</li> <li>• No Evaluation criteria disclosure requirements</li> <li>• No record of costs/profit negotiations</li> </ul> <p>No audit and review requirement of contract (no <u>Exhibit 10-A: A&amp;E Consultant Audit Request Letter and Checklist</u> or <u>Exhibit 10-K: Consultant Certification of Contract Costs and Financial Management System</u>)</p>

Price or rate quotation may be considered in the selection of A&E consultants on contracts below \$150,000 and must be documented in the project files. Qualified small business firms shall be considered for selection on federal-aid and state reimbursed contracts. Additionally, on federal-aid contracts, qualified DBE firms shall be considered for selection, and the appropriate federal contract language shall be included.

The full amount of any contract modification or amendment that would cause the total contract amount to exceed the Federal simplified acquisition threshold (currently established at \$150,000) would be ineligible for federal funding. Also, FHWA reserves the right to withdraw all federal-aid funding from a contract if it is modified or amended above the applicable established simplified acquisition threshold.

### **Noncompetitive Negotiated Contracts (Sole-Source)**

Procurement by noncompetitive proposals may be used only when the award of a contract is infeasible under small purchase procedures, sealed bids or competitive proposals (23 CFR 172.7(a)(3)).

FHWA considers these types of contracts as Sole Source contracts and should be used only in very limited circumstances. A Public Interest Finding prepared by the local agency and approved by Caltrans is required before establishing these services (23 CFR 172.7(a)(3); also see *Exhibit 12-F: Cost-Effectiveness/Public Interest Finding*).

Conditions under which noncompetitive negotiated contracts may be acceptable include:

- Only one organization is qualified to do the work;
- An emergency exists of such magnitude that cannot permit delay;
- Competition is determined to be inadequate after solicitation of a number of sources.

The local agency shall:

- Follow its defined process for noncompetitive negotiation;
- Develop an adequate scope of work, evaluation factors, and cost estimate before solicitation;
- Conduct negotiations to ensure a fair and reasonable cost.

The local agency must carefully document details of the special conditions, obtain Caltrans approval on a Public Interest Finding and retain all documents in the project files for future Caltrans' or FHWA's review.

A Public Interest Finding (see *Exhibit 12-F: Cost-Effectiveness/Public Interest Finding*) is not required for a local agency to be reimbursed for contract administration activities associated with non-infrastructure type projects such as many Safe Routes to School or Transportation Alternatives Program projects. However, an indirect cost allocation plan must be approved in order to be reimbursed for this work (see <http://www.fhwa.dot.gov/legregs/directives/policy/indirectcost.htm>).

### **Personal Services Contracts**

A personal services contract is characterized by the employer-employee relationship created between the local agency and the contract personnel who essentially perform similar duties as the employees. When personal engineering services less than \$150,000 or non-engineering consultant or vendor services for non-infrastructure programs are needed and federal or state reimbursement will be sought, these services may be obtained through Small Purchase Procedures up to a limit of \$150,000 each.

The \$150,000 is a cumulative limit for services provided by any individual consultant or consulting firm. Such services must be under the direction and control of a full-time employee of the local agency in responsible charge. Compensation for construction engineering services should be based on actual costs incurred, plus a fixed fee, or in the case of individual compensation on an agreed-upon hourly or daily rate. Lump sum payments should not be used for construction engineering services.

For personal service contracts, the following information must be documented by the local agency and retained in the project files:



- Explanation of the services needed, and why they cannot be provided by the local agency;
- Name and qualification of the consultant, who provided the services;
- Documentation of the fees showing how the fee was calculated, and that it is reasonable by comparative standards;
- Any other records needed to show compliance with federal-aid program regulations.

### **Retaining a Consultant as an Agency Engineer or in Management Support Role**

A local agency may retain qualified consultants in a management support role on its staff in professional capacities for state funded or federal-aid projects such as:

- A City Engineer (or equivalent) who manages the engineering unit for the city, providing oversight of a project, series of projects, managing or directing work of other consultants or contractors on behalf of the City, selecting other consultants, approving changes to schedule, scope, deliverables or costs, and approving invoices
- A County Engineer (or equivalent) who manages the engineering unit for the county such as duties described above.
- A Project Manager (or equivalent) who manages and oversees a project, series of projects or the work of other consultants and contractors on behalf of the public agency
- A Program Manager (or equivalent) who manages and oversees an element of a highway program, function, or service on behalf of the public agency

However, a consultant in a management support role is not:

- A consultant engineer performing project-specific design, and/or construction contract administration and construction engineering for the public agency
- A consultant “project manager” performing contract management on behalf of the consultant on the public agency’s consultant contract.
- A consultant providing support to administrative duties such as federal authorization process, labor compliance activities, and other management and administrative tasks.

The use of a consultant in a management support role should be limited to unique or very unusual situations. These situations require a thorough justification as to why the local agency cannot perform the management. Consultants used in management support roles must be selected using the same procedures as those for other consultants specified in this chapter.

Eligibility for federal or state reimbursement for a consultant in a management support role requires the following:

- Compliance with the selection procedures specified in this chapter;
- Existence of a contract between the local agency and the consultant specifying the local agency engineering services to be performed;

- Written designation by the local agency of the responsibilities and authority of the consultant as an agency engineer;
- For a state funded or federal-aid project, completion of Exhibit 10-T: Panel Member Conflict of Interest & Confidentiality Statement by all members (both consultants and employees) prior to participating in the Architect & Engineering (A&E) Selection Panel pertaining to the specific selection process and the firms being considered;
- Selection of consultants for A&E management positions shall be by the use of qualification based selection procedures on an open and competitive basis resulting in a contract with defined beginning and ending dates not to exceed five (5) years;
- For a state funded or federal-aid project, a local agency consultant in a management support role shall not:
  - Participate in, or exercise authority over the A&E selection process, if that consultant's firm is one of the proposing firms, or subconsultant to a proposing firm;
  - Participate in, or exercise authority over management of work performed by the consultant's firm, or to a consultant's firm of which the local agency consultant firm is a subconsultant. This would include, but not be limited to, managing or directing the work, approving changes in the schedule, scope, or deliverables; and approving invoices.
  - Apply for or receive reimbursement of federal-aid funds for the local agency's federal-aid project if either of the foregoing has occurred. However reimbursement for the construction contract portion of the project will still be allowed provided all other federal-aid requirements have been met.
  - Where benefiting more than a single federal-aid project, allocability of consultant contract costs for services related to a management support role shall be distributed consistent with the cost principles applicable to the contracting agency in 23 CFR 172.7(b)(5).

If engineering services for a project are within the scope of the services described in the retained consultant's contract, these services may be performed by the person or firm designated as an agency engineer. If the services are not within the scope, eligibility for federal or state reimbursement for these services require a new consultant contract to be developed using the selection procedures in this chapter. Retained consultants involved in the preparation of the RFP or RFQ shall not be considered in the selection of consultants for the resulting project specific work.

When engineering or architectural consultants in a management support role are procured with federal-aid funds, the local agency (subgrantee) shall fully comply with the following:

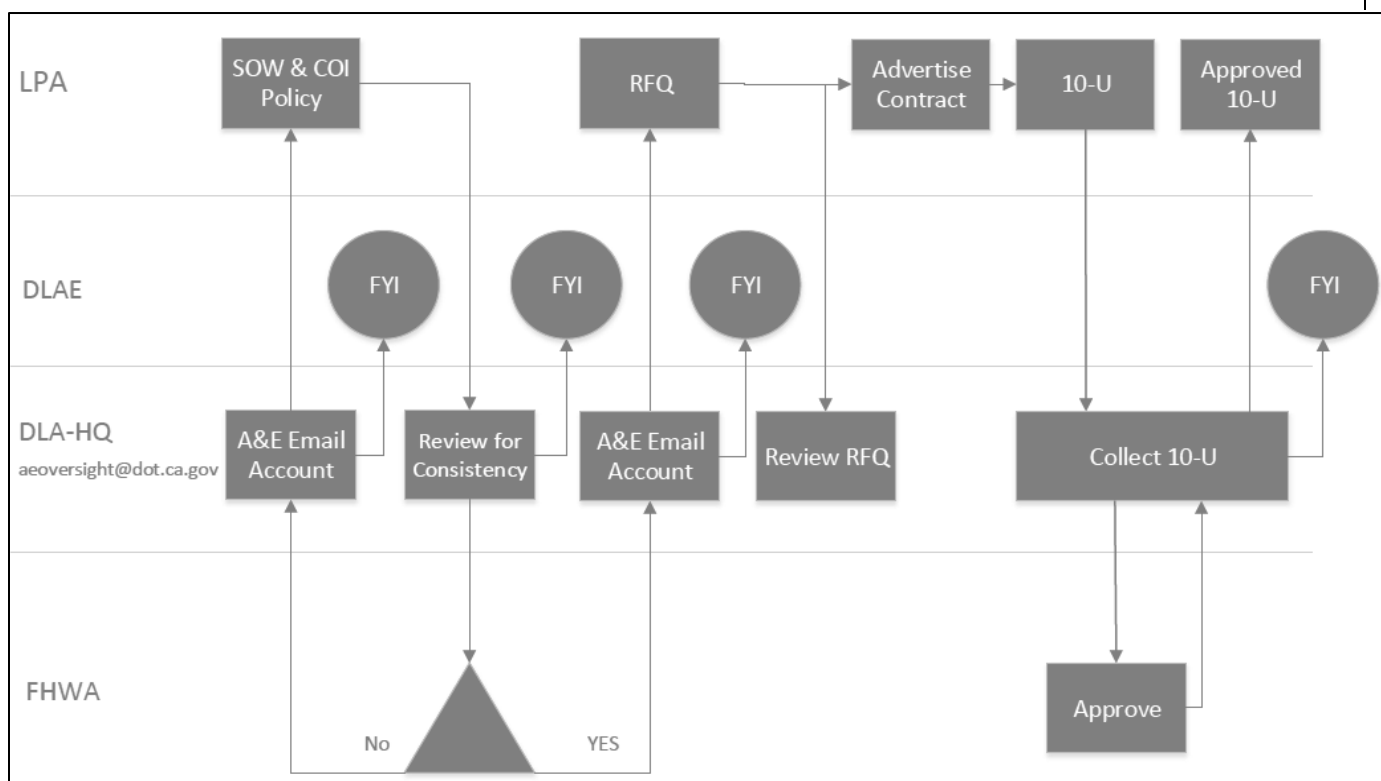
- Subparagraphs of 2 CFR 200.318 maintain a contract administration system and maintain a written code of standards. No employee, officer or agent of the subgrantee shall participate in selection, or in the award or administration of a contract supported by federal funds if a conflict of interest, real or apparent, would be involved.

- Subparagraph of 23 CFR §172.7(b) requires that the local agency shall receive approval from FHWA. In addition, any federal-aid projects designated as High Profile projects may also need approval from FHWA.
- Liability insurance should normally be required from the consultant (errors and omissions, etc.).

For federally funded projects, local agencies that solicit to hire A&E consultant(s) in a management support role must obtain FHWA approval prior to contract execution.

In order for a contract for a consultant in a management support role to be federally eligible, the following are required prior to contract execution:

- The local agency shall submit a request for approval via email the Scope of Work and Conflict of Interest Policy to the Division of Local Assistance-Headquarters (DLA-HQ) at [aeoversight@dot.ca.gov](mailto:aeoversight@dot.ca.gov), prior to solicitation.
- Once the local agency receives FHWA's written response, the local agency can proceed with the RFQ.
- After consultant selection, the local agency shall submit the completed *Exhibit 10-U: Consultant in Management Support Role Conflict of Interest and Confidentiality Statement* to the DLA-HQ at [aeoversight@dot.ca.gov](mailto:aeoversight@dot.ca.gov). Local agency will receive FHWA's approved *Exhibit 10-U* via email.



**Figure 10-5: Consultant in a Management Support Role Flowchart**

## Construction Engineering Services

Under federal-aid regulations and state policy, the primary responsibility for general supervision of construction must remain with the local agency. The local agency must also ensure that the work is performed in accordance with the approved plans and specifications, by employing or retaining as a consultant a registered engineer for construction engineering services on the project.

All construction engineering activities performed by a consultant must be under the overall supervision of a full-time employee of the agency who is in responsible charge. These activities may include preparation of contract change orders, construction surveys, foundation investigations, measurement, and computation of quantities, testing of construction materials, checking of shop drawings, preparation of estimates, reports, and other inspection activities necessary to ensure that the construction is being performed in accordance with the plans and specifications. The construction engineering consultant's contract defines the relative authorities and responsibilities of the full-time employee of the local agency in charge of the project and the consultant's construction engineering staff.

If a technical inspection consultant is to provide professional assistance to the local agency, a formal consultant contract must be executed which follows this chapter's requirements. The contract shall provide for reviews at appropriate stages during performance of the work to determine if any changes or other actions are warranted. These reviews are to be made by the local agency.

## 10.10 Non-A&E Consultants

### Definition

Services and planning studies that are not included in the definition of A&E related services or are not directly related to a construction project may be considered non-A&E. These services include Right-of-Way appraisal and acquisition activities, conducting public outreach during environmental clearance or construction, and Active Transportation Program educational and outreach activities.

The determining factor for the required use of competitive negotiation/qualifications based selection procedures is whether the services being procured are related to a specific construction project and whether the services require work to be performed, provided by, or under the direction of a registered engineer or architect. If a planning study is to determine the need for improvements within a corridor, to conduct travel demand studies, or to obtain information on costs for planning and programming processes, the consultant may not need to be procured under a qualifications based selection process.

### Intelligent Transportation System (ITS) Projects

Intelligent Transportation System (ITS) means electronic, communications, or information processing used singly or in combination to improve the efficiency or safety of a surface transportation system. ITS projects are those that in whole or in part, funds the acquisition of

technologies or systems of technologies that provide significant contributions to the provision of one or more ITS user services as defined in the National ITS Architecture.

The federal-aid procurement regulations identify three possible contract procurement procedures for ITS projects including engineering and design related services (or A&E), construction, and non-engineering/non-architectural (or Non-A&E).

If ITS projects include physical installation of field devices and/or communications infrastructure, such as new traffic signals, new controller cabinets, changeable message signs, radio and computers, vehicle detectors, and conduits for cabling in the roadway, then that work and required equipment usually meets the definition of construction. The construction contract must be procured based on competitive bidding. If the ITS project involves considerable software development, system integration, hiring engineers and specialists for ITS design and installation support, inspection, design documentation, training and deployment, it would be considered an engineering and design services contract and the contract must be procured as an A&E consultant contract.

However, if an ITS project does not meet either the definition of construction or engineering and design services, then the contract may be considered to be a Non-A&E consultant contract. Examples of Non-A&E consultant contracts are:

- The procurement of hardware and software associated with incident management system
- Software systems for arterial and freeway management systems
- Operating the 511 traveler information service
- Nonprofessional services for system support such as independent validation and verification, testing and specification development, and development of a concept of operations

For more information regarding Intelligent Transportation Systems (ITS) Program procurement requirements, refer to *LAPG, Chapter 13* [LAPG Chapter 13: Intelligent Transportation Systems](#).

### **Non-Infrastructure Projects**

- Non-infrastructure (NI) projects are those transportation-related projects that do not involve either engineering design, Right-of-Way acquisition (for additional guidance refer to LAPM Chapter 13), or the eventual physical construction of transportation facilities.

Procurement of Non-A&E consultant contracts associated with non-infrastructure projects must follow Non-A&E procurement procedures described in this chapter. For more information on NI projects, refer to *LAPM Chapter 3 Project Authorization*. [LAPM Chapter 3: Project Authorization](#).

### **Procurement of Non-A&E Consultant Contracts**

Local agencies must use their own documented procurement procedures which reflect applicable state, local, and tribal laws and regulations, provided that the procurements conform to applicable federal laws and regulations (2 CFR Part 200). All non-A&E

procurements for federal-aid funded projects must be conducted by competitive proposals in a manner providing full and open competition consistent with federal and state standards. Refer to California State Public Contract Code 10335-10381 for more information.

- a. Request for proposals must be publicized and all evaluation factors and their relative importance identified
- b. Proposals must be solicited from an adequate number of qualified sources (no less than three)
- c. Local agency must have a written procedure for evaluating proposals
- d. Consultants other than A&E consultants shall be selected using cost or cost and qualifications (best value)
- e. Public agencies contracting with other public agencies to perform work need an executed Memorandum of Understanding (MOU) or interagency agreement
- f. A consultant firm that was instrumental or listed in the application process for projects, such as ATP, is not entitled to be awarded a contract for its implementation without a competitive procurement. All federal/state funded contracts must be competitively solicited.

### **Determining Need for Consultant**

To identify if a non-A&E professional services contract is needed, consider the following:

- Types of services needed
- Special licensing (not considered A&E)
- How necessary are the services
- When are the services needed
- One-time or on-going services
- Routine or extraordinary/unique
- Scope of Work

### **Preparing the Request for Proposal**

An RFP for professional services should be as detailed and precise as possible and include minimum qualification requirements, solicitation and award time frames, term of agreement, scope of work, evaluation criteria and process, and technical proposal and performance specifications.

Be sure to attach complete scopes of work outlining local agency and consultant responsibilities and all special provisions for the work/services needed, and have all funding approved. Local agency contacts, or the Contract Administrator should be identified in the RFP.

An example RFP is provided on the Local Assistance Website at <http://www.dot.ca.gov/hq/LocalPrograms/AE/index.htm> and may be modified.

### Scope of Work

Clear and concise scopes of work are critical elements of service contracts. SOWs must be detailed and specific and be organized in a logical manner. Sort work details by similar actions or requirements. Clearly define roles and responsibilities of consultant and local agency. Agency Contract Administrator should write SOWs to indicate what qualifications are required to perform the work and to express when, where, and how the work/service is to be performed.

### Technical Proposal

The Technical proposal should include the following information:

- **Consultant Project Manager** – qualifications, roles and responsibilities.
- **Methodology** - description of work and overall approach, specific techniques that will be used and specific administrative and operations expertise to be used.
- **Workplan and Work Schedule** - the technical proposal should include activities and tasks, and their delivery schedule.
- **Personnel** - List of personnel who will be working on the project, and their resumes.
- **Facilities and resources** (If applicable) - Explanation of where the services will be provided and what type of equipment is needed to perform services.
- **Sub-contracts** - Identify all sub-contracts that are to be used, description of each and the work by each sub-consultant/sub-contractor. No work shall be subcontracted unless listed in the technical proposal. Sub-consultant resumes should be provided.
- **References** - The technical proposal should provide at least three (3) clients for whom the proposer has performed work of similar nature to the request.

