



REQUEST FOR PROPOSAL NO. 202122-05

CITY OF MADERA

Administrative Hearing Officer

Date Released: November 13, 2021

Proposals are due Friday, December 17, 2021 prior to 5:00 PM.

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REQUEST FOR PROPOSAL FOR ADMINISTRATIVE HEARING OFFICER

The City of Madera (City) is requesting proposals from qualified individuals who can serve as contract administrative hearing officers for various administrative hearings as authorized by the Madera Municipal Code. The term is expected to be for one year with an option to extend for a second year. The number and types of hearing vary. For efficiency for both City and Hearing Officer and to the extent possible, certain hearings will be bundled and heard on specific dates. The City reserves the right to award one or more contracts for this service.

I. BACKGROUND

The City of Madera incorporated in 1907. The City is a general law City and operates under the City Council/City Manager form of government. The City covers approximately 16 square miles, with a population of 66,000. Located in the central San Joaquin Valley of California, Madera is approximately 15 minutes north of the largest city within the region, Fresno.

The City seeks qualified attorneys that can serve as contract administrative hearing officers for administrative hearings regarding:

- Municipal code violations;
- Nuisance abatement;
- Vehicle impoundment;
- Animal control; and
- Parking violations.

The City may award one contract or more at its sole discretion and create a pool of hearing officers to hear appeals on a rotation basis.

II. GENERAL INFORMATION

The City has attempted to provide all information available. It is the responsibility of each Proposer to review, evaluate, and where necessary, request any clarification prior to submission of a Proposal. Proposers are not to contact other City personnel with any questions or clarifications concerning this Request for Proposal (RFP). The City's Purchasing Division contact set out in RFP will provide all official communication concerning this RFP. Any City response

relevant to this RFP other than through or approved by the City's Purchasing Division is unauthorized and will be considered invalid.

If clarification or interpretation of this solicitation is considered necessary by City, a written addendum shall be issued, and the information will be posted on City's website at www.madera.gov/departments/purchasing/ Bids and Announcements. Addenda will also be provided to all prospective hearing officers who have submitted a Letter of Intent to Respond via email. Any interpretation of, or correction to this solicitation will be made only by addendum issued by the City's Purchasing Division. The City will not be responsible for any other explanations, corrections to, or interpretations of the documents, including any oral information.

Schedule of Events: This Request for Proposal shall be governed by the following schedule:

<i>RFP Schedule</i>	
RFP Release	November 13, 2021
Deadline for Letter of Intent to Respond	December 3, 2021
Deadline for Written Questions	December 10, 2021 , 5:00 PM
Response to Questions Posted on Website	December 13, 2021
Proposals Due Date and Time	December 17, 2021, 5:00 PM
Review of Proposals and Contract Negotiations	January 7, 2022
Council Consideration of Award of Contract	January 19, 2022

A. Inquiries

Any questions related to this RFP shall be submitted in writing to the attention of Jennifer Stickman, Procurement Services Manager via email at jstickman@madera.gov no later than 5:00 PM on December 10, 2021.

No oral question or inquiry about this RFP shall be accepted. No questions or inquiries should be directed to any individual(s) at the locations detailed in this document. All communications should be submitted in writing per the process described in this document.

B. Letter of Intent to Respond

Proposers intending to respond to the RFP are encouraged to submit a Letter of Intent to Respond via email to jstickman@madera.gov by December 3, 2021. The Letter of Intent to Respond will help ensure receipt of RFP amendments and other communications regarding the RFP. The Letter of Intent to Respond does not bind prospective hearing officers to submitting a proposal. The Letter of Intent to Respond should be emailed to Jennifer Stickman, Procurement Services Manager at jstickman@madera.gov, with the

name, title, and contact information of the proposer.

C. Submittals

1. Due to Covid-19 safety precautions and to ensure the delivery of your proposal, it is required that you email your proposal to Jennifer Stickman, Procurement Services Manager at jstickman@madera.gov by 5:00 PM on Friday, December 17, 2021.
2. Proposals shall be sent with the subject line: "RFP No. 202122-05 Administrative Hearing Officer" by the time and date specified above.
3. Proposals received after the time and date specified above will be considered nonresponsive and will be returned unopened to the Proposer.

D. Accompanying information

Checklist of Forms to Accompany Proposal: As a convenience to Proposers, following is a list of the forms, **Attachments A and B** included in this RFP, which should be included with Proposals:

1. Attachment A - Vendor Application Form
2. Attachment B – Fee Schedule

III. GENERAL INSTRUCTIONS AND PROVISIONS

- A. Any proposal may be withdrawn at any time prior to the hour fixed for the opening, provided that a request in writing executed by the Proposer, or his/her duly authorized representative, for the withdrawal of such proposal is filed with Purchasing. The withdrawal of a proposal shall not prejudice the right of a proposer to file a new proposal prior to the time and date set for the opening.
- B. Unsigned proposals or proposals signed by an individual not authorized to bind the prospective Consultant will be considered nonresponsive and rejected.
- C. Attention of Proposers is especially directed to the requirements which, in addition to the proposal and these instructions, are basis for evaluation and will be part of any agreement with the successful Proposer.
- D. The City recognizes its policy of providing equal opportunity to all qualified persons and reaffirms its commitment that there shall be no discrimination against qualified applicants or employees on the basis of race, gender, color, national origin, religion, age, disability, sexual orientation, or marital status.
- E. The City reserves the right to reject or accept any or all proposals or parts thereof, and to accept or reject the alternatives individually or jointly, for any reason.