### Cost Proposal Worksheet

The RFP should provide a standard format for cost proposal that all proposers must include in their technical proposal. The cost proposal format can be broken down by specific tasks, showing hourly labor rates, level of effort and material, and/or by milestones and deliverables.

### DBE Consideration

DBE consideration is required on all federal-aid funded contracts including non-A&E..

### Solicitation and Award of Contracts

Advertisement for RFPs may be through the local agency website, local publications, and national publications. Minimum solicitation time is 14 calendar days.

The solicitation should inform potential bidders that questions must be submitted in writing to the Agency Contract Manager/Administrator by a specified date and time. All pertinent technical information and answers to bidder's questions shall be provided to all potential bidders. Written responses to all questions will be collectively compiled and provided as an addendum.

Contracts may be modified or amended only if the contracts so provide. Amendments must be requested and executed prior to the termination date of the most recently approved original or amended contract. All records of contract activities shall be kept for three years after federal final voucher E-76 or state final voucher for State-Only funds. Costs are reimbursable after state allocation by the California Transportation Commission (CTC) and/or the issuance of the federal E-76. The per diem rate shall not exceed the state rate. Contract Managers are responsible for monitoring expenditures on all contracts and verifying categories of work that require prevailing wage. A person in Responsible Charge of contract management is required for all federally funded projects.

### **Evaluation Criteria**

Review all eligible proposals (i.e., those filed on time and in the manner prescribed) to determine which ones meet the format requirements and the standards specified in the RFP. Proposals meeting the minimum standards and format requirements can then be rated or scored. Those proposals shall be submitted to an agency evaluation committee. The evaluation committee will evaluate and score proposals using the methods specified in the RFP. The contract must be awarded to the responsible proposer whose proposal is given the highest score by an evaluation committee.

The Contract Administrator must verify that each proposal contains all of the forms and other information required by the RFP. If all required information is not provided, a proposal may be considered nonresponsive and rejected without evaluation. Proposals without information regarding, or not meeting, the required DBE utilization goal or without a Good Faith Effort documentation, late submittals, submittals to the wrong location, or submittals with inadequate copies are considered nonresponsive and shall be rejected. Submittal of additional information after the due date shall not be allowed. Documentation of when each proposal was received must be maintained in the project files. Copies of date stamped envelope covers or box tops are recommended.

Note that all criteria to be used to evaluate the technical proposals must have a logical foundation within the scope of work or within other technical requirements contained in the RFP. Each criterion must have a weight or level of importance, and it is recommended that total possible score for the evaluation criteria be one hundred (100) points. The proposed cost should be at least thirty percent (30%) of total points in evaluation criteria.

To establish effective competition, a minimum of three proposal must be evaluated. If only two proposals are received, a justification must be documented to proceed with the procurement. If only one proposal is received, a Non-Competitive process must be justified and a Public Interest Finding (PIF) (*LAPM Exhibit 12-F: Cost-Effective/Public Interest Finding*) must be documented. In either case, the re-advertisement of the RFP should be considered as an option.

The committee must also evaluate reference checks and other information gathered independently. Reference checks shall be completed and other information gathered before the interviews are conducted. If necessary, the results of the reference checks or other information may be discussed with the highest ranked qualified consultants at the interviews.



### Oral Presentations

Oral presentations are optional. The evaluation criteria must include factors/sub-factors and weights used to score the proposers performance at the oral presentation. The evaluation committee will only be able to score each proposer based upon this criteria. The Contract Manager/Administrator should develop a set of questions related to the scope of work or the project to be asked during the evaluation committee question and answer (Q & A) section of the oral presentations. All proposers are asked the same questions for consistency.

### Protest/Appeals/Reinstatement Procedures

Both state and federal regulations require well-defined protest/reinstatement procedures. It is essential that the procedures include a reasonable opportunity for the prospective consultant to present his/her case. The appeals procedures strengthens the process by which the contracting agency reaches its ultimate goal and helps defends its action against a claim of lack of due process. A termination clause and a provision for settlement of contract disputes are required. Protest procedures and dispute resolution processes should be in accordance with 2 CFR 200.318(k)

## 10.11 REFERENCES

- 23 CFR, Part 172  
Administration of Engineering and Design Related Service Contracts  
<http://www.ecfr.gov/cgi-bin/text-idx?rgn=div5&node=23:1.0.1.2.3>
- 40 USC, Section 1104  
Brooks Act <http://www.fhwa.dot.gov/programadmin/121205.cfm>
- 41 CFR  
Public Contracts and Property Management  
[http://www.ecfr.gov/cgi-bin/text-idx?tpl=/ecfrbrowse/Title41/41tab\\_02.tpl](http://www.ecfr.gov/cgi-bin/text-idx?tpl=/ecfrbrowse/Title41/41tab_02.tpl)
- 41 USC  
Public Contracts  
<http://law.onecle.com/uscode/41/index.html>
- 23 USC  
Letting of Contracts  
<http://www.fhwa.dot.gov/map21/docs/title23usc.pdf>
- 48 CFR, Chapter 1, Part 15.404  
<https://www.acquisition.gov/far/html/FARTOCP15.html>

- 48 CFR, Chapter 1, Part 31  
<https://www.acquisition.gov/far/html/FARTOCP15.html>
- Title 48, Part 16 – Types of Contracts  
<http://www.elaws.us/subscriber/signin?returnurl=http://federal.elaws.us/cfr/title/4/10/2013/title48/chapter1/part16&IsHistory=1&AspxAutoDetectCookieSupport=1>
- 48 CFR 27, Subpart 27.3 – Patent Rights under Government Contracts  
<https://www.law.cornell.edu/cfr/text/48/part-27/subpart-27.3>
- 48 CFR 31.201-3  
<https://www.gpo.gov/fdsys/pkg/CFR-2011-title48-vol1/pdf/CFR-2011-title48-vol1-sec31-201-6.pdf>
- 48 CFR, Chapter 99 – Cost Accounting Standards, Subpart 9900  
<https://www.gpo.gov/fdsys/granule/CFR-2002-title48-vol7/CFR-2002-title48-vol7-chap99>
- 2 CFR Part 200  
[http://www.ecfr.gov/cgi-bin/text-idx?SID=eb0db4a32ce93fdc5815e6fe58791d9d&mc=true&tpl=/ecfrbrowse/Title02/2cfr200\\_main\\_02.tpl](http://www.ecfr.gov/cgi-bin/text-idx?SID=eb0db4a32ce93fdc5815e6fe58791d9d&mc=true&tpl=/ecfrbrowse/Title02/2cfr200_main_02.tpl)
- 49 CFR, Part 26  
Participation by Disadvantaged Business Enterprises in Department of Transportation Financial Assistance Programs  
[http://www.ecfr.gov/cgi-bin/text-idx?tpl=/ecfrbrowse/Title49/49cfr26\\_main\\_02.tpl](http://www.ecfr.gov/cgi-bin/text-idx?tpl=/ecfrbrowse/Title49/49cfr26_main_02.tpl)
- American Association of State Highway and Transportation Officials (AASHTO) Uniform Audit and Accounting Guide  
<http://audit.transportation.org/Pages/default.aspx>
- Caltrans Division of Procurement and Contracts Website  
<http://www.dot.ca.gov/dpac/index.html>
- California Labor Code, Section 1775  
<http://law.onecle.com/california/labor/1775.html>
- Government Auditing Standards (GAS) issued by the United States Government Accountability Office  
<http://www.gao.gov/yellowbook/overview>
- Government Code Sections 4525 through 4529.5  
<http://www.leginfo.ca.gov/cgi-bin/displaycode?section=gov&group=04001-05000&file=4525-4529.5>

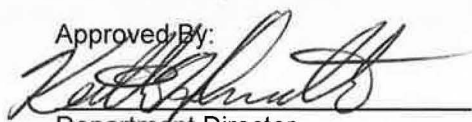
- OMB Circular A-110  
Uniform Administrative Requirements for Grants and Agreements With Institutions of Higher Education, Hospitals, and Other Non-Profit Organizations  
[https://www.whitehouse.gov/omb/circulars\\_a110](https://www.whitehouse.gov/omb/circulars_a110)
- Standard Environmental Reference (SER)  
<http://www.dot.ca.gov/ser/>



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## REPORT TO CITY COUNCIL

Approved By:

  
Department Director

  
City Administrator

Council Meeting of October 17, 2018

Agenda Item Number C-1

**SUBJECT: CONSIDERATION OF RESOLUTION SETTING A PUBLIC HEARING TO DETERMINE WHETHER THE PUBLIC INTEREST AND NECESSITY, SAFETY OR WELFARE REQUIRE THE FORMATION OF RULE 20B UNDERGROUND UTILITY DISTRICT NO. 19 IN DESIGNATED REAL PROPERTY LOCATED WITHIN AND ADJACENT TO THE OLIVE AVENUE WIDENING PROJECT FROM GATEWAY DRIVE TO KNOX STREET**

### **RECOMMENDATION:**

That the City Council approves Resolution No. 18-\_\_\_\_:

1. Setting a public hearing for establishing a Rule 20B Underground Utility District No. 19 within and adjacent to the Olive Avenue widening project.
2. Directing the City Clerk to notify all affected property owners and utility companies concerned of the time and place of such hearing by mail at least ten (10) days prior to the hearing date.

### **SUMMARY:**

The Olive Avenue Widening Project includes undergrounding of the PG&E, AT&T, and Comcast facilities in the project limits. Chapter 8 of Title III of the Madera Municipal Code establishes a procedure for the creation of underground utility districts (UUD's). The Resolution of Intention is the first step to accomplish the proposed undergrounding of the utilities. Attached "Exhibit A" indicates boundaries of the proposed Underground Utility District No. 19.

### **Engineering**

205 W. Fourth Street • Madera, CA 93637 • TEL (559) 661-5418 • FAX (559) 675-6605

[www.cityofmadera.ca.gov](http://www.cityofmadera.ca.gov)

## **HISTORY:**

The City Council in 1968, adopted an Ordinance providing for the City Council to call for public hearings to determine public necessity and requirements for formation of Underground Utility Districts (UUD). Whenever the Council creates an Underground Utility District, it shall be unlawful for any person or utility to erect, construct, place, keep, maintain, continue, employ, or operate poles, overhead wires, and associated overhead structures in the district except as may be required to continue to receive service until the underground work has been performed.

## **SITUATION:**

The Olive Avenue Widening Project (the "Project") will consist of widening and reconstructing Olive Avenue between Gateway Drive and Roosevelt Street to Arterial Street Standards with four travel lanes and completing the arterial street standard improvements on Olive Avenue between Roosevelt Street and Knox Street consistent with the adopted Plan Line. The Project will include a new UPRR crossing protection and signal, installation of traffic signals at the intersections of Olive Avenue at Roosevelt Street and Olive Avenue at Knox Street. The project also includes street widening improvements to meet Collector Street Standards on Knox Street between Neplus Way and Olive Avenue.

Within the Project, there is a heavy concentration of overhead electrical, telephone and cable distribution facilities that need to be removed and/or be relocated. New utility services will be required for the new traffic signal(s), street lighting and irrigation facilities. Undergrounding the utilities in lieu of relocating poles that are in conflict is consistent with previously constructed projects on arterial streets connecting with collector streets. This practice is consistent with the following General Plan policy:

To improve the appearance of the City's commercial and residential neighborhoods, the City will require that all utility lines be placed underground in conjunction with new development projects, unless determined by the City to be infeasible. Additionally, the City will seek to place existing above-ground utility lines underground in the parts of the City which have been largely built-out.

Examples include Pine Street and Pecan Avenue adjacent to Freedom Industrial Park, 4<sup>th</sup> Street from "K" to "I" Street prior to bridge widening project, and Ellis Street/Kennedy Street/Schnoor Avenue prior to construction of the Ellis Overcrossing. Projected costs to underground the utilities within the road widening segment and also in front of Sierra Vista School have been included in the project budget.

Adopting the resolution of intent will set the public hearing, requiring that all affected property owners be notified of the date, time and place of this Public Hearing. It is requested that the hearing be held on November 7, 2018, at 6:00 PM.

### Rule 20A vs. Rule 20B

Tariff Rule 20 was established by the California Public Utilities Commission in 1967 to collect and allocate funds to convert overhead utilities to underground. Utility companies are required to allocate a certain amount of money each year for conversion projects. Rule 20 provides three levels, A, B, and C, of progressively diminishing ratepayer funding for the projects.

For projects funded with Rule 20A funds, 100% of the project costs are covered by the utility. Projects are designed and constructed by PG&E as the lead and subject to their timeframes. Rule 20A funds are allocated annually to local government agencies. The City of Madera currently receives approximately \$130,000 per year. Local agencies can borrow ahead five (5) years of allocations. The most recent Rule 20A projects completed for Madera were associated with the Youth Center and the relocation of the Police Department. Those projects borrowed ahead the maximum allowable and as of 2018, the City's balance of PG&E Rule 20A funds is approximately negative \$17,000 (-\$17,000). Staff recommends the City continue to bank Rule 20A funds for future undergrounding projects within previously developed areas where typical street funding could not be used for such purposes without an associated street project.

For Rule 20B projects, the owner (City) pays the difference between completing an underground system and the costs to relocate the overhead facilities for the project. At the request of the City, the affected utilities will perform a Rule 20B design for undergrounding of utilities required for the Olive Avenue Widening Project. The utility companies coordinate their efforts to place existing above ground facilities underground within a joint trench when feasible. Once the estimates are complete, each utility will prepare an aerial to underground conversion agreement establishing the costs for design reimbursement and the difference between completing an underground system and relocating the existing overhead facilities.

Upon completion of design and preparation of construction plans, the City will take the lead on construction of the underground conduits and vaults. Each utility will install their own wiring, transformers and associated equipment. City Engineering staff will coordinate with each property owner that may be affected by the conversion of above ground utilities to underground utilities. The City will process a right-of-entry for any work on private property. Property owners would only incur costs if they choose to upgrade their service in conjunction with the conversion or if the existing service is currently out of code and a safety hazard.

Rule 20C projects are usually small projects that involve one or more private property owners. The costs are almost entirely borne by the applicants. Undergrounding within the provisions of Rule 20C occurs when neither Rule 20A nor Rule 20B applies.

#### Environmental Clearance

In April 1996, the City of Madera adopted a Mitigated Negative Declaration for the East Olive Plan Line and Building Setback Project (East Olive Avenue Plan Line) for the widening of Olive Avenue to a 100 foot right of way arterial standard street. The Mitigated Negative Declaration was certified based on an Initial Study in conformance with the California Environmental Quality Act (CEQA). On November 10, 2015, the City of Madera Planning Commission approved an Addendum to the Mitigated Negative Declaration for the Adoption of the East Olive Plan Line to include Olive Avenue between Gateway Drive and Knox Street. The approval of the addendum was based on an analysis of the proposed project within the Environmental Assessment, Initial Study and Mitigated Negative Declaration prepared by staff pursuant to the CEQA Section 15164.

#### **FINANCIAL IMPACT:**

The Pacific Gas & Electric, (PG&E) Electric Rule 20B Program requires that the City fund the cost for design and construction. The City may receive a cost contribution for a portion of the design costs (associated with the cost to design a relocation versus underground) and will receive a credit for avoidance to relocate poles expense. The cost of the UUD cannot be

determined until the design has been completed. The estimated cost is in the range of \$600,000 to \$1,000,000 and is included in the Project Budget.

There will be no impact to the City's General Fund for the design and construction costs for the Utility Underground District.

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

**Action 126** – The project supports the strategy for providing clean attractive streets that are safe and aesthetically pleasing. The requested action is for the improvement of infrastructure and is not in conflict with any of the actions or goals contained in the plan.



## **RESOLUTION 18-\_\_**

### **A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MADERA, CALIFORNIA SETTING A PUBLIC HEARING TO DETERMINE WHETHER THE PUBLIC INTEREST AND NECESSITY, SAFETY OR WELFARE REQUIRE THE FORMATION OF RULE 20B UNDERGROUND UTILITY DISTRICT NO. 19 IN DESIGNATED REAL PROPERTY LOCATED WITHIN AND ADJACENT TO THE OLIVE AVENUE WIDENING PROJECT BETWEEN GATEWAY DRIVE AND KNOX STREET**

**WHEREAS**, Chapter 8 of Title III of the Madera Municipal Code establishes a procedure for the creation of underground utility districts, including the calling of a public hearing to ascertain whether public interest and necessity, health, safety or welfare require the formation of such underground utility district; and

**WHEREAS**, it has been recommended that such underground utility district be formed within the boundaries of the Olive Avenue Widening Project between Gateway Drive and Knox Street hereinafter referred to as THE UUD PROJECT and including described property as shown on the attached drawing;

**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. Pursuant to Section 3-8.02 of the Madera Municipal Code, notice is hereby given that a public hearing will be held by the City Council of the City of Madera on the 7<sup>th</sup> day of November 2018, at the hour of 6:00 p.m. in the Council Chambers at City Hall in Madera, California, to ascertain whether the public interest and necessity, health, safety and welfare require the removal of poles, overhead wires and associated overhead structures and the underground installation of wires and facilities for supplying electric, communication or similar associated service in THE UUD PROJECT hereinafter described to be designated as the City of Madera RULE 20B Underground Utility District No. 19.
3. At such hearing all persons interested shall be given an opportunity to be heard. Said hearing may be continued from time to time as may be determined by the City Council.






4. Property owners or interested persons may also submit written communications, regarding formation of the Underground Utility District and the UUD PROJECT, at any time prior to the end of the public hearing.
5. The City Clerk is directed to notify all affected property owners as shown on the last equalized assessment roll and the utilities concerned of the time and place of such hearing by mailing a copy of this resolution to such property owners and utilities concerned at least ten (10) days prior to the date thereof. The area proposed to be included in the district is all that real property in the City of Madera more particularly depicted on the attached EXHIBIT "A" map.
6. This resolution is effective immediately upon adoption.

\*\*\*\*\*

## EXHIBIT "A"

### CITY OF MADERA UNDERGROUND UTILITY DISTRICT # 19

#### LEGEND:

-  LOT LINES  
 DISTRICT BOUNDARY  
 LOT NUMBERS



ID	APN	OWNER	ADDRESS	CITY	STATE	ZIP
1	011-182-002-000	ALLEN STEPHEN J				
2	011-252-001-000	UNION PACIFIC RAILROAD				
3	011-201-002-000	UNION PACIFIC RAILROAD				
4	011-201-001-000	UNION PACIFIC RAILROAD				
5	011-201-003-000	CITY OF MADERA				
6	011-203-005-000	NUNEZ FRANCISCO & CARO MARTHA LEON				
7	011-271-001-000	MADERA SCHOOL DISTRICT				
8	011-330-002-000	CASTILLO BERNABE ETAL				
9	011-330-003-000	CASTILLO BERNABE ETAL				
10	011-300-011-000	GONZALEZ JUAN & BEATRICE TRUSTEE				
11	011-300-010-000	SJR LLC				
12	011-300-002-000	UNION PACIFIC RAILROAD				
13	011-300-001-000	J W MYERS INC				



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## REPORT TO CITY COUNCIL

Approved By

Department Director

Council Meeting of October 17, 2018

Agenda Item Number C-2

City Administrator

**SUBJECT:** PUBLIC HEARING AND CONSIDERATION OF INTRODUCTION OF AN ORDINANCE AMENDING SUBSECTION B OF SECTION 3-5.08 OF CHAPTER 5 OF TITLE III OF THE MADERA MUNICIPAL CODE RELATING TO SPEED LIMITS IN CERTAIN ZONES

### RECOMMENDATION:

That the City Council conduct a public hearing and introduce Ordinance No. \_\_ C.S. Amending Subsection B of Section 3-5.08 of Chapter 5 of Title III of the Madera Municipal Code relating to the speed limits in certain zones.

### SUMMARY:

This item is intended to address several locations where adjustments or additions to Subsection B of Section 3-5.08 of Chapter 5 of Title III of the Madera Municipal Code are considered necessary.

### BACKGROUND:

Section 3-5.08 of Chapter 5 of Title 3 of the Madera Municipal Code establishes speed limits for certain street segments in the City of Madera.

The speed limits of each of the locations considered within this report were the subject of either a speed survey or an engineering study. Speed surveys are conducted to collect vehicle speed data on roadway segments used for determining maximum speed limits. Speed limit determination rely on the premise that a reasonable speed limit is one that conforms to the actual behavior of the drivers. Speed limits are normally set at or below the 85<sup>th</sup> percentile speed. The 85<sup>th</sup> percentile speed is the speed at which 85 percent of the traffic is moving along a roadway segment. The speed limit may be further adjusted as permitted by California Vehicle Code based on an engineering study for the purposes of addressing concerns such as pedestrian crossing safety, sight distance restrictions, roadway design, etc.

### DISCUSSION:

Staff is proposing that the speed limits be implemented at the subject location and be included in an amended Subsection B of Section 3-5.08 of Chapter 5 of Title III of the Madera Municipal Code. The locations are as follows:

### Engineering

205 W. Fourth Street • Madera, CA 93637 • TEL (559) 661-5418 • FAX (559) 675-6605

[www.cityofmadera.ca.gov](http://www.cityofmadera.ca.gov)

Knox Street from Olive Ave. to Tozer Street – A speed survey was conducted for this segment within the last 6 months. The 85<sup>th</sup> percentile speed on this segment determined to be 45 mph. The speed limit was reduced by 5 mph as permissible by the CA MUTCD 2014 Revision 3 Section 2B.13 "Speed Limit Sign (R2-1)", which states that *"the posted speed may be reduced by 5 mph from the nearest 5 mph increment of the 85<sup>th</sup> percentile speed in accordance with California Vehicle Code (CVC) Section 627 and 22358.5"*. The speed reduction was based on the following condition:

- There are currently two (2) horizontal curves along Knox Street that are not suitable for a 45-mph speed. The reduction in speed along with warning signs at the locations are considered appropriate for the conditions.

Yosemite Ave from Gateway Drive to Pine Street – Proposed ordinance shows a reduction of 5 mph from 40 mph to 35 mph. The speed limit was reduced by 5 mph based on recommendations from a recent engineering study. The reduction is also based on the CA MUTCD 2014 Revision 3 Section 2B.13 criteria presented above. Specifically, the basis for the reduction is the consistent observation of high pedestrian volumes crossing Yosemite Ave at L, M and N Streets along this segment to get to and from school. The study also found that several street crossings along this segment do not meet adequate line of sight and stop sight distances. Reducing the speed to 35mph would improve both the line of sight distances and stop sight distance requirements.

Westberry Blvd. from Sunset Avenue to Riverview Drive - The proposed ordinance is reintroducing the declared prima facie speed limit at this street segment. The street segment was erroneously deleted from the list of streets with declared prima facie speed limits from the October 5, 2016 Amendment of Subsection B of Section 3-5.08 of Chapter 5 of Title III of the Madera Municipal Code. The proposed speed limit of 40 mph is 5 mph less than current speed limit posting of this segment. The speed reduction is due to the speed survey result conducted on March 10, 2016 that resulted on a 85<sup>th</sup> percentile of 42 mph.

The following table provides a summary of the proposed changes to the October 5, 2016 Ordinance:

Item No.	LOCATION	Declared Prima Facie Speed Limit (MPH)
1	Adell Street from Country Club to "D" Street	40
2	Almond Ave. from Pine Street to Granada Drive	45
3	Almond Ave. from Golden State Hwy to Madera Ave	40
4	Almond Ave. from Madera Ave. to Stadium Road	40
5	Cleveland Ave. from Gateway Drive to Tulare St	40
6	Cleveland Ave. from Granada Drive to Schnoor Ave.	40
7	Cleveland Ave from Granada Dr. to W. City Limits	45
8	Cleveland Ave. from Schnoor Ave. to Freeway 99	40
9	Cleveland Ave. from Tulare to Tozer Road	40
10	Clinton Ave. from Lilly St to Tozer Road	35
11	Country Club Drive from Cleveland Ave. to Clark	40
12	D Street from Central Ave. to Yosemite Ave.	35
13	D Street from Cleveland Ave. to Adell Street	40
14	D Street from Ninth Street to Olive Avenue	35

Item No.	LOCATION	Declared Prima Facie Speed Limit (MPH)
15	Ellis Street from Lake Street to Chapin Ave.	40
16	Fourth Street from I Street to Pine Street	35
17	Fourth Street from D Street to Lake Street	35
18	Gateway Drive from Cleveland Ave. to Avenue 16	50
19	Gateway Drive from Fresno River to Cleveland Ave.	40
20	Gateway Drive from Ninth Ave. to Olive Ave.	35
21	Granada Drive from Cleveland Ave. to Fresno River	45
22	Granada Drive from Howard Road to Sunset Ave.	35
23	Granada Drive from Howard Rd. to Industrial Ave.	40
24	Granada Drive from Industrial Ave. to South City Limits	45
25	Granada Drive from Sunset Ave. to Riverview Drive	35
26	Howard Road from Autumn Road to Pine Street	35
27	I Street from 4th Street to Olive Avenue	35
28	I Street from 4th Street to Central Avenue	35
29	Industrial Ave. from Granada Dr. to Schnoor Ave.	40
30	Kennedy Street from Lake Street to Tulare Ave.	35
31	Kennedy Street from Tulare Street to City Limits	40
32	<b>Knox Street from Olive Ave. to Tozer Street</b>	40
33	Lake Street from Cleveland Ave. to Ellis Street	40
34	Lake Street from Clinton Ave. to Sunrise Ave.	35
35	Pecan Ave. from Raymond Thomas to Golden State Blvd.	40
36	Pecan Ave. from Madera Ave. to Pine Street	45
37	Pecan Ave. from Schnoor Ave. to Pine Street	45
38	Pine Street from Howard Road to Pecan Street	45
39	Pine Street from Howard Road to Sunset Avenue	30
40	Schnoor Ave. from Dutra Way to Cleveland Ave.	35
41	Schnoor Ave. from Kennedy Street to Cleveland Ave.	40
42	Sherwood Way from Country Club Drive to Sonora Street	40
43	Sherwood Way from Sonora Street to Lake Street	35
44	Storey Road from Yosemite Ave. to City Limits	45
45	Sunrise Ave. from B Street to Lilly Street	40
46	Sunset Ave. from Fourth Street to Granada Drive	35
47	Sunset Ave. from Granada Drive to City Limits	45
48	Tozer Street from Avenue 15 to A Street	50
49	Tozer Street from Yosemite Ave. to Avenue 15	45
50	Tozer Street from Olive Ave. to Knox Street	45
51	Vineyard Ave. from Clinton Ave. to Yosemite Ave.	35
52	Westberry Blvd. from Howard Road to Sunset Avenue	45
53	<b>Westberry Blvd. from Sunset Avenue to Riverview Drive</b>	40
54	Yosemite Ave. from Gateway Drive to Pine Street	35

**FISCAL IMPACT:**

There is no direct impact to the City.

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

The speed limits are integral in creating a good traffic flow which minimizes traffic accidents. Safe, clean and attractive streets accommodate traffic, providing easy access to all parts of the City.



## ORDINANCE NO. \_\_\_\_\_

### AN ORDINANCE AMENDING SUBSECTION B OF SECTION 3-5.08 OF CHAPTER 5 OF TITLE III OF THE MADERA MUNICIPAL CODE RELATING TO THE ADJUSTMENT OF SPEED LIMITS IN CERTAIN ZONES

#### BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF MADERA AS FOLLOWS:

SECTION 1. Subsection (B) of Section 3-5.08 of Chapter 5 of Title III of the Madera Municipal Code is hereby deleted in its entirety and replaced as follows:

[

(B) Section 16. It is determined upon the basis of an engineering and traffic investigation that the speed permitted by state law upon the following streets is less than is necessary for the safe operation of vehicles thereon by reason of the designation and sign-posting of such streets as through highways and/or by reason of widely-spaced intersections, and it is declared that the prima facie limit shall be as set forth in this section on those streets, or parts of streets, designated in this section when signs are erected giving notice thereof:

Item No.	LOCATION	Declared Prima Facie Speed Limit (MPH)
1	Adell Street from Country Club to "D" Street	40
2	Almond Ave. from Pine Street to Granada Drive	45
3	Almond Ave. from Golden State Hwy to Madera Ave	40
4	Almond Ave. from Madera Ave. to Stadium Road	40
5	Cleveland Ave. from Gateway Drive to Tulare St	40
6	Cleveland Ave. from Granada Drive to Schnoor Ave.	40
7	Cleveland Ave from Granada Dr. to W. City Limits	45
8	Cleveland Ave. from Schnoor Ave. to Freeway 99	40
9	Cleveland Ave. from Tulare to Tozer Road	40
10	Clinton Ave. from Lilly St to Tozer Road	35
11	Country Club Drive from Cleveland Ave. to Clark	40
12	D Street from Central Ave. to Yosemite Ave.	35
13	D Street from Cleveland Ave. to Adell Street	40
14	D Street from Ninth Street to Olive Avenue	35
15	Ellis Street from Lake Street to Chapin Ave.	40
16	Fourth Street from I Street to Pine Street	35
17	Fourth Street from D Street to Lake Street	35
18	Gateway Drive from Cleveland Ave. to Avenue 16	50
19	Gateway Drive from Fresno River to Cleveland Ave.	40
20	Gateway Drive from Ninth Ave. to Olive Ave.	35
21	Granada Drive from Cleveland Ave. to Fresno River	45
22	Granada Drive from Howard Road to Sunset Ave.	35
23	Granada Drive from Howard Rd. to Industrial Ave.	40
24	Granada Drive from Industrial Ave. to South City Limits	45
25	Granada Drive from Sunset Ave. to Riverview Drive	35
26	Howard Road from Autumn Road to Pine Street	35
27	I Street from 4th Street to Olive Avenue	35
28	I Street from 4th Street to Central Avenue	35
29	Industrial Ave. from Granada Dr. to Schnoor Ave.	40
30	Kennedy Street from Lake Street to Tulare Ave.	35
31	Kennedy Street from Tulare Street to City Limits	40

Item No.	LOCATION	Declared Prima Facie Speed Limit (MPH)
32	Knox Street from Olive Ave. to Tozer Street	40
33	Lake Street from Cleveland Ave. to Ellis Street	40
34	Lake Street from Clinton Ave. to Sunrise Ave.	35
35	Pecan Ave. from Raymond Thomas to Golden State Blvd.	40
36	Pecan Ave. from Madera Ave. to Pine Street	45
37	Pecan Ave. from Schnoor Ave. to Pine Street	45
38	Pine Street from Howard Road to Pecan Street	45
39	Pine Street from Howard Road to Sunset Avenue	30
40	Schnoor Ave. from Dutra Way to Cleveland Ave.	35
41	Schnoor Ave. from Kennedy Street to Cleveland Ave.	40
42	Sherwood Way from Country Club Drive to Sonora Street	40
43	Sherwood Way from Sonora Street to Lake Street	35
44	Storey Road from Yosemite Ave. to City Limits	45
45	Sunrise Ave. from B Street to Lilly Street	40
46	Sunset Ave. from Fourth Street to Granada Drive	35
47	Sunset Ave. from Granada Drive to City Limits	45
48	Tozer Street from Avenue 15 to A Street	50
49	Tozer Street from Yosemite Ave. to Avenue 15	45
50	Tozer Street from Olive Ave. to Knox Street	45
51	Vineyard Ave. from Clinton Ave. to Yosemite Ave.	35
52	Westberry Blvd. from Howard Road to Sunset Avenue	45
53	Westberry Blvd. from Sunset Avenue to Riverview Drive	40
54	Yosemite Ave. from Gateway Drive to Pine Street	35

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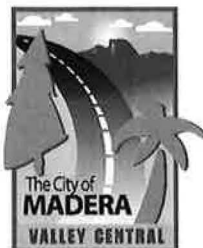
Section 2. If any section, subsection, clause or phase of this Ordinance is for any reason held to be unconstitutional or invalid for any reason, such decision shall not affect the validity of the remaining portions of this Ordinance. The City Council hereby declares that it would have passed this Ordinance and any section, subsection, sentence, clause or phrase thereof irrespective of the fact that any one or more sections, subsection, sentence, clause or phrase be declared unconstitutional or otherwise invalid.

Section 3. This Ordinance shall be effective and of full force and effect at 12:01 a.m. on the thirty-first day after its passage or when appropriate signs giving notice thereof are erected upon street and shall not thereafter be revised except upon the basis of an engineering and traffic survey, whichever occurs later.

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# REPORT TO THE CITY COUNCIL



**Return to Agenda**

COUNCIL MEETING OF:  
October 17, 2018

AGENDA ITEM NUMBER:  
C-3

Approved By:

  
\_\_\_\_\_  
Community Development Director

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

**SUBJECT:**     **Consideration of a Resolution Approving a Program Development Agreement Between the City of Madera and ENGIE Services U.S. Inc. for the Preparation of an Integrated Energy Assessment and Identification of Energy Conservation Measures**

## **RECOMMENDATION:**

Staff recommends that the City Council adopt a resolution approving a Program Development Agreement with ENGIE Services.

## **SUMMARY:**

The approval of a program development agreement with ENGIE Services is recommended. The agreement will allow ENGIE to perform a detailed assessment of approximately 50 City sites to identify opportunities for energy retrofits and energy conservation measures. After evaluating proposals from 3 firms to implement sustainable energy projects on behalf of the City, ENGIE Services was selected by staff to move towards a program development agreement. There is no cost to the City for the agreement, except to the extent the City eventually chooses to implement projects identified in the assessment without ENGIE. In that case, the City would reimburse ENGIE the amount of \$10,000 for a PG&E interconnection application fee the firm already agreed to pay.

## **DISCUSSION:**

Over the last several years, the City has periodically received proposals from energy service companies (ESCOs) to implement sustainable energy projects at various city facilities. Examples of such projects include the addition of solar panels, lighting retrofits, heating and air-conditioning changeouts, and electrical service upgrades. Beginning in the fall of 2017, the City was approached by 3 separate ESCOs at roughly the same time, each proposing to go through the initial assessment process to analyze a series of energy and/or cost saving projects on behalf of the City. The firms are ENGIE Services, Johnson Controls, and Schneider Electric. All three companies are established firms with strong reputations.

A formal competitive bidding process is not required for the type of work being considered. However, staff chose to take advantage of the timing and authorized each of the 3 firms to conduct independent evaluations of needs and opportunities at City facilities and then submit preliminary proposals based on their findings. A group comprised of the City Administrator, Community Development Director, Director of Financial Services, and Interim Public Works Director reviewed the preliminary proposals and conducted interviews with all three companies. The proposal from ENGIE Services was identified as being the most thorough and comprehensive in terms of identifying potential projects and their probable benefits.

With the approval of the recommended program development agreement, ENGIE will prepare a detailed assessment of approximately 50 City sites over the course of several weeks. The sites include buildings (City Hall, Fire Stations, Airport, etc.), wastewater treatment plant, water wells and sewer lift stations, ball park lighting, etc. The assessment will evaluate a variety of technologies including lighting, plant and equipment modifications, electrical infrastructure, solar, battery and energy storage, electrical vehicle charging, and diesel generators for backup power. After the completion of the assessment, the City and ENGIE will negotiate an energy services contract under which ENGIE would complete physical improvements and upgrades identified in the assessment. The approval of the program development agreement does not mandate that the City enter into a future energy services contract. However, the agreement prohibits the City from using ENGIE's assessment as the basis for any work to be completed by any other company.

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

Strategy #431- Develop a City plan to promote both governmental and citizen use of alternative sources of energy.

#### **FINANCIAL IMPACT:**

There is no cost to the City for the agreement, except to the extent the City eventually chooses to implement projects identified in the assessment without ENGIE. In that case, the City would reimburse ENGIE the amount of \$10,000 for a PG&E interconnection application fee the firm already agreed to pay.

Resolution No. \_\_\_\_\_

**RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MADERA APPROVING A  
PROGRAM DEVELOPMENT AGREEMENT WITH ENGIE SERVICES U.S. INC. AND  
AUTHORIZING THE MAYOR TO EXECUTE THE AGREEMENT ON BEHALF OF THE CITY**

Whereas, the City of Madera desires to evaluate opportunities to implement energy retrofits and energy conservation measures into City buildings and facilities in an effort to save money, use less energy, and improve the sustainability of its operations; and

Whereas, ENGIE Services U.S. Inc (ENGIE Services) is an Energy Services Company with considerable experience working with local agencies to implement energy retrofits and conservation measures throughout the San Joaquin Valley; and

Whereas, ENGIE Services has provided the City with an Energy Program Feasibility Study highlighting potential energy retrofits and conservation measures that the City and ENGIE can partner on, and ENGIE has presented the City with a program development agreement which will allow the preparation of a detailed assessment of approximately 50 City sites to identify and confirm opportunities for energy retrofits and energy conservation measures; and

Whereas, the City Council has reviewed the proposed program development agreement and has determined that it is in the City's best interest to proceed with the approval of the agreement.

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 Program Development Agreement Between the City of Madera and ENGIE Services U.S. Inc., a copy of which is on file with the office of the City Clerk, is hereby adopted.
3. The Mayor is authorized to execute the agreement on behalf of the City.
4. This resolution is effective immediately upon adoption.

\* \* \* \* \*



## PROGRAM DEVELOPMENT AGREEMENT

This PROGRAM DEVELOPMENT AGREEMENT (this "Agreement") is made and entered into as of this seventeenth (17th) day of October 2018, between ENGIE Services U.S. Inc. ("ENGIE Services U.S."), having its principal offices at 500 Twelfth Street, Suite 300, Oakland, CA 94607, and City of Madera, with offices located at 205 W. 4th Street, Madera, CA 93637 ("Madera") and together with ENGIE Services U.S. the "Parties" and each of Madera and ENGIE Services U.S. a "Party").

WHEREAS, ENGIE Services U.S. is an energy services and solutions company with the technical and management capabilities and experience to perform an integrated energy assessment (an "Assessment") and to identify supply-side and/or demand-side energy conservation measures ("ECMs");

WHEREAS, Madera desires to enter into an agreement to have ENGIE Services U.S. perform an Assessment in accordance with the scope of work set forth in Attachment A (the "Scope of Work") for the sites listed on Part I of Attachment B (the "Sites"), and to deliver recommendations, described in the Scope of Work, identifying energy improvements and operational changes to be installed or implemented at the Sites (the "Recommendations"); and

WHEREAS, the primary purpose of the Assessment and the Recommendations is to provide an engineering and economic basis for the implementation of the ECMs identified in the Recommendations, in furtherance of which the Parties intend to negotiate and execute a contract providing for, among other things, engineering, procurement, installation, construction and training services (an "Energy Services Contract");

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties agree as follows:

### 1. ASSESSMENT AND RECOMMENDATIONS

ENGIE Services U.S. agrees to complete the Assessment and to present Recommendations to Madera within ninety (90) calendar days after the date on which ENGIE Services U.S. receives the information listed in Part I of Attachment A (the "Required Information"). Madera agrees to deliver the Required Information to ENGIE Services U.S. no later than ten (10) calendar days after the date hereof.

Madera agrees to assist ENGIE Services U.S. in performing the Assessment by (i) providing ENGIE Services U.S. with access to key decision makers and stakeholders of City of Madera, (ii) providing ENGIE Services U.S. its employees and agents, such access to the Sites and other relevant facilities of Madera as ENGIE Services U.S. deems necessary and (iii) providing, or causing Madera's energy suppliers to provide, complete and accurate data concerning energy usage and costs related to the Sites and other relevant facilities. ENGIE Services U.S. will be entitled to rely upon the accuracy and completeness of all information provided to ENGIE Services U.S. by Madera and Madera's energy suppliers. ENGIE Services U.S. will promptly provide written notice to Madera if ENGIE Services U.S. determines there is any incorrect data included in the information provided by Madera or Madera's energy suppliers, but ENGIE Services U.S. will have no obligation to correct or confirm any such information unless otherwise specified in the Scope of Work. Any change(s) in the Scope of Work will be set forth in a writing executed by the Parties.

### 2. COMPENSATION TO ENGIE SERVICES U.S.

ENGIE Services U.S. will pay the interconnection application fee of Ten Thousand Dollars (\$10,000) to PG&E ("Interconnection Fee").

In the event that Madera proceeds with implementation of any of the ECMs in the Recommendations without the participation of ENGIE Services U.S., Madera shall reimburse the Interconnection Fee to ENGIE Services U.S. no later than thirty (30) calendar days after Madera commences implementation of the ECM(s).

Each of Madera and ENGIE Services U.S. reserves the right to terminate this Agreement at any time during the course of the Assessment, by delivery of written notice to the other.

Any amount not paid when due will, from and after the due date, bear interest at a fluctuating rate equal to the sum of (a) The United States Prime Rate as listed from time to time in the Eastern print edition of the Wall Street

Journa<sup>®</sup> plus (b) 2% per annum. Accrued and unpaid interest on past due amounts (including interest on past due interest) will be due and payable upon demand.

### 3. INSURANCE

ENGIE Services U.S. will maintain, or cause to be maintained, for the duration of this Agreement, the insurance coverage outlined in Attachment C hereto.

### 4. INDEPENDENT CONTRACTOR

ENGIE Services U.S., and the agents and employees of ENGIE Services U.S., its subcontractors and/or consultants, are acting in an independent capacity in the performance of this Agreement, and not as public officials, officers, employees, consultants, or agents of Madera or the State of California for purposes of conflict of interest laws or any other applicable law. This Agreement may not be construed to represent the creation of an employer/employee or principal/agent relationship. ENGIE Services U.S. will act in an independent capacity and retain sole discretion in the manner and means of carrying out its activities under this Agreement. ENGIE Services U.S. is free to work for other entities while under contract with Madera.

### 5. ENERGY SERVICES CONTRACT

As it is the intent of Madera and ENGIE Services U.S. to pursue cost effective energy retrofits and ECMs at the Sites pursuant to an Energy Services Contract, both Parties agree to enter into good faith negotiations of an Energy Services Contract immediately following completion of the Assessment.

### 6. WORK PRODUCT

Madera will not, by virtue of this Agreement, acquire any interest in any formulas, patterns, devices, secret inventions or processes, copyrights, patents, other intellectual or proprietary rights, or similar items of property which are or may be used in connection with the Assessment or the Recommendations. The Recommendations, and all data, proposals, plans, specifications, flow sheets, drawings, and other work product prepared or produced by ENGIE Services U.S. hereunder ("Work Product") and furnished directly or indirectly, in writing or otherwise, to Madera under this Agreement will remain ENGIE Services U.S.' property and will be used only in connection with work performed by ENGIE Services U.S. ENGIE Services U.S. will be deemed the author and owner of such Work Product and will retain all common law, statutory and other reserved rights, including copyrights. The Work Product may not be used by Madera as a basis for facility construction or implementation of ECMs developed herein by any entity other than ENGIE Services U.S., without the prior written agreement of ENGIE Services U.S. If ENGIE Services U.S. determines that Madera has violated this prohibition, ENGIE Services U.S. may, in its sole discretion, and in addition to injunctive relief or any other legal or equitable remedies ENGIE Services U.S. may have, require that Madera pay, in addition to the Interconnection Fee, liquidated damages in an amount equal to One Hundred Fifty Thousand Dollars (\$150,000). This liquidated damages amount is not a penalty but a reasonable estimate of the amount of losses ENGIE Services U.S. will suffer, and will survive the termination of this Agreement. Any unauthorized use of the Work Product will be at Madera's sole risk and without liability to ENGIE Services U.S., and Madera agrees to defend, indemnify and hold harmless, ENGIE Services U.S., its subcontractors, and their directors, employees, subcontractors, and agents from any and all actions, claims, demands, damages, disabilities, fines, penalties, losses, costs, expenses (including consultants' and attorneys' fees and other defense expenses) and liabilities of any nature (collectively, "Losses") associated with or resulting from such use.

### 7. LIMITATION OF LIABILITY

The liability of a defaulting Party, in connection with this Agreement or any analysis, report, recommendations, or other deliverables provided hereunder, will be limited to direct, actual damages. Neither Party shall be liable to the other Party for any special, indirect, incidental or consequential damages whatsoever, whether in contract, tort (including negligence) or strict liability, including, but not limited to, operational losses in the performance of business such as lost profits or revenues or any increase in operating expense. Additionally, each Party waives any claims for negligence against the other Party to the greatest extent permitted by law. In no event will ENGIE Services U.S. be liable to Madera for any Losses which collectively exceed the amount of the Assessment Fee, regardless of whether such amounts arise out of breach of contract, guarantee or warranty, tort, product liability, contribution, strict liability or any other legal theory.



## 8. NONDISCRIMINATION; COMPLIANCE WITH LAWS

ENGIE Services U.S. will comply with all applicable laws, rules, regulations and policies, including, but not limited to, those relating to nondiscrimination, accessibility and civil rights.

The Parties acknowledge and agree that ENGIE Services U.S. is not a municipal advisor and cannot give advice to Madera with respect to municipal securities or municipal financial products absent Madera being represented by, and relying upon the advice of, an independent registered municipal advisor. ENGIE Services U.S. is not subject to a fiduciary duty with regard to Madera or the provision of information to Madera. Madera will consult with an independent registered municipal advisor about the financing option(s) appropriate for Madera's situation.

ENGIE Services U.S. cannot guarantee that Madera will receive funding from any energy efficiency rebate, incentive, and/or loan program(s) (collectively, "Incentive Funds"); ENGIE Services U.S. expressly disclaims any liability for Madera's failure to receive any portion of the Incentive Funds, and Madera acknowledges and agrees that ENGIE Services U.S. will have no liability for any failure to receive all or any portion of the Incentive Funds.

## 9. FORCE MAJEURE

Neither Party will be considered to be in default in the performance of any material obligation under this Agreement (other than the obligation to make payments) when a failure of performance will be due to an event of Force Majeure. The term "Force Majeure" will mean any cause beyond the control of the affected Party and which by the exercise of due diligence such Party could not reasonably have been expected to avoid and which, despite using commercially reasonable efforts, it has been unable to overcome. Neither Party will be relieved of its obligation to perform if such failure is due to causes arising out of its own negligence or due to removable or remediable causes which it fails to remove or remedy within a reasonable time period. Either Party rendered unable to fulfill any of its obligations under this Agreement by reason of an event of Force Majeure will give prompt written notice of such fact to the other Party.

## 10. INTEGRATION; AMENDMENT; COUNTERPARTS

This Agreement constitutes the entire contract among the Parties relating to the subject matter hereof and supersedes any and all previous agreements and understandings, oral or written, relating to the subject matter hereof. This Agreement may not be amended except by a writing executed by both Parties. No oral amendment shall be enforceable, even if supported by new consideration. Except as otherwise provided herein, the terms and provisions of this Agreement will apply to, be binding upon, and inure to the benefit of the Parties hereto and their respective heirs, legal representatives, successors, and permitted assigns.

This Agreement may be executed in counterparts (and by different parties hereto in different counterparts), each of which shall constitute an original, but all of which when taken together shall constitute a single contract. Delivery of an executed counterpart of a signature page of this Agreement by email shall be effective as delivery of a manually executed counterpart of this Agreement.

## 11. DISPUTE RESOLUTION; APPLICABLE LAW; VENUE; SEVERABILITY

If a dispute arises out of or relates to this Agreement, or the transaction contemplated by this Agreement (a "Dispute"), either Party may initiate the dispute resolution process set forth in this Section 11 by giving notice to the other Party. Senior executives for the Parties will meet, within thirty (30) calendar days after notice of the Dispute, in an attempt to resolve the Dispute and any other identified disputes or any unresolved issues that may lead to a dispute. If the senior executives are unable to resolve a Dispute or if a senior management conference is not held within the time provided herein, either Party may submit the Dispute to mediation.

If the Dispute is not settled by senior management conference, the Parties will endeavor to settle the Dispute by mediation under the Commercial Mediation Procedures of the American Arbitration Association ("AAA"). Mediation is a condition precedent to arbitration or the institution of legal or equitable proceedings by either Party. Once one Party files a request for mediation with the other Party and with the American Arbitration Association, the Parties agree to conclude the mediation within sixty (60) calendar days after filing the request. Either Party may terminate the mediation at any time after the first session, but the decision to terminate must be delivered in person by the Party's representative to the other Party's representative and the mediator.

If the Dispute is not resolved by mediation within sixty (60) calendar days after the date of filing of the request for mediation, then the exclusive means to resolve the Dispute is final and binding arbitration. Either Party may initiate arbitration proceedings by notice to the other Party and the American Arbitration Association. The following provisions

apply to all arbitration proceedings pursuant to this Article: (i) The place of arbitration will be the American Arbitration Association office closest to where the Assessment was performed; (ii) one arbitrator will conduct the arbitral proceedings in accordance with the Commercial Arbitration Rules and Mediation Procedures (excluding the Procedures for Large, Complex Commercial Disputes) of the American Arbitration Association currently in effect ("Arbitration Rules") (to the extent of any conflicts between the Arbitration Rules and the provisions of this Agreement, the provisions of this Agreement prevail); (iii) the Parties will submit true copies of all documents considered relevant with their respective statement of claim or defense, and any counterclaim or reply (in the discretion of the arbitrator, the production of additional documents that are relevant and material to the determination of the Dispute may be required); (iv) the arbitrator does not have the power to award, and may not award, any punitive, indirect or consequential damages (however denominated); all arbitration fees and costs are to be shared equally by the parties, regardless of which Party prevails, and each Party will pay its own costs of legal representation and witness expenses; (v) the award must be in the form of a reasoned award; (vi) the Dispute will be resolved as quickly as possible, and the arbitrator will endeavor to issue the arbitration award within six (6) months after the date on which the arbitration proceedings were commenced; and (vii) the award will be final and binding and subject to confirmation and enforcement proceedings in any court of competent jurisdiction.

If any term of this Agreement is declared by a court to be illegal, invalid or unenforceable, the legality, validity and enforceability of the other terms of this Agreement will not be affected or impaired thereby, and the rights and obligations of the Parties will be enforced as if the illegal, invalid or unenforceable term were revised to the minimum extent necessary to make such term legal, valid and enforceable.

## 12. INDEMNITY

***Indemnity for Professional Liability:*** When the law establishes a professional standard of care for ENGIE Services U.S.'s services provided under this Agreement, to the fullest extent permitted by law, ENGIE Services U.S. shall indemnify, protect, defend, and hold harmless Madera and any and all of its officials, employees and agents from and against any and all losses, liabilities, damages, costs, and expenses, including legal counsel's fees and costs but only to the extent the ENGIE Services U.S. (and its subconsultants) are responsible for such damages, liabilities and costs on a comparative basis of fault between the ENGIE Services U.S. (and its subconsultants) and Madera in the performance of professional services under this Agreement. ENGIE Services U.S. shall not be obligated to defend or indemnify Madera for Madera'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, ENGIE Services U.S. shall indemnify, defend, and hold harmless Madera, 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 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 performance of this Agreement by ENGIE Services U.S. or by any individual or Agency for which ENGIE Services U.S. is legally liable, including, but not limited to, officers, agents, employees, or subcontractors of ENGIE Services U.S.; provided that ENGIE Services U.S. shall not be obligated to defend or indemnify Madera for the Agency's own sole negligence or willful misconduct.

*[the Parties' signatures appear on the following page]*

IN WITNESS WHEREOF, and intending to be legally bound, the Parties hereto subscribe their names to this Agreement.

**ENGIE SERVICES U.S.:**

**MADERA:**

**ENGIE Services U.S. Inc.**

**City of Madera**

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

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

**Print Name:** \_\_\_\_\_

**Print Name:** \_\_\_\_\_

**Title:** \_\_\_\_\_

**Title:** \_\_\_\_\_



## ATTACHMENT A

### SCOPE OF WORK

#### I. Required Documents (Needed to Proceed).

A. Madera will provide the following detailed documentation:

1. Most recent three (3) years of audited financial statements.
2. Actual utility company invoices for all utilities serving the Sites, for a minimum of two (2) years, and preferably three (3) years, immediately prior to the date hereof, with, beginning with the most recently completed month.
3. Utility company demand interval recordings of 15/30-minute electrical demand for characteristic months of the year, where available.
4. Record drawings (AutoCAD or hard copy) for the Sites, where available:
  - a. mechanical
  - b. plumbing
  - c. electrical
  - d. building automation and temperature controls
  - e. structural
  - f. architectural
  - g. modifications and remodels
  - h. site landscaping
5. AutoCAD or hard copy of 8 1/2" x 11" or 11" x 17" floor and roof plans of all Sites, as well as information on the age, type and condition of buildings and roofs, where available.
6. A list of key contacts at each Site, including Madera personnel knowledgeable of the electrical, HVAC, lighting and controls systems.
7. Energy management system and HVAC equipment operating schedules, point lists and sequences of operation.
8. Original construction submittals and factory data (specifications, pump curves, etc.), where available.
9. Test and balance reports for water and air systems, where available.

#### II. Scope of Work.

The Integrated Energy Assessment (the "Assessment") will be performed as described below:

A. Perform detailed review of documents delivered above.

B. Perform an inspection survey to:

1. Identify potential energy conservation measures ("ECMs") and opportunities for distributed and renewable generation technologies.
2. Identify the potential locations and type of application for solar photovoltaics (PV) and other ECM installations.
3. Interview the facility manager, chief engineer, or others as needed.
4. Identify comfort or system-function problems which may impact the performance of the recommended measures.
5. Identify "process" energy use, such as production equipment, computer rooms, printing plants, parking garages, etc.

6. Obtain the hours of operation for building systems and equipment and expected occupancy and use.
7. Survey major energy using equipment, and record (to extent available and needed) the pertinent information for the following:
  - a. Lighting
  - b. HVAC equipment
  - c. Controls and automation
  - d. Other (process, outdoor lighting, etc.)
  - e. Pumps
  - f. Compressors
  - g. Boilers
  - h. Heat exchangers
  - i. Fan coil units
8. Perform Site survey, consisting of:
  - a. Site walk
  - b. Shading analysis
- C. Perform Utility Analysis and Solar Photovoltaic Production Analysis:
  1. Identify current rate schedule, analyze electrical usage and model load profile for each Site
  2. Determine expected solar photovoltaic production curve for proposed Sites
  3. Overlay electrical load profile with expected solar photovoltaic production curve, to right-size the solar photovoltaic system(s) and identify rate restructuring opportunities.
- D. Analyze HVAC and electrical usage for each Site, where existing historical sub-meter data is available.
- E. To the extent deemed necessary by ENGIE Services U.S., prepare preliminary engineering for ECMs and renewable opportunities at the Sites, to include:
  1. A general scope of the construction work required for installation of work.
  2. Rough sizing of major equipment and a preliminary selection.
- F. Calculate energy use and cost for all viable ECMs and renewable generation technologies:
  1. For each ECM or renewable generation technology, calculate annual energy savings
  2. Calculation methodology will be determined by ENGIE Services U.S. and may include using modeling software such as Market Manager or Trace 700, or may involve spreadsheet analysis or other accepted, standard engineering procedures.
  3. Calculations will follow ASHRAE or other nationally recognized authority and will be based on sound engineering principle(s).
  4. Operational and maintenance savings, if any, will be identified as a separate line item.
- G. Prepare a preliminary measurement and verification plan, explaining how each ECM is to be measured and verified. This plan need only show intended methodologies but is not required to identify precise instrumentation and/or formulae intended for use. This plan should be carefully enough prepared so as not to materially conflict with the final measurement and verification plan to be prepared during final negotiations of, and incorporated into, the Energy Services Contract.
- H. Prepare a proposed "Project Cost" and a list of "Services to Be Provided," in anticipation of ENGIE Services U.S. and Madera entering into an Energy Services Contract to design, construct, install, and monitor the projects proposed in the Recommendations. Cost calculations will explicitly state that the Energy Services Contract must be promptly executed to avoid price increases and that hazardous substance or abnormal subsurface/soil condition issues must not be present.
- I. ENGIE Services U.S. will provide to Madera Recommendations which will include:
  1. A draft Energy Services Contract which will include the contract amount, scope of work, and payment schedule
  2. A scope of work for each ECM per Site which is compatible with Madera's investment and infrastructure improvement goals

3. A description of each recommended ECM and a table summarizing all recommended ECMs
4. An economic analysis for the aggregated Sites, including project costs, utility incentives, energy savings, renewable energy revenue, operation and maintenance savings and any other revenue or program contributions

**III. Technologies to be Considered:**

A. The technologies listed below will be considered during the performance of assessments:

1. Lighting
  - a. Lighting fixture retrofits
  - b. Lighting controls
  - c. Exterior and parking lot lighting
  - d. Solar street lighting
2. Plant/equipment modifications
  - a. Boiler upgrade/replacement
  - b. Chiller upgrade/replacement
  - c. Cooling tower upgrade/replacement
  - d. Package unit upgrade/replacement
  - e. Energy Management System (EMS) upgrades
  - f. Smart thermostats
  - g. Pump replacements/upgrades
  - h. Variable frequency drives (VFDs)
  - i. Aeration system upgrades
3. Electrical infrastructure modifications
  - a. Switchgear upgrade/replacement
  - b. Subpanel upgrade/replacement
  - c. Transformer upgrade/replacement
4. Solar Photovoltaics
5. Battery energy storage systems
6. Electric vehicle charging stations
7. Diesel generators for backup power

**ATTACHMENT B****SITE INVENTORY**

(all Sites – both included and excluded – must be listed)

**PART I: SITES INCLUDED IN ASSESSMENT**

Site Name	Address	Floor Area (square feet)
Adell St and Sonora St (Water Well #23)	ADELL & SONORA STS	NA
Barnett Way and Almond Ave (Water Well #21)	BARNETT WY S/O ALMOND	NA
City Hall	205 W 4th St, Madera, CA 93637	18,055
Fire Station #6	317 N Lake St, Madera, CA 93638	7,500
Fire Station #7	200 S Schnoor Ave, Madera, CA 93637	7,200
Frank Bergon Senior Center	238 S D St, Madera, CA 93638	4,166
Housing Authority - Kennedy St Housing	1034 E Kennedy St, Madera, CA 93638	2,000
Housing Authority Maintenance Department	600 S Lake St, Madera, CA 93638	9,600
Housing Authority Office	205 N G St, Madera, CA	6,800
Mace Center	131 Mace St, Madera, CA 93638	2,500
Madera Community Center (at Mountain Vista High School)	1901 Clinton St, Madera, CA	17,400
Madera Municipal Golf Course	23200 Avenue 17, Madera, CA 93637	TBD
Madera Municipal Swimming Pool (at Centennial Park)	221 Flume St, Madera, CA	TBD
Millview and Road 28 (Water Well #28)	MILLVIEW & RD 28	NA
Millview Park Lights	1910 Clinton St, Madera, CA	TBD
Municipal Airport	4020 Aviation Dr, Madera, CA	TBD
Municipal Airport - Admin Building	ADMINISTRATION BLDG, HWY 99 #2	3,100
Municipal Airport - Hangars 501	4020 Aviation Dr, Madera, CA	TBD
Municipal Airport - Main Electrical Vault	MAIN ELECTRICAL VAULT, AIRPORT	TBD
Pan American Community Center	703 Sherwood Way, Madera, CA	12,016
Parks & Community Service Department (Centennial Park)	701 E 5th St, Madera, CA	39,000
Police Station	330 S C St, Madera, CA 93638	17,249
Public Parking Lot - 6th St and South D St	6TH & D ST	NA
Public Works Main Building	1030 S Gateway Dr, Madera, CA 93637	16,540
Pump Station - Water Well #29	2400 RIVERVIEW DR	NA
Rotary Park – Skatepark	920 N Gateway Dr, Madera, CA 93637	NA
Sewer Lift Pump - Cleveland Ave at District Fairgrounds	CLEVL D AV AT FAIRGRNDS, FAIRGROUNDS	NA
Sewer Lift Pump 401	COLUMBIA & SOUTH ST	NA
Shop & Pump 150HP	AVE 12 600FT W/O HWY99	NA
Town & Country Park - Athletic Field Lighting	TOWN & COUNTRY PARK	NA
Town & Country Park - Ballpark Lights	2300 HOWARD RD, N/S OF INDUSTRIAL 600 FT W/O SCHNOOR	NA
Town & Country Park - Little League Baseball Lights	TOWN & COUNTRY PARK	NA
Town & Country Park (Water Well #30)	TOWN & COUNTRY PARK	NA
Transit Facility	123 N E St, Madera, CA 93638	767
Transit Facility - Suite 101	123 N E St #101, Madera, CA 93638	767
Transit Facility - Suite 102	123 N E St #102, Madera, CA 93638	767

Rev. Date: \_\_\_\_\_

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Waste Water Treatment Plant	13048 Road 21 1/2, Madera CA	20,000
Water Well #15	212 N Granada Dr, Madera, CA 93637	NA
Water Well #17	SOUTH D ST & OLIVE AVE	NA
Water Well #22	W 4TH & NO H ST	NA
Water Well #24	TULARE AVE & DAULTON, DAULTON STREETS	NA
Water Well #25	AVE 16 & GRANADA	NA
Water Well #29	2401 Riverview Dr, Madera, CA 93637	NA
Water Well #31	A STREET 660' W/O ROAD 28 - WELL # 31	NA
Water Well #32	3699 SUNSET AVE, WELL #32	NA
Water Well #33	1188 San Bruno Ave, Madera, CA 93637	NA
Water Well #34	800 S KNOX ST WELL 34	NA
Waterfall Pump - Town & Country Park	TOWN & COUNTRY PARK, HOWARD RD	NA
Westside Activity Center	108 S P St, Madera, CA	4,500
Safety Streetlighting	City Wide	NA

**PART II: SITES NOT INCLUDED IN ASSESSMENT**

Any site not specifically listed above.

## ATTACHMENT C

### INSURANCE REQUIREMENTS

Without limiting ENGIE Services U.S.'s indemnification of Madera, and prior to commencement of Work, ENGIE Services U.S. 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 Madera.

#### *Minimum Scope and Limits of Insurance*

ENGIE Services U.S. 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 Madera and its officers, officials, employees and agents shall be additional insureds under such policies.
- **\$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 ENGIE Services U.S. 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 Madera 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. ENGIE Services U.S. shall submit to Madera, along with the certificate of insurance, a Waiver of Subrogation endorsement in favor of Madera, its officers, agents, employees, and volunteers.
- **\$1,000,000 Professional Liability (Errors & Omissions)** per claim and in the aggregate. ENGIE Services U.S. 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 ENGIE Services U.S. 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 ENGIE Services U.S.'s bid.

#### *Maintenance of Coverage*

ENGIE Services U.S. 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 ENGIE Services U.S., its agents, representatives, employees, subcontractors or consultants as specified in this Agreement.

#### *Proof of Insurance*

ENGIE Services U.S. shall provide to Madera 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 Madera prior to commencement of performance. Current evidence of insurance shall be kept on file with Madera 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 Madera, its elected or appointed officers, agents, officials, employees, and volunteers, or shall specifically allow ENGIE Services U.S., or others providing insurance evidence in compliance with these specifications, to waive their right of recovery prior to a loss. ENGIE Services U.S. hereby waives its own right of recovery against Madera and shall require similar written express waivers and insurance clauses from each of its consultants or subcontractors.

*Enforcement of Contract Provisions (non estoppel)*

ENGIE Services U.S. acknowledges and agrees that any actual or alleged failure on the part of the Agency to inform ENGIE Services U.S. of non-compliance with any requirement imposes no additional obligations on Madera, 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 ENGIE Services U.S. maintains higher limits than the minimums required above, the entity shall be entitled to coverage at the higher limits maintained by ENGIE Services U.S..

*Notice of Cancellation*

ENGIE Services U.S. agrees to oblige its insurance agent or broker and insurers to provide to Madera 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 Madera. Madera 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 Madera's Risk Manager.

*Timely Notice of Claims*

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

*Additional Insurance*

ENGIE Services U.S. 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.





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## REPORT TO CITY COUNCIL

Approved By:

  
Department Director

Council Meeting of October 17, 2018  
Agenda Item Number C-4

  
City Administrator

**SUBJECT:** CONSIDERATION OF A RESOLUTION APPROVING THE AWARD OF CONTRACT FOR FIRE STATION NO. 58 FIRE STATION CONSTRUCTION NORTHWEST CITY PROJECT NO. FD-00002 IN THE AMOUNT OF \$6,568,364.60 TO DAVIS MORENO CONSTRUCTION, INC., AUTHORIZING CONSTRUCTION CONTINGENCIES OF UP TO 10% AND CONSTRUCTION INSPECTION AND MANAGEMENT OF UP TO 5%, AND AUTHORIZING THE MAYOR TO EXECUTE THE CONTRACT ON BEHALF OF THE CITY

CONSIDERATION OF A RESOLUTION APPROVING A CONTRACT WITH MOORE TWINING ASSOCIATES, INC., FOR ON-DEMAND TESTING SERVICES NOT TO EXCEED \$35,000 FOR FIRE STATION NO. 58 FIRE STATION CONSTRUCTION NORTHWEST CITY PROJECT NO. FD-00002, AND AUTHORIZING THE MAYOR TO EXECUTE THE CONTRACT ON BEHALF OF THE CITY

### **RECOMMENDATION:**

1. Adoption of a Resolution:
  - a. Approving the award of contract for Fire Station No. 58 Fire Station Construction Northwest City Project No. FD-00002 in the amount of \$6,568,364.60 to Davis Moreno Construction, Inc.
  - b. Authorizing Construction Contingencies of up to 10% as approved by the City Engineer.
  - c. Authorizing Contingencies of up to 5% for Construction Inspection and Management as approved by the City Engineer.
  - d. Authorizing the Mayor to execute the Agreement on behalf of the City
2. Adoption of a Resolution:
  - a. Approving On-Demand Testing Services Agreement with Moore Twining, Inc., not to exceed \$35,000 as approved by the Engineer.
  - b. Authorizing the Mayor to execute the Agreement on behalf of the City.

### **Engineering**

205 W. Fourth Street • Madera, CA 93637 • TEL (559) 661-5418 • FAX (559) 675-6605

[www.cityofmadera.ca.gov](http://www.cityofmadera.ca.gov)



## **SUMMARY:**

The low bid of \$6,568,364.60 received for the project is approximately 8.9 percent below the Engineer's Cost Estimate of \$7,370,000. The low bidder meets all the requirements necessary to be awarded the construction contract. The project funding is included in the current 2018/19 City budget.

## **DISCUSSION:**

The new Fire Station No. 58 consists of constructing a 9,020 square foot "Essential Services Facility" that will include 3 fire truck bays and can accommodate a hook and ladder fire truck. Included within the building is a reception area and station office, battalion chief, captain and firemen quarters, locker area, kitchen/dining area, turnout cleaning and storage area, IT and communications room. The new station will be fully energy efficient.

The new fire station will be fully landscaped, with ADA compliant sidewalks, parking areas for staff and visitors. A perimeter fence will be constructed including security features for the grounds and building.

The site work consists of constructing a fully paved high-strength PCC concrete entrance, perimeter access and exits for the 3-bay fire station. Sewer, water and storm drains connections to existing off-site infrastructure will be extended to service the fire station facility. Included with the Project is an emergency stand-by generator with a fueling enclosure.

The project includes utility installations for a gas main and appurtenances by City contractor from the PG&E gas meter installation location to the fire station, electrical conduits will be installed by City contractor from a new pole and transformer to be installed by PG&E to serve the fire station. The City contractor will also install AT&T conduit and appurtenances and Comcast conduit within a joint trench to serve the facility. PG&E will provide cabling/wiring to energize the new station and/or to activate their services. The PG&E Rule 16 cost for their portion of the installations is \$57,951.97. The remaining costs for extension of utilities by AT&T and Comcast is estimated at approximately \$35,000. Upon completion of their installations the final costs will be provided.

The City Engineering Division will provide Construction Management for the overall project and Construction Inspection for the site work. The City's Building Division will provide building inspections for compliance with the Building Code and Building Permit requirements.

RRM Design Group, Inc., the design architect will provide services during construction as required for completion of the project, the construction phase was included in their initial contract and approved by the City Council.

Materials testing, compaction testing, concrete testing including other testing as required in accordance with the specifications and building code will be performed by Moore Twining Associates, Inc. The testing will be performed on an on-demand basis as approved by the City Engineer at a cost not to exceed \$35,000. Moore Twining Associates Inc., was selected to provide a Geotechnical Engineering Investigation for the project and the project report is incorporated into the specifications.

## **SITUATION:**

The "Notice Inviting Bids" was duly noticed. Plans and specifications were distributed to various building exchanges and made available to contractors and sub-contractors. The plans and specifications were also posted on the City of Madera's website and EBidBoard.com, which is a project listing service for contractors.

On August 30, 2018, the City received the two bids listed below:

<b>BIDDERS NAME:</b>	<b>BID AMOUNT:</b>
1. Davis Moreno Construction, Inc.	\$6,568,364.60
2. DL Falk Construction Group, Inc.	\$6,918,000.00

Engineers Opinion of Project Cost..... \$7,370,000.00

All bids were checked for accuracy of the bid extensions and required bid documents were checked for compliance with requirements of the specifications. The validity of contracting licenses and bid security were also checked. It has been determined that Davis Moreno Construction, Inc. has submitted the lowest responsive and responsible bid that meets all the contract requirements.

## **FINANCIAL IMPACT:**

Construction and development costs for Fire Station No. 58 will come from Measure K revenues allocated to Fire Protection. Pursuant to a funding strategy previously identified by the Council, available cash will cover initial construction costs, followed by the issuance of a 30-year bond to cover remaining costs.

Costs for the facility are as follows:

### **CONSTRUCTION CONTRACT**

Low Bid Amount:	\$6,568,365
Contract Construction Contingency (10%):	656,836
Construction Inspection & Management (5%):	328,418
<u>QA Project Testing Services:</u>	<u>35,000</u>
Subtotal - Construction Contract Cost.....	\$7,588,619

### **OTHER MISCELLANEOUS DEVELOPMENT COSTS (ESTIMATED)**

Dry Utilities (ATT & PGE)	\$ 80,000
Equipment & Furnishings	250,000
Personnel Protective Equipment	50,000
Communications Equipment	175,000
<u>Contingency for Misc. Items (15%)</u>	<u>75,750</u>
Subtotal – Other Miscellaneous Costs	\$580,750

**Total Project Construction/Development Costs                      \$8,219,369**

Funding Sources for the Project are as follows:

Measure K Cash Receipts from Prior Years	\$1,300,000
Measure K Appropriation - 2018/19 FY Budget	2,100,000
Loan Against FY 19/10 Measure K Revenues	300,000

Loan Against FY 20/21 Measure K Revenues	300,000
Bond Proceeds - 30 Year Bond	4,219,369
<b>Total Project Funding – All Sources</b>	<b>\$8,219,369</b>

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

The 2025 Action Plan includes Strategy #421: Ensure the safety and protection of Madera and its community members through adequate first response to emergencies. Maintain sufficient resources to expand protection as the community grows.

**RESOLUTION NO. 18-\_\_**

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MADERA APPROVING THE AWARD OF CONTRACT FOR FIRE STATION NO. 58 FIRE STATION CONSTRUCTION NORTHWEST CITY PROJECT NO. FD-00002 IN THE AMOUNT OF \$6,568,364.60 TO DAVIS MORENO CONSTRUCTION, INC., AUTHORIZING CONSTRUCTION CONTINGENCIES OF UP TO 10% AND CONSTRUCTION INSPECTION AND MANAGEMENT OF UP TO 5%, AND AUTHORIZING THE MAYOR TO EXECUTE THE CONTRACT ON BEHALF OF THE CITY**

**WHEREAS**, The Engineering Department advertised a solicitation for bids for the Fire Station No. 58 Fire Station Construction Northwest City Project No. FD-00002, and

**WHEREAS**, Sealed bids were received and opened by the City Engineer; and

**WHEREAS**, Funding for project construction is programmed in the City's FY 2018/19 Budget, and

**WHEREAS**, On July 31, 2017, a Negative Declaration Determination was approved for the project pursuant to the provisions of the California Environmental Quality Act (CEQA).  
The project will not have a significant effect on the environment.

**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 has reviewed and considered all information presented including the report to the City Council from the Engineering Department.
3. The City finds that Davis Moreno Construction, Inc., is the lowest responsible and responsive bidder.
4. The Agreement for the Fire Station No. 58 Fire Station Construction Northwest City Project No. FD-00002, a copy of which is on file in the office of the City Clerk and which is referred to for more particulars, is hereby approved.
5. Construction Contingencies of up to 10% of the Agreement amount as approved by the City Engineer are hereby authorized.
6. Construction Inspection and Management contingencies of up to 5% of the Agreement amount as approved by the City Engineer are hereby authorized.
7. The Mayor is authorized to execute the Agreement on behalf of the City.
8. This Resolution is effective immediately upon adoption.

\* \* \* \* \*

**RESOLUTION NO. 18-\_\_**

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MADERA, CALIFORNIA, APPROVING A CONTRACT WITH MOORE TWINING & ASSOCIATES, INC., FOR ON-DEMAND TESTING SERVICES NOT TO EXCEED \$35,000 FOR THE FIRE STATION NO. 58 FIRE STATION CONSTRUCTION NORTHWEST CITY PROJECT NO. FD-00002, AND AUTHORIZING THE MAYOR TO EXECUTE THE CONTRACT ON BEHALF OF THE CITY**

**WHEREAS**, The City of Madera is undertaking construction of the new Fire Station No. 58 Fire Station Construction Northwest City Project No. FD-00002, and

**WHEREAS**, The Engineering Department selected Moore Twining Associates, Inc., to provide Professional Geotechnical Services for the Fire Station No. 58 Fire Station Construction Northwest City Project No. FD-00002, and

**WHEREAS**, Moore Twining Associates, Inc., has provided a Geotechnical Engineering Investigation report for the Fire Station No. 58 Fire Station Construction Northwest City Project No. FD00002 site that is incorporated in the specifications; and

**WHEREAS**, Moore Twining Associates, Inc., shall provide Professional On-Demand Materials Testing Services for the Fire Station No. 58 Fire Station Construction Northwest City Project No. FD-00002, and

**WHEREAS**, Funding for project construction is programmed in the City's FY 2018/19 Budget, and

**WHEREAS**, the City Engineer has prepared an agreement for such services with Moore Twining Associates, Inc. that is on file in the office of the City Clerk of the City of Madera and the "Agreement" is referred to for more particulars.

**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 has reviewed and considered all information presented including the report to the City Council from the Engineering Department.
3. The Agreement with Moore Twining Associates, Inc., for On-Demand Testing Services, a copy of which is on file in the office of the City Clerk and referred to for particulars, is approved in an amount not to exceed \$35,000
4. The Mayor is authorized to execute the Agreement on behalf of the City.
5. This Resolution is effective immediately upon adoption.

\* \* \* \* \*

## AGREEMENT

**THIS AGREEMENT**, made this 17th day of October, 2018, between the City of Madera, hereinafter called "**OWNER**", and Davis Moreno Construction, 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 "**CITY OF MADERA FIRE STATION NO. 58 - FIRE STATION CONSTRUCTION NORTHWEST, CITY PROJECT NO. FD-00002**"

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 \$6,568,364.60, 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 "**CITY OF MADERA, FIRE STATION NO. 58 - FIRE STATION CONSTRUCTION NORTHWEST, CITY PROJECT NO. FD-00002 [PROJECT NAME]**" dated JULY 2018.

Addenda Nos. 1, dated 08/21/18  
Addenda Nos. 2, dated 08/23/18  
Addenda Nos. 3, dated 08/28/18  
Addenda Nos. 4, dated 08/29/18

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 **One Thousand Dollars (\$1,000.00)** 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.

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 I, Part 7, Division 2 (commencing with Section 1860) and Chapter 4, Part I, 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 I, 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 I, 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 CONTRACTORS WITH CONSTRUCTION RISK**", pages **35-37** of the Contract Documents.

19. Amendments- Any changes to this Agreement requested by either City or **Davis Moreno Construction, 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, **Davis Moreno Construction, 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 **Davis Moreno Construction, Inc.**;
2. A failure by **Davis Moreno Construction, Inc.** to comply with any material term of this Agreement;
3. A substantially incorrect or incomplete report submitted by **Davis Moreno Construction, Inc.** to City.

In no event shall any payment by City or acceptance by **Davis Moreno Construction, 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 **Davis Moreno Construction, Inc.** the repayment to City of any funds disbursed to **Davis Moreno Construction, 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  
205 W. 4<sup>th</sup> Street  
Madera, Ca 93637

To the Contractor **Davis Moreno Construction, Inc.**  
4720 North Blythe Avenue  
Fresno, CA 93722

Notices. All notices and communications from the **Davis Moreno Construction, 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 **Davis Moreno Construction, 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 **Davis Moreno Construction, 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 **Davis Moreno Construction, Inc.** in connection to the Project and correctly sets forth the obligations of the City and **Davis Moreno Construction, 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 **Davis Moreno Construction, 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: \_\_\_\_\_  
Andrew J. Medellin, Mayor

APPROVE AS TO FORM:

\_\_\_\_\_  
J. Brent Richardson, City Attorney

ATTEST:

\_\_\_\_\_  
Sonia Alvarez, City Clerk

BY: \_\_\_\_\_  
Herein Called CONTRACTOR

BY: \_\_\_\_\_

\_\_\_\_\_  
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 \_\_\_\_\_, 2018 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)



## INSURANCE REQUIREMENTS FOR CONTRACTORS WITH CONSTRUCTION RISK

Without limiting Contractor's indemnification of City, and prior to commencement of Work, Contractor 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.

### *Minimum Scope and Limits of Insurance*

Contractor shall maintain limits no less than:

- **\$5,000,000 General Liability** (including operations, products and completed operations) per occurrence, \$10,000,000 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 and CG 20 37 to provide that the City and its officers, officials, employees and agents shall be additional insureds under such policies. The additional insured coverage under the Contractor's policy shall be primary and non-contributory and will not seek contribution from the City's insurance or self-insurance and shall be at least as broad as CG 20 01 04 13.
- **\$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 Contractor 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. Contractor 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.
- **Builder's Risk (Course of Construction)** insurance covering all risks of loss less policy exclusions equivalent to the completed value of the project with no coinsurance penalty provisions. Contractor may submit evidence of Builder's Risk insurance as evidence of course of construction coverage. Termination of coverage shall not occur prior to full completion of the applicable project. The City of Madera, its officers, officials, employees and agents shall be named as loss payee. Policy must include: (1) coverage for any ensuing loss from faulty workmanship, Nonconforming Work, omission, or deficiency in design or specifications; (2) coverage against machinery accidents and operational testing; (3) coverage for removal of debris, and insuring the buildings, structures, machinery, equipment, materials, facilities, fixtures, and all other properties constituting a part of the Project; (4) transit coverage, including ocean marine coverage (unless insured by the supplier), with sub-limits sufficient to insure the full replacement value of any key equipment item; and (5) coverage with sub-limits sufficient to insure the full replacement value of any property or equipment stored either on or off the Site. Such insurance shall be on a form acceptable to City to ensure adequacy of terms and sub-limits.
- **\$1,000,000 Professional Liability** for design/build, if applicable.
- Performance Bond, Payment Bond and Subdivision/Completion Bond for 100% of the contract price.



#### *Maintenance of Coverage*

Contractor 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 Contractor, his agents, representatives, employees, subcontractors or subconsultants as specified in this Agreement.

#### *Proof of Insurance*

Contractor shall provide to the City certificates of insurance and endorsements, as required, as evidence of the insurance coverage required herein. 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. City 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 Contractor, or others providing insurance evidence in compliance with these specifications, to waive their right of recovery prior to a loss. Contractor 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)*

Contractor acknowledges and agrees that any actual or alleged failure on the part of the Agency to inform Contractor 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 Contractor maintains higher limits than the minimums required above, the entity shall be entitled to coverage at the higher limits maintained by Contractor.

#### *Notice of Cancellation*

Contractor 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*

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

*Additional Insurance*

Contractor 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.

## **HOLD HARMLESS AND INDEMNIFICATION AGREEMENT**

Contractor shall indemnify, defend and hold harmless, City of Madera, And its officers, officials, employees and agents of the above from and against all claims, damages, losses and expenses including attorney fees arising out of the performance of the work described herein, caused in whole or in part by any negligent act or omission of the Contractor, any subcontractor, anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable, except where caused by the active negligence, sole negligence, or willful misconduct of the Entity.

## PAYMENT BOND

KNOW ALL MEN BY THESE PRESENTS: that

\_\_\_\_\_  
(Name of Contractor)

\_\_\_\_\_  
(Address of Contractor)

a \_\_\_\_\_, hereinafter called Principal,  
(Corporation, Partnership or Individual)

\_\_\_\_\_  
(Name of Surety)

\_\_\_\_\_  
(Address of Surety)

hereinafter call Surety, are held and firmly bound unto

\_\_\_\_\_  
City of Madera  
(Name of Owner)

\_\_\_\_\_  
205 West 4<sup>th</sup> Street, Madera CA 93637  
(Address of Owner)

hereinafter called OWNER, in the penal sum of \_\_\_\_\_  
Dollars, (\$\_\_\_\_\_) in lawful money of the United States, for the payment of which sum well and truly made,  
we bind ourselves, successors, and assigns, jointly and severally, firmly by these presents, and also by the  
provisions of Part 2, Title 14, Chapter 2 of the California Code of Civil Procedure (Section 995.010, et seq.)  
and of Section 3247, et seq. of the California Civil Code.

THE CONDITION OF THIS OBLIGATION is such that whereas, the Principal entered into a certain contract  
with the Owner, dated the \_\_\_\_ day of \_\_\_\_, 2018 a copy of which is hereto attached and made a part hereof  
for the construction of:

**"CITY OF MADERA FIRE STATION NO. 58 - FIRE STATION CONSTRUCTION  
NORTHWEST, CITY PROJECT NO. FD-00002"**

NOW, THEREFORE, if the Principal and all subcontractors shall promptly make payment to all mechanics,  
material men, contractors, subcontractors, lessors of equipment, artisans, architects, registered engineers,  
licensed land surveyors, machinists, builders, teamsters and laymen and all persons and laborers of every  
class performing labor upon or bestowing skill or necessary services on or furnishing materials or leasing  
equipment to be used or consumed in or furnishing appliances, teams or power contributing to the work  
described in the above mentioned contract, and to any other persons named in Section 3181 of the  
California Civil Code, and of amounts due under the Employment Insurance Code with respect to work or  
labor performed under the contract, or for any amounts required to be deducted, withheld and paid over the  
Employment Development Department from the wages of employees of the contractor and subcontractors  
pursuant to Section 13020 of the Unemployment Insurance code, with respect to such work and labor, then  
this obligation shall be null and void: otherwise it shall remain in full force and effect.

PROVIDED FURTHER, that this obligation shall inure to the benefit of all persons named in Section 3181  
of the California Civil code, and all such claimants and their assigns shall have a right of action in any suit  
brought upon this bond.

PROVIDED FURTHER, that no suit, action or other proceeding to recover on this bond shall be maintained unless commenced within six (6) months from the completion of the work described in the above mentioned contract, as "completion" is defined in Section 3086 of the California Civil Code.

PROVIDED FURTHER, that the said Surety, for value received hereby stipulates and agrees that no change, extension of time, alteration or addition to the terms of the contract of accompanying the same shall in any way affect its obligation on this Bond, and it does hereby waive notice of any such change, extension of time, alteration or addition to the terms of the contract or to the work or to the specifications.

PROVIDED FURTHER, that no final settlement between the Owner and the Contractor shall abridge the right of any beneficiary hereunder, whose claim may be unsatisfied.

IN WITNESS WHEREOF, this instrument is executed in THREE counterparts, each one of which shall be deemed an original, this the \_\_\_\_\_ day of \_\_\_\_\_, 2018.

ATTEST:

\_\_\_\_\_  
Principal

BY: \_\_\_\_\_(s)

\_\_\_\_\_  
(Principal) Secretary

(Seal)

\_\_\_\_\_  
(Witness as to Principal)

\_\_\_\_\_  
(Address)

ATTEST:

\_\_\_\_\_  
(Surety) Secretary

\_\_\_\_\_  
(Surety)

(SEAL)

\_\_\_\_\_  
Witness as to Surety

BY: \_\_\_\_\_  
Attorney in Fact

\_\_\_\_\_  
(Address)

\_\_\_\_\_  
(Address)

NOTE: Date of Bond must not be prior to date of Contract. If Contractor is Partnership, all partners should execute Bond.

**PERFORMANCE BOND**

KNOW ALL MEN BY THESE PRESENTS: that

\_\_\_\_\_  
(Name of Contractor)

\_\_\_\_\_  
(Address of Contractor)

a \_\_\_\_\_, hereinafter called Principal,  
(Corporation, Partnership or Individual)

\_\_\_\_\_  
(Name of Surety)

\_\_\_\_\_  
(Address of Surety)

hereinafter call Surety, are held and firmly bound unto

City of Madera  
(Name of Owner)

205 West 4<sup>th</sup> Street, Madera CA 93637  
(Address of Owner)

hereinafter called OWNER, in the penal sum of \_\_\_\_\_ Dollars, (\$  
) in lawful money of the United States, for the payment of which sum well and truly made, we bind ourselves, successors, and assigns, jointly and severally, firmly by these presents.

THE CONDITION OF THIS OBLIGATION is such that whereas, the Principal entered into a certain contract with the Owner, dated the \_\_\_\_ day of \_\_\_\_\_, 2018 a copy of which is hereto attached and made a part hereof for the construction of:

**"CITY OF MADERA FIRE STATION NO. 58 - FIRE STATION CONSTRUCTION  
NORTHWEST, CITY PROJECT NO. FD-00002"**

NOW, THEREFORE, if the Principal shall well, truly and faithfully perform its duties, all the undertakings, covenants, terms, conditions, and agreements of said Contract during the original term thereof, and any extensions thereof which may be granted by the Owner, with or without notice to the surety and during the one year guaranty period, and if he shall satisfy all claims and demands incurred under such Contract, and shall fully indemnify and save harmless the Owner from all costs and damages which it may suffer by reason of failure to do so, and shall reimburse and repay the Owner all outlay and expense which the Owner may incur in making good any default, then this obligation shall be null and void: otherwise it shall remain in full force and effect.

PROVIDED FURTHER, that the said Surety, for value received hereby stipulates and agrees that no change, extension of time, alteration or addition to the terms of the contract or to work to be performed thereunder or the specifications accompanying the same shall in any way affect its obligation on this Bond, and it does hereby waive notice of any such change, extension of time, alteration or addition to the terms of the contract or to the work or to the specifications.

PROVIDED FURTHER, that no final settlement between the Owner and the Contractor shall abridge the right of any beneficiary hereunder, whose claim may be unsatisfied.

IN WITNESS WHEREOF, this instrument is executed in THREE counterparts, each one of which shall be deemed an original, this the \_\_\_\_\_ day \_\_\_\_\_ 2018.

ATTEST: \_\_\_\_\_  
Principal

BY: \_\_\_\_\_(s) \_\_\_\_\_  
(Principal) Secretary

(Seal)

\_\_\_\_\_  
(Witness as to Principal) (Address)

ATTEST:

\_\_\_\_\_  
(Surety) Secretary (Surety)

(SEAL)

\_\_\_\_\_  
Witness as to Surety BY: \_\_\_\_\_  
Attorney in Fact

\_\_\_\_\_  
(Address) (Address)

\_\_\_\_\_  
NOTE: Date of Bond must not be prior to date of Contract. If Contractor is Partnership, all partners should execute Bond.

**AGREEMENT FOR PROFESSIONAL ON-DEMAND SERVICES FOR MATERIALS TESTING SERVICES FOR FIRE STATION NO. 58, CITY PROJECT NO. FD-00002**

This Agreement made and entered into this 17th day of October 2018 between the City of Madera, a municipal corporation of the State of California, hereinafter called "CITY", and Moore Twining Associates, Inc., hereinafter called "ENGINEER".

**WITNESSETH**

**WHEREAS**, CITY plans to construct the Fire Station No. 58, City Project No. FD-00002, hereinafter called "the Project"; and

**WHEREAS**, CITY needs the services of the ENGINEER, for the Materials Testing Services of sewer, water and storm drain pipeline systems, roadway/PCC construction and undergrounding of PG&E, AT&T and Comcast utilities to provide services to the new Fire Station No., also to provide compaction and materials testing as specified for construction of the Fire Station No. 58, construction of the Building in accordance with the Uniform Building Code; and

**WHEREAS**, ENGINEER is qualified and licensed to provide the required professional quality assurance and acceptance testing services required by Caltrans and CITY desires to hire ENGINEER for such purposes.

**NOW THEREFORE:**

The parties hereto mutually agree as follows:

**1. SERVICES OF ENGINEER:**

CITY hereby hires ENGINEER to provide on-demand quality assurances and acceptance testing services for construction of sewer, water and storm drain pipeline systems, roadway/PCC construction and undergrounding of PG&E, AT&T and Comcast utilities to provide services to the new Fire Station No. 58 to support CITY as set forth herein in connection with the Project. Said work to be performed pursuant to this agreement is more particularly described in Section 2 – Scope of Work.

**2. SCOPE OF WORK:**

ENGINEER shall provide the professional on-demand quality assurance and acceptance testing services for quality control management of bridge construction and roadway materials set forth in EXHIBIT A – FEE SCHEDULE and EXHIBIT B – ON\_DEMAND QUALITY ASSURANCES AND ACCEPTANCE TESTING SERVICES, attached hereto and incorporated herein by reference. ENGINEER shall comply with all Caltrans and City of Madera construction engineering and inspection standards and requirements.



### **3. RESPONSIBILITIES:**

The City Engineer shall be the Responsible Engineer in charge of the Project. The ENGINEER shall report to the City's Construction Manager/Resident Engineer for the Project or other construction managers as designated by the CITY. The ENGINEER'S responsibility will only be related to the quality assurance and acceptance testing services of bridge construction and roadway materials for the Project.

### **4. COMPENSATION:**

The ENGINEER shall be reimbursed for actual costs based on hourly billing rates that include labor wages, employee benefits, overhead and net fee/profit and be reimbursed for direct costs for supplies, travel/mileage and printing reports and for actual materials testing lab cost for the total estimated amount of Thirty-five Thousand Dollars (\$35,000). The reimbursement for actual costs shall be paid at the hourly billing rates and itemized rates set forth in the ENGINEER'S FEE SCHEDULE, EXHIBIT "A" – attached here to and incorporated herein by reference.

CITY and ENGINEER agree that the hourly rates in EXHIBIT "A" shall remain in full force and effect through December 31, 2019. It is understood and agreed by both parties that all expenses incidental to ENGINEER'S performance of services and deliverables to be reimbursed are included in Other Direct Costs listed in the Cost Proposal. There shall be no compensation for any type of equipment purchase.

CITY and ENGINEER mutually agree that the on-demand quality assurance and acceptance testing services may change due to the contractor's schedule and selection of vendors and differing conditions encountered during construction. Therefore, the final compensation may be more or less than the ENGINEER'S estimated cost. However, the ENGINEER shall not be entitled to compensation for any expenses exceeding \$35,000 unless the parties enter into an approved amendment to this agreement which provides for such compensation.

### **5. COST PRINCIPLES AND PAYMENT:**

Allowable elements of cost shall comply with the Cost Principles and Procedures, 48 CFR, Federal Acquisition Regulations System, Chapter 1, Part 31 et seq. Also, compliance with the administrative requirements set forth in 49 CFR, Part 18, Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments is required.

Payments for all undisputed portions of each invoice as provided for hereunder shall be made within 30 days of receipt and approval of ENGINEER'S monthly invoices for the work performed as specified herein. ENGINEER'S invoice shall specify the billed hours and hourly rates for each employee classification. A 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.

The Cost Proposal is subject to an audit or Certified Public Account (CPA) Indirect Cost (Overhead) Audit Work Review. The Cost Proposal shall be adjusted by the ENGINEER and approved by the CITY to conform to the Workpaper Review recommendations or audit recommendations. The ENGINEER agrees that the individual terms of cost identified in the audit report shall be incorporated into the Agreement by this reference if directed by the CITY at its sole discretion. Refusal by the ENGINEER to incorporate the Workpaper Review recommendations or audit recommendations will be considered a breach of the Agreement terms and cause for termination of the Agreement.

Progress payments will be made monthly in arrears based on services provided and allowable incurred costs including the fixed fee percentage. If ENGINEER fails to submit the required deliverables specified in the Scope of Services, CITY shall have the right to delay payment and/or terminate this Agreement in accordance with the provisions of this Agreement.

ENGINEER shall submit invoices no later than 45 calendar days after the performance of work for which ENGINEER is billing. Invoices shall follow the format included in the ENGINEER'S cost proposal. Invoices shall include a detail of ENGINEER'S services related to the tasks listed in the Contractor's schedule. The final invoice shall be submitted within 60 days of the CITY'S acceptance of the Project. Invoices shall be mailed to the address listed in Section 25 of this Agreement.

#### **6. EXTRA SERVICES:**

Extra services not contemplated hereunder as set forth in this Agreement or for such services beyond the control of the CITY or ENGINEER as may be specifically requested by CITY or ENGINEER through the City Engineer in writing. Extra services shall be mutually agreed to and ENGINEER shall be compensated at the hourly rates in EXHIBIT "A", provided however, the City Engineer's authority is limited to expenditures not to exceed an additional amount of \$3,500.

#### **7. DOCUMENTATION & DELIVERABLES:**

ENGINEER shall provide to the City's Resident Engineer the appropriate documentation in a format specified in the Caltrans Construction Manual, of the work to be inspected and approved to the Resident Engineer. Such documentation and reports shall be consistent with the Caltrans Construction Manual and provided in a timely manner for the task at hand and per the contract documents.

Upon Completion and acceptance of the project by the CITY, ENGINEER shall deliver the original documents, files, records, drawings, final reports required by Caltrans and other documents prepared for the project.

#### **8. AUDITS AND INSPECTIONS ACCESS:**

For the purpose of determining compliance with Public Contract Code 10115, et seq. and Title 21, California Code of Regulations, Chapter 21, Section 2500 et seq., when applicable and other

matters connected with the performance of this Agreement pursuant to Government Code 8546.7; the CITY and ENGINEER shall maintain all books, documents, papers, accounting records, and other evidence pertaining to the performance of this Agreement, including but not limited to, the costs of administering this Agreement.

ENGINEER 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. ENGINEER 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. ENGINEER shall retain all of these documents for a period of three (3) years after final payment to ENGINEER.

## **9. INSURANCE REQUIREMENTS FOR CONSULTANTS**

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.

### *Minimum Scope and Limits of Insurance*

Consultant shall maintain limits no less than:

- **\$1,000,000 General Liability** (including operations, products and completed operations) per occurrence, \$2,000,000 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.
- **\$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.
- **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.

### **10. OWNERSHIP OF DOCUMENTS:**

The responsible Professional Engineer shall sign and date all construction materials inspection documents and reports and other engineering reports furnished by ENGINEER and, where appropriate, indicate their registration number. The documents shall be prepared in a format consistent with the Caltrans Construction Manual.

If the Agreement is terminated at any time, the ENGINEER shall submit all project related documents, deliverables and correspondence whether in complete form, draft form or in progress. These items will become the sole property of the CITY which may use them to complete the Project.

Upon completion and acceptance of the Project, all documents required in performing services under this Agreement shall, be submitted to, and remain the sole property of CITY.

Reuse or modifications of documents for any purpose other than as intended under this Agreement shall be at CITY'S sole risk and without liability to ENGINEER. CITY shall indemnify, defend and hold harmless ENGINEER for any claims, loss, cost or damages arising out of, pertain to, or relate to such reuse or modification, including use of incomplete documents.

### **11. CONFIDENTIALITY OF DATA:**

All financial, statistical, personal, technical, or other data and information relative to the CITY'S operations, which are designated confidential by the CITY and made available to the

ENGINEER, in order to carry out this Agreement, shall be protected by the ENGINEER from unauthorized use and disclosure. Permission to disclose information on one occasion, or public hearing held by the CITY relating to this Agreement, shall not authorize the ENGINEER to further disclose such information or disseminate the same on any other occasion.

The ENGINEER shall not comment publicly to the press or any other media regarding this Agreement or the CITY'S actions on the same, except to the CITY'S staff, ENGINEER'S own personnel involved in the performance of the Agreement, at public hearings or in response to questions from a Legislative committee. The ENGINEER shall not issue any news release or public relations item of any nature, whatsoever, regarding work performed or to be performed under this Agreement without prior review of the contents thereof by the CITY, and receipt of the CITY'S written permission.

#### **12. TIME OF COMPLETION:**

Based on the contractor's construction schedule, ENGINEER'S quality control and testing services should be completed by December 31, 2019. The final task will be the submittal of documents for the Final Report. This agreement may be extended by mutual written agreement.

#### **13. TERMINATION OF AGREEMENT:**

A. This agreement may be terminated at any time by either party upon thirty (30) calendar days written notice. In the event the Agreement is terminated by either party, ENGINEER 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 Engineer 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:

1. An illegal use of funds by ENGINEER;
2. A failure by ENGINEER to comply with any material term of this Agreement;
3. A substantially incorrect or incomplete report submitted by ENGINEER to CITY.

In no event shall any payment by CITY or acceptance by ENGINEER 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 ENGINEER the repayment to CITY of any funds disbursed to ENGINEER under this Agreement which, as determined by the appropriate court or arbitrator, were not expended in accordance with the terms of this Agreement.

#### **14. APPROVAL:**



CITY will give reasonably prompt consideration to all matters submitted by ENGINEER for approval to the end that there will be no significant delays in ENGINEER'S program of work. An approval, authorization or request to ENGINEER 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.

**15. HOLD HARMLESS:**

ENGINEER shall defend and indemnify the CITY, its officers, officials, employees and designated volunteers for claims that arise out of, pertain to, or relate to the negligence, recklessness, or willful misconduct of the ENGINEER, its officers, subconsultants, agents, employees or contractors, in performing or failing to perform any work, services or functions under this Agreement.

**16. RESPONSIBILITY FOR OTHERS:**

ENGINEER shall be responsible to CITY for its services and the services of its subconsultants. ENGINEER shall not be responsible for the acts or omissions of the CITY or 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:**

ENGINEER shall be obligated to comply with applicable standards of professional care in the performance of the Construction Engineering Services. Engineer 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, ENGINEER, and their successors in interest, legal representatives, executors, administrators and permitted assigns with respect to all covenants as set forth herein. ENGINEER 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 ENGINEER under this Agreement, it is mutually understood and agreed that ENGINEER, including any and all of ENGINEER'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, fiduciary, partner or associate of CITY. Furthermore, CITY shall have no right to control or supervise or direct the manner or method by which ENGINEER shall perform its work and function. However, CITY shall retain the right to administer this Agreement so as to verify that ENGINEER is performing its obligations in accordance with the terms and conditions hereof. ENGINEER 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, ENGINEER shall have absolutely no right to employment rights and benefits available to CITY employees. ENGINEER shall be solely liable and responsible for providing to, or on behalf of, its employees all legally required employee benefits. In addition, ENGINEER shall be solely responsible and hold CITY harmless from all matters relating to payment of ENGINEER'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 ENGINEER may be providing services to others unrelated to CITY or to this Agreement.

## **22. CONFLICT OF INTEREST**

The ENGINEER shall disclose any financial, business, or other relationship with CITY that may have an impact upon the outcome of the Agreement, or any ensuing CITY construction project. The ENGINEER shall also list current clients who may have a financial interest in the outcome of the Agreement, or ensuing CITY construction project. The ENGINEER hereby certifies that it does not now have, nor shall it acquire any financial or business interest that would conflict with the performance of services under this Agreement.

The ENGINEER hereby certifies that neither the ENGINEER, its employees, nor any firm affiliated with the ENGINEER providing services on this Project, prepared the Plans, Specification, and Estimates for any construction contract included within the Agreement. An affiliated firm is one, which is subject to the control of the same persons through joint-ownership, or otherwise. The ENGINEER further certifies that neither the ENGINEER, nor any firm affiliated with the ENGINEER, will bid on any construction subcontracts included within the construction contract.



Additional, ENGINEER certifies that no person working under this Agreement is also employed by the construction contractor for any project included within this Agreement.

**23. REBATES, KICKBACKS OR OTHER UNLAWFUL CONSIDERATION**

The ENGINEER warrants that this Agreement was not obtained or secured through rebates, kickbacks or other unlawful consideration, either promised or paid to any CITY employee. For breach or violation of this warranty, CITY shall have the right in its discretion; to terminate this Agreement without liability; to pay only for the value of the work actually performed; or to deduct from the contract price; or otherwise recover the full amount of such rebate, kickback or other unlawful consideration.

**24. 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.

**25. AMENDMENTS:**

Any changes to this Agreement requested either by CITY or ENGINEER 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.

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

Consistent with the professional standard of care, ENGINEER shall comply with all Federal, State, and local laws, ordinances, regulations and provisions applicable in the performance of ENGINEER'S services. ENGINEER 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. This includes compliance with prevailing wage rates and their payment in accordance with California Labor Code, Section 1775.

**27. ENGINEER'S LEGAL AUTHORITY:**

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

**28. 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 or that party or, in lieu of personal service, when deposited in the United States mail, first class postage prepaid, addressed as follows:

CITY  
Engineering Division

205 W. 4th Street

Madera, CA 93637

Attention: Keith B. Helmuth, P.E.

City Engineer

ENGINEER  
Moore Twining Associates, Inc.

2527 Fresno Street

Fresno, CA 93721

Harry Moore

President

**29. COVENANT AGAINST CONTINGENT FEES**

The ENGINEER warrants that they have not employed or retained any company or person, other than a bona fide employee working for the ENGINEER; to solicit or secure this agreement; and that they have not paid or agreed to pay any company or person other than a bona fide employee, any fee, commission, percentage, brokerage fee, gift, or any other consideration, contingent upon or resulting from the award, or formation of this agreement. For breach or violation of this warranty, CITY shall have the right to annul this agreement without liability, or at its discretion; to deduct from the agreement price or consideration, or otherwise recover the full amount of such fee, commission, percentage, brokerage fee, gift or contingent fee.

**30. PROHIBITION OF EXPENDING CITY, STATE OR FEDERAL FUNDS FOR LOBBYING**

The ENGINEER certifies to the best of his or hers knowledge and belief that:

1. No city, state or federal appropriated funds have been paid, or will be paid by-or-on behalf of the ENGINEER to any person for influencing or attempting to influence an officer or employee of any state or federal agency; a Member of the State Legislature or United States Congress; an officer or employee of the Legislature or Congress; or any employee of a Member of the Legislature or Congress, in connection with the awarding of any state or federal contract; the making of any state or federal grant; the entering into of any cooperative agreement, and the extension, contribution, renewal, amendment, or modification of any state or federal contract, grant, loan or cooperative agreement.
2. If any funds other than federal appropriated funds have been paid, or will be paid to any person for influencing or attempting to influence an officer or employee of any federal agency; a Member of Congress; an officer or employee of Congress or an employee of a Member of Congress; in connection with this federal contract, grant, loan, or cooperative agreement; the ENGINEER shall complete and submit Standard Form-LL, "Disclosure Form to Report Lobbying" in accordance with its instructions.

This certification is a material representation of fact upon which reliance was place when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by Section 1352, Title 31, US. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure. The ENGINEER also agrees by signing this document the he or she shall require that the language of this certification be included in all lower-tier subcontracts, which exceed \$100,000, and that all such sub recipients shall certify and disclose accordingly.

### **31. CERTIFICATIONS**

The Exhibits and Certifications listed on the ATTACHMENTS page, incorporated herein and attached hereto, are a part of this agreement.

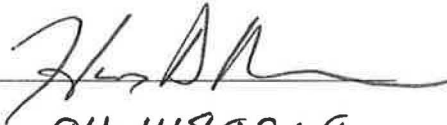
### **32. SOLE AGREEMENT:**

This instrument constitutes the sole and only agreement between ENGINEER and CITY respecting the Project and correctly sets the obligations of the ENGINEER 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.

\* \* \* \* \*

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

By:   
\_\_\_\_\_  
94-1480968  
Taxpayer I.D. Number

**APPROVED AS TO FORM:**

By: \_\_\_\_\_  
Brent Richardson, City Attorney

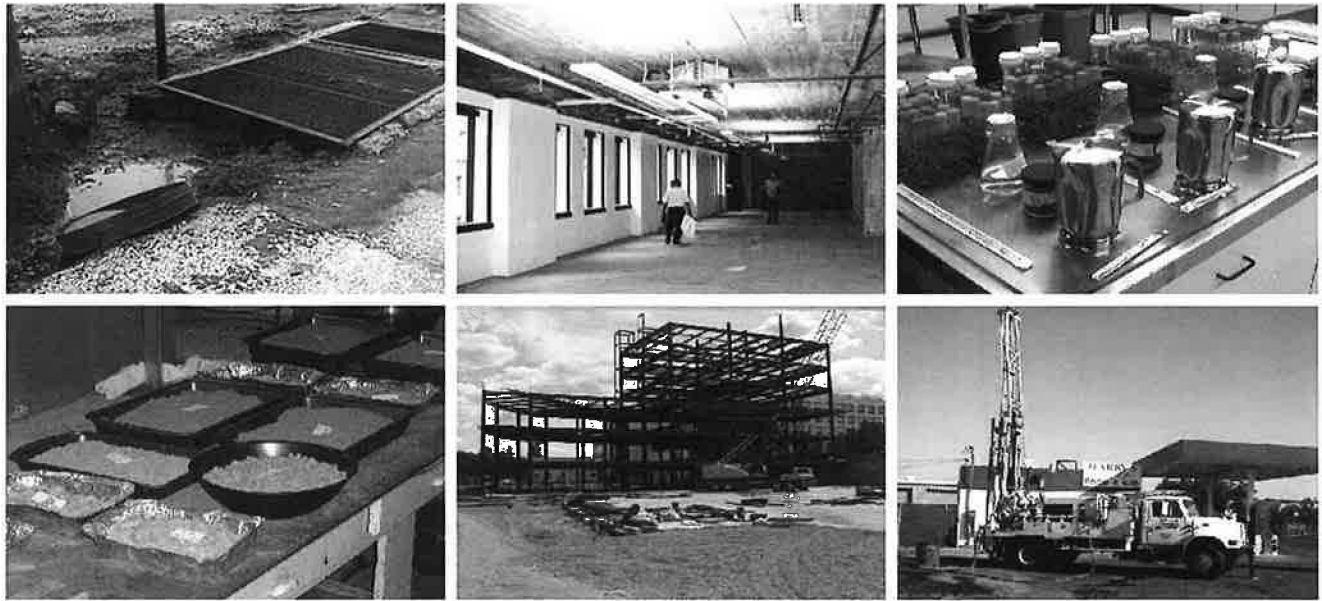
**ATTEST:**

By: \_\_\_\_\_  
Sonia Alvarez, City Clerk

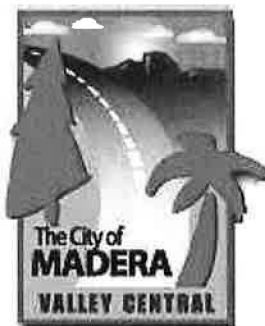
# **ATTACHMENTS**

## **EXHIBIT A FEE SCHEDULE**

## **EXHIBIT B ON DEMAND MATERIALS TESTING SERVICES**



**2018 Prevailing Wage  
Fee Schedule for  
The City of Madera  
Fire Station #58**



Moore Twining Associates, Incorporated  
[www.mooretwining.com](http://www.mooretwining.com)



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## Introduction

Moore Twining Associates, Inc. (Moore Twining), founded in 1898, has continually provided professional consulting and analytical services throughout California for the past 120 years. Moore Twining provides professional services in geotechnical



engineering, environmental services, construction inspection, materials testing, drilling services, and analytical chemistry.

Offices are maintained in Riverside, Fresno, Monterey (San Jose), and Sacramento, with the Fresno office also serving as the corporate headquarters. Our professional staff consists of registered geotechnical engineers,

registered civil engineers, registered professional geologists, certified engineering geologists, chemists, certified field inspectors, laboratory technicians, and administrative personnel.

Our reputation for service and integrity is known by individuals involved in all aspects of the engineering and testing industries throughout California. We take pride in providing our clients with consistently reliable and cost-effective services.

### Office Locations

<b>Fresno</b> (Corporate Headquarters)	2527 Fresno Street Fresno, California 93721 Phone: 559.268.7021 Fax: 559.268.7126
<i>Chemistry Division Fax:</i>	559.268.0740
<b>Riverside</b>	11800 Sterling Ave., Suite C Riverside, California 92503 Phone: 951.898.8932 Fax: 951.898.8974
<b>Monterey</b>	501 Ortiz Avenue San Jose, California 95128 Phone: 831.392.1056 Fax: 831.392.1059
<b>Sacramento</b>	165 Commerce Circle, Suite D Sacramento, California 95815 Phone: 916.381.9477 Fax: 916.381.9478



## Basis of Fees

1. Fees stated in this fee schedule are for professional services, construction inspection, drilling and materials testing services provided by Moore Twining Associates, Inc. Analytical Chemistry fees are presented separately upon request.
2. The fees listed herein are typical of engineering, inspection, and testing services most frequently provided by Moore Twining Associates, Inc. Fees for other services and special quotations will be provided upon request. Special consideration is given to projects involving protracted periods of time or volume testing. All fees are subject to change without notice.
3. A minimum of four hours per day will be charged for all field services plus travel time to and from the job site. Field services over four hours will be charged at two-hour increments thereafter. A cancellation charge of two hours will be billed in the event the client fails to notify our office of a cancellation at least 24 hours prior to the scheduled inspection.
4. Time Schedule: Basis of sampling, observation, drilling, travel, and other fees:

### Rate of Changes Period

**Regular Time** Monday through Friday – eight hours from 8:00 a.m. to 5:00 p.m.

**Time and One-Half** Monday through Friday – after continuous eight hours and Saturdays

**Double Time** Work performed beyond 12 hours, Sundays and Holidays

### Shift Differential

**Second (Swing) Shift** Regular hourly rate plus 10% for the first eight hours worked; time in excess of eight hours will be charged at overtime rate

**Third (Graveyard) Shift** Regular hourly rate plus 15% for the first eight hours worked; time in excess of eight hours will be charged at overtime rate

5. Fees reflect per-unit test and only include reporting of laboratory and/or field results not requiring engineering evaluation, recommendations, and/or conclusions.
6. Vehicle mileage, when applicable, is \$0.54 per mile. Drill rig, heavy equipment trucks, and four-wheel drive vehicles are \$1.00 per mile. All vehicle mileage charges (except for drill rigs) are from Moore Twining Associates, Inc.'s nearest office. Drill rigs are from our Drilling office located at 662 R Street in Fresno, California.
7. Work requiring special equipment, machinery rental, outside consultants, etc., will be charged at cost-plus-15% unless otherwise noted. The cost of replacing equipment that is damaged due to client's request and/or negligence will be assessed.
8. For delivery of additional materials and/or equipment to the job site, pick-up of materials requested, and/or equipment ordered but not used, there will be a charge of \$70/hour. There will be a restocking fee of 20% on all materials returned. Any special rental equipment such as air compressors, generators, cement mixers, etc. can be provided at cost-plus-15%, plus pick-up and delivery charges. Other equipment necessary to meet your project's special needs can be obtained upon request. Clients ordering specialized materials will be billed for the full amount of purchase regardless of utilization of only a portion thereof.

9. Staff billing rates will be imposed for requested research into technical files or records.
10. Requests for additional copies of reports are charged at secretarial rate plus photocopying fee of \$0.10 per page.
11. Facsimiles are charged at \$1.00 per page for local calls and \$1.50 for long-distance calls.
12. Public carriers, i.e. overnight mail, FedEx, UPS, Greyhound, etc. will be charged at cost plus secretarial time.
13. Processing of affidavits and certificates are charged at \$50 for each additional insured.
14. Additional insured certificates are charged at \$50 for each additional insured.
15. Certified payroll, \$50 per billing period.
16. The client will be invoiced for all services, equipment, materials, and supplies used on a project. Any invoice under \$100 will be C.O.D. All other invoices are due and payable on the 10<sup>th</sup> of the next succeeding month following date of charge and are past-due thereafter. Past-due balances are subject to a finance charge of 1.5% per month (an annual percentage rate [APR] of 18%). All invoice errors or necessary corrections will be brought to the attention of the company within ten days of receipt of the invoice; thereafter, client acknowledges invoices are correct and valid.
17. The unit rates provided in this fee schedule will be applicable through December 31, 2018.

## Northern California Prevailing Wage Fee Schedule

PROFESSIONAL			
Principal	\$	150.00	Hour
Registered Geotechnical Engineer	\$	125.00	Hour
Registered Civil Engineer	\$	120.00	Hour
Certified Engineering Geologist	\$	110.00	Hour
Project Geologist	\$	90.00	Hour
Project Manager	\$	65.00	Hour
SUPPORT STAFF			
Computer Aided Drafting	\$	45.00	Hour
Secretarial Services	\$	35.00	Hour
FIELD INSPECTION FEES			
ACI Technician – Field Sampling and Testing Concrete	\$	89.50	Hour
Earthwork Observation and Compaction Testing	\$	94.50	Hour
Special Inspection and Observations – Reinforced Concrete	\$	99.50	Hour
Special Inspection and Observations – Structural Masonry	\$	99.50	Hour
Special Inspection and Observations – Structural Steel	\$	99.50	Hour
Non-Destructive Testing Services	\$	105.00	Hour
Spray-Applied Fireproofing	\$	89.50	Hour
Batch Plant Inspection	\$	55.00	Hour
Shop Welding and Steel Fabrication Inspection	\$	55.00	Hour
Sample Pickup (if special trip is required)	\$	50.00	Hour
Vehicle Mileage	\$	0.54	Mile
Vehicle & Equipment Charge	\$	25.00	Day
Per Diem	\$	150.00	Day
MATERIALS TESTING FEES			
AGGREGATES	TEST METHOD		
Sieve Analysis without Wash ASTM C136	\$	60.00	Each
Sieve Analysis with Wash ASTM C117	\$	120.00	Each
% Passing #200 Sieve ASTM C117	\$	60.00	Each
Specific Gravity & Absorption (Coarse) ASTM C127	\$	120.00	Each
Specific Gravity & Absorption (Fine) ASTM C128	\$	120.00	Each
Clay Lumps and Friable Particles ASTM C142	\$	150.00	Each
Cleanness Value CT 229	\$	120.00	Each
% of Crushed Particles (Fractured Face) ASTM D5821	\$	130.00	Each
Durability Index CT229	\$	120.00	Each
LA Rattler Abrasion Testing ASTM C535	\$	180.00	Each
Organic Impurities ASTM C40	\$	80.00	Each
Potential Reactivity -Chemical Method ASTM C289	\$	300.00	Each
Magnesium or Sodium Sulfate Soundness ASTM C88	\$	300.00	Each
Sand Equivalent ASTM D2419	\$	90.00	Each

Lightweight Pieces in Concrete Aggregate ASTM C123	\$	225.00	Each
Stone Proctor ASTM C29	\$	50.00	Each
Flat & Elongated Particles in Coarse Aggregate ASTM C4791	\$	120.00	Each
<b>ASPHALT</b>			
Marshall Density- Lab Mix Method ASTM D6926	\$	240.00	Each
Asphalt Extraction (Ignition Method) ASTM C6307	\$	150.00	Each
Asphalt Gradation and Extraction ASTM C5444	\$	120.00	Each
Maximum Theoretical Density/Rice Specific Gravity ASTM D2041	\$	150.00	Each
Hveem Stability ASTM D5160	\$	150.00	Each
Marshall Flow and Stability ASTM C6927	\$	200.00	Each
Bulk Density Testing of Cores ASTM D1188 or ASTM D2726	\$	40.00	Each
Swell CT 305	\$	225.00	Each
Moisture Vapor Susceptibility CT307	\$	150.00	Each
Asphalt Extraction (Solvent Method) ASTM D2172	\$	200.00	Each
Gradation and Oil Extraction Correction	\$	500.00	Each
Asphalt Core Thickness ASTM D3549	\$	20.00	Each
<b>CONCRETE</b>			
Concrete Compressive Strength Tests 6"x12" (Set of 4) ASTM C39	\$	70.00	Set of 4
Concrete Compressive Strength Test 6"x12" ASTM C39	\$	20.00	Each
Concrete Compressive Strength Test 6"x12" ASTM C39, held not tested	\$	10.00	Each
Compressive Strength of Concrete Cores ASTM C42	\$	50.00	Each
Flexural Strength Beam ASTM C78	\$	70.00	Each
Splitting Tensile Strength of Cylindrical Concrete ASTM C496	\$	50.00	Each
Unit Weight of Lightweight Concrete ASTM C567	\$	25.00	Each
Compressive Strength of Lightweight Concrete ASTM C495	\$	25.00	Each
Dry Shrinkage of Concrete ASTM C157	\$	250.00	Each
Gunite/Shotcrete Panels ASTM C1140	\$	250.00	Each
Preparation of Concrete Specimens by Saw Cutting	\$	20.00	Each
Concrete Compressive Strength Test 4"x8" (set of 5) ASTM C39	\$	80.00	Set of 5
Concrete Compressive Strength Test 4"x8" ASTM C39	\$	20.00	Each
Thickness of Drilled Concrete Core ASTM C174	\$	50.00	Each
Moisture Transmission & pH Test Kits	\$	50.00	Each
Concrete Cylinder HOLD (Not Tested)	\$	10.00	Each
Bit Charge	\$	7.00	Inch
<b>SOILS</b>			
Atterberg Limit/Plasticity Index ASTM D4319	\$	150.00	Each
Hydrometer Analysis ASTM D422	\$	120.00	Each
Specific Gravity ASTM D854	\$	90.00	Each
R-Value ASTM D2844	\$	200.00	Each
Consolidation ASTM D2435	\$	300.00	Each

Unconfined Compressive Strength ASTM D2166	\$	100.00	Each
Direct Shear- Consolidated ASTM D3080	\$	200.00	Each
Expansion Index of Soils ASTM D4829	\$	170.00	Each
Moisture Determination of Soil and Rock ASTM D2216	\$	30.00	Each
Permeability Flexible Wall ASTM D5084	\$	335.00	Each
pH of Soils	\$	30.00	Each
Sulphate Content of Soils	\$	30.00	Each
Chloride Content of Soils	\$	30.00	Each
Minimum Resistivity CT643	\$	110.00	Each
CBR, 100% ASTM D1883	\$	350.00	Each
CBR 95%, 3 point method ASTM D1883	\$	700.00	Each
Remold Charge	\$	50.00	Each
Oversized Correction for Moisture Density ASTM D4718	\$	180.00	Each
Crumb Test ASTM D6572	\$	50.00	Each
Atterberg Limit (Liquid Limit) ASTM D4318	\$	75.00	Each
Maximum Density Standard Proctor ASTM D698	\$	135.00	Each
Maximum Density Modified Proctor 4" Mold ASTM D1557	\$	170.00	Each
Maximum Density Modified Proctor 6" Mold ASTM D1557	\$	180.00	Each
Relative Compaction of Soils and Aggregate CT 216	\$	150.00	Each
Unconfined Compressive Strength of Lime Treated Soils CT 373	\$	150.00	Each
<b>MASONRY</b>			
Mortar Cylinder Compressive Strength 2x4 ASTM C780	\$	24.00	Each
Grout Compressive Strength ASTM C1019	\$	24.00	Each
Prism Compressive Strength, 1/2 Size	\$	30.00	Each
Masonry Core Unit Strength ASTM C1314	\$	50.00	Each
Masonry Core Shear Test ASTM C1314	\$	50.00	Each
Masonry Block Compressive Strength ASTM C140	\$	75.00	Each
Absorption, Unit Weight and Moisture Content ASTM C140	\$	75.00	Each
Drying Shrinkage of Block ASTM C426	\$	75.00	Each
Relative Mortar Strength CT 515	\$	250.00	Each
High Strength Grout Cubes ASTM C109	\$	18.00	Each
<b>STEEL</b>			
Rebar Tensile Test ASTM A370	\$	40.00	Each
Rebar Bend Test ASTM A290	\$	40.00	Each
Rebar Tensile and Bend Test ASTM A370 and A290	\$	80.00	Each
7 Strand Wire Cables ASTM A416	\$	150.00	Each
<b>FIREPROOFING</b>			
Fireproofing Dry Density ASTM E605	\$	50.00	Each

**DRILLING DEPARTMENT****Northern California Prevailing Wage Drilling Services****CME-75 Drill Rig with Two Man Crew**

Operating Rate* (add \$5/hour for 10" Auger)	\$	230.00	Hour
Level C1 Add**	\$	35.00	Hour
Travel Time (FOB Fresno Office)	\$	200.00	Hour
Mobilization and Demobilization	\$	110.00	Hour
Standby	\$	175.00	Hour
Mileage (Drill Rig) (From Fresno Office)	\$	1.00	Mile
Flatbed Support Vehicle	\$	1.00	Mile
Truck	\$	.575	Mile
Service Truck Rental	\$	250.00	Day

**Equipment and Material Fees**

Steam Cleaner	\$	125.00	Day
Air Compressor	\$	125.00	Day
Hydro Punch II		By Quote	
55 Gallon Drums	\$	60.00	Each
Brass Sleeves w/plastic end caps	\$	6.00	Each
Obtaining Drilling Permits	\$	70.00	Hour
Pre-Steamed Clean Auger/Equipment			
50 feet or less	\$	100.00	Each
51 feet to 100 feet	\$	200.00	Each
Well Materials	\$	Cost + 15%	
Concrete for Backfill Material	\$	Cost + 15%	
Parts Replacement	\$	Cost + 15%	

\* Drilling Under Level D Personal Health and Safety Protection - Normal Work Uniform, Coveralls

\*\* Drilling Under Level C Personal Health and Safety Protection - Disposable, Chemically Resistant Clothing; Air-purifying Respirator, Health and Safety Protection - Fully Encapsulated, Including Supplied-air Respirators



September 14, 2018

MTP Number: 1027-18

Mr. Jerry Martinez  
City of Madera  
204 West 4<sup>th</sup> Street  
Madera, California 93637

**Project: Fire Station #58**  
2558 Condor Drive  
Madera, California

**Subject: Special Inspection Services**

Dear Mr. Martinez:

Our firm has performed a preliminary review of the project plans provided by the City of Madera for the new Fire Station #58 project. Based on our review of the project plans prepared by RRM Design Group, dated July 17, 2018. The new Fire Station #58 project is anticipated to require the following materials testing and special inspections:

- Earthwork;
- Reinforcing Steel;
- Structural Concrete;
- Post-Installed Anchors;
- Portland Cement Concrete;
- Structural Masonry;
- Structural Steel;
- Structural Wood; and
- Laboratory Testing of Soils, Concrete, Mortar, and Grout.

Moore Twining Associates, Inc. is certified as a Materials Testing and Special Inspection agency by AMRL, CCRL and DSA (State of California Division of the State Architect). The DSA certification lab number for our Fresno office is LEA #65.

We trust this information meets your needs. If you have any questions regarding this letter, please contact our office at (559) 268-7021.

Sincerely,  
**MOORE TWINING ASSOCIATES, INC.**  
Construction Inspection Division

**Tyler Street, EIT**  
Project Engineer

**CENTRAL VALLEY**  
2527 Fresno Street  
Fresno, CA 93721  
559-268-7021 • 559-268-7126 Fax

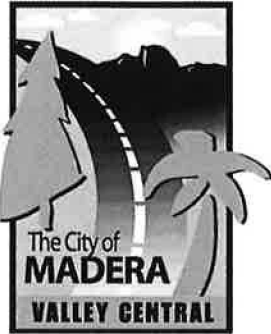
**CENTRAL COAST**  
501 Ortiz Avenue  
San Jose, CA 95128  
831-392-1056 • 831-392-1059 Fax

**NORTHERN CALIFORNIA**  
165 Commerce Circle, Suite D  
Sacramento, CA 95815  
916-381-9477 • 916-381-9478 Fax

**SOUTHERN CALIFORNIA**  
11800 Sterling Avenue, Suite C  
Riverside, CA 92503  
951-898-8932 • 951-898-8974 Fax



## Report to City Council



Council Meeting of October 17, 2018  
Agenda Item Number C-5

Approved by:

Wendy Silva  
Department Director

Steve Franke  
City Administrator

### **Consideration of a Resolution Approving a Fifth Amendment to the City Attorney At-Will Employment Agreement and Authorizing the Mayor to Execute the Amendment**

#### **RECOMMENDATION**

Should the Council desire to effectuate the proposed Agreement Amendment, staff recommends Council adopt the resolution amending the City Attorney At-Will Employment Agreement and authorizing the Mayor to execute the Agreement.

Pursuant to Government Code § 54953 (c) (3), prior to taking action on this item, the Council must publicly announce a summary of the action being considered.

**Announcement** - If approved, the proposed amendment to the City Attorney's At-Will Employment Agreement would extend the term of the existing agreement by sixty (60) days for the purposes of ongoing contract negotiations.

#### **HISTORY**

The City Council negotiated an At-Will Employment Agreement with Joel Brent Richardson to serve as City Attorney. The most recent Agreement was entered into in 2015 with a term expiring October 19, 2018.

#### **SITUATION**

The City Council appointed an ad hoc committee to negotiate a new employment agreement with City Attorney Brent Richardson. The ad hoc committee is in the process of negotiating terms and conditions of the new agreement with Mr. Richardson, and due to the Council meeting schedule, will not have a recommendation prior to the expiration of the existing agreement with Mr. Richardson. For this reason, the ad hoc committee is recommending a sixty (60) day extension to allow for completion of the negotiation process.



**FISCAL IMPACT**

Adoption of the amendment to the City Attorney's employment agreement will extend Mr. Richardson's existing Agreement terms and conditions by sixty (60) calendar days.

**CONSISTENCY WITH THE VISION MADERA 2025 PLAN**

Compensation and benefits for City employees are not addressed in the vision or action plan; the requested action is also not in conflict with any of the actions or goals contained in that plan.

RESOLUTION No. \_\_\_\_\_

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MADERA  
APPROVING A FIFTH AMENDMENT TO THE CITY ATTORNEY AT-WILL  
EMPLOYMENT AGREEMENT AND AUTHORIZING THE MAYOR TO EXECUTE THE  
AGREEMENT

WHEREAS, the City of Madera wishes to establish reasonable rules, regulations and compensation for its staff and elected officials within the financial limits of the organization; and

WHEREAS, a Fifth Amendment to the City Attorney At-Will Employment Agreement has been prepared and is amenable to all parties.

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

1. The above recitals are true and correct.
2. The Fifth Amendment to the City Attorney's At-Will Employment Agreement between the City and Joel Brent Richardson, on file with the office of the City Clerk and referred to for more particulars, is hereby approved.
3. The Mayor of the City of Madera is authorized to execute the Fifth Amendment on behalf of the City of Madera.
4. This resolution is effective immediately upon adoption.

\* \* \* \* \*

**FIFTH AMENDMENT TO THE  
CITY ATTORNEY AT-WILL EMPLOYMENT AGREEMENT**

This Amendment, entered into on the 17<sup>th</sup> day of October, 2018, amends the previous agreement entitled CITY ATTORNEY AT-WILL EMPLOYMENT AGREEMENT dated August 5, 2015 and amended June 15, 2016; September 21, 2016; June 7, 2017; and June 20, 2018 by and between the City of Madera, a municipal corporation, hereinafter called "Employer," and Joel Brent Richardson, hereinafter called "Employee," both of whom understand as follows:

**WITNESSETH:**

WHEREAS, Employee and Employer entered into an agreement dated August 5, 2015 and amended June 15, 2016; September 21, 2016; June 7, 2017; and June 20, 2018 to contract with Employee to serve as City Attorney of Employer ("Agreement"); and

WHEREAS, Employer and Employee desire to modify said Agreement to extend the existing term due to ongoing contract negotiations.

NOW THEREFORE, it is hereby agreed that the Agreement between the parties is amended in the following particulars only:

Section 1. Section 1.A. of the Agreement is amended to read as follows:

**Section 1: TERM**

- A. The term of this Agreement shall be five (5) years from October 19, 2013. The Employer will provide written notice to the Employee on or before July 20, 2018 of its intent to offer to extend, renew, or otherwise not renew this contract for an additional term. If the Employer chooses to extend the Agreement, the Employer will inform the Employee of the newly proposed term at the time of its offer to renew. The Employee must respond to an offer to extend or renew the Agreement within 45 days of the offered extension or renewal.

Due to ongoing contract negotiations, the term of the Agreement is extended by sixty (60) days to December 18, 2018.

Section 2. All other provisions of the Agreement not inconsistent with this Amendment shall continue in full force and effect.

**IN WITNESS WHEREOF**, the parties hereto have caused this Amendment to be executed by and through their respective officers duly authorized on the date first written above.

EMPLOYEE

CITY OF MADERA

By:   
Joel Brent Richardson

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

ATTEST

By: \_\_\_\_\_  
Sonia Alvarez, City Clerk