- F. The City reserves the right to seek supplementary information from any Proposer at any time after official proposal opening and before the award.
- G. The City reserves the right to modify this RFP at any time. In the event it becomes necessary to modify or revise the RFP, a written amendment or addenda issued by City's Purchasing Division is the only method which should be relied on with respect to changes to the RFP. Documents, amendments, addenda, etc. will be posted to the City's Purchasing page at www.madera.gov/purchasing under Bid Announcement and Results and provided to all Proposers who have submitted a Letter of Intent to Respond via email. However, it is the Proposer's responsibility to contact City's Purchasing Division prior to submitting a proposal to determine if any amendments were made to the RFP.
- H. This RFP does not commit the City to award a contract, to pay any costs incurred in the preparation of a proposal for this request, or to procure or contract for services. The City reserves the right to accept or reject any or all proposals received as a result of this request, to negotiate with any qualified Consultant, or to modify or cancel in part or in its entirety the RFP if it is in the best interests of the City to do so. Furthermore, a contract award may not be made based solely on price.
- I. Proposals will be evaluated by the City. If a proposal is found to be incomplete or not in compliance with the format required, it will not be considered for evaluation. During the evaluation process, the City may find it beneficial to request additional information.
- J. Prior to beginning any work or delivering any equipment or material to be furnished under this proposal, the proposer shall secure the appropriate Business License from the City of Madera. Business license information may be obtained by calling (559) 661-5408. Should the proposer already have their license, please indicate the license number and expiration date on Attachment A, Vendor Information Form.
- K. An active State Bar of California number, as well as any other Federal or State of California License/Certification required to provide the services will be required. A Certificate of Insurance in accordance with the Insurance Requirements for Service Providers document included in the RFP in Section V will also be required prior to award of a contract
- L. An award will be made as soon as reasonably practical after the opening of Proposals.
- M. The successful Consultant shall enter into a formal agreement with City which will be very similar in content to the Attachment C "Sample" Consultant Services Agreement which is provided for information purposes only and to help clarify City intent relevant to this RFP as well as general contract requirements of the City.

- N. An award under this RFP will not be based solely on the price. If an award is made, it will go to the proposer(s) with the best overall proposal who provides the best value to the City and its residents. The successful proposal will be competitively priced and provide for adequate service to meet the City's needs.
- O. The prospective Consultant is advised that should this RFP result in recommendation for award of a contract, the contract will not be in force until it is approved by the City Council.
- P. All products used or developed in the execution of any contract resulting from this RFP will remain in the public domain at the completion of the contract.
- O. By submitting a proposal, the prospective Consultant certifies that its submission is not the result of collusion or any other activity that would tend to directly or indirectly influence the selection process. The proposal will be used to determine the prospective Consultant's capability of rendering the services to be provided.
- Q. Pursuant to the California Public Records Act, Government Code Section 6250 and following, public records may be inspected and examined by anyone desiring to do so, at a reasonable time, under reasonable conditions, and under supervision by the custodian of the public record. All submitted proposals are subject to the California Public Records Act and may be determined to be public records subject to disclosure, even if the prospective hearing officer claims confidential treatment. The City will disclose public records as required under the California Public Records Act.

Each prospective Consultant should be aware that although the California Public Records Act recognizes that certain confidential trade secret information may be protected from disclosure, the City might not be in a position to establish that the information, which a prospective Consultant submits, is a trade secret. If a request is made for information marked as "confidential" by the prospective Consultant in their proposal, the City will provide the prospective Consultant who submitted such information with reasonable notice to allow the firm to seek protection from disclosure by a court of competent jurisdiction.

IV. SCOPE OF SERVICES

Objectives

The objective is to identify qualified individuals that can assist the City by presiding over hearings on municipal code violations, public nuisances, parking violations, and vehicle impoundment as well as other hearings authorized under the Municipal Code. Responsibilities will include:

- Preparing for hearings as scheduled by City staff.
- Reviewing case documentation.
- Conducting hearings and hearing testimony and evidence from parties regarding the issues.
- Preparing written determinations making a decision, which sets forth the legal and evidentiary basis for the decision, and adopting findings as required by the particular provisions of the Municipal Code.
- Performing all other services as outlined in the agreement for services.

Examples of typical administrative hearings held include:

- Code Enforcement violations.
- Public nuisance violations.
- Animal Control violations.
- Water Conservation violations.
- Parking violations.
- Other matters requiring administrative hearings as needed.

Hearing officers will confirm the absence of conflicts before undertaking any new matters for the City. Hearing officers will inform and seek the consent of the City before representing another client in any matter directly adverse to the City (e.g., transactions, negotiations, proceedings, or other representations involving specific parties).

All hearings will be conducted in English and if necessary, with the assistance of foreign language translator as provided by applicants/contesting parties or the City.

Hearing officers shall be required to submit a typed Statement of Decision as to each hearing conducted within the statutorily required time following the closing of the hearing record in a format approved by the City. The Decision shall include findings and conclusions.

Hearing preparation could include, but is not limited to, reading the file materials and familiarization with the Municipal Code provisions at issue hearing materials, and rules of evidence.

Hearing officers shall provide a detailed invoice for services rendered each month, including the case number, hearing date, time incurred and hourly rate.

The City will provide hearing rooms, use of copy equipment, documents, materials, and equipment necessary for carrying out hearings. On a case-by-case basis a court reporter will be utilized. The locations and times of said hearings shall be designated by the City, but normally will be conducted during traditional business hours; Monday through Friday between the hours

of 8:00 a.m. and 5:00 p.m. in person and/or remotely via videoconferencing platform. Hearings held in person will be held at Madera City Hall located at 205 West 4th Street, Madera, CA.

The contract will not obligate the City to assign the contractor hearings. Once a hearing is accepted; however, the hearing officer will be required to provide hearing officer services.

Qualifications

Previous experience as an administrative hearing officer is not required but will be taken into consideration during the selection process.

The following qualifications are required:

- Be an attorney in good standing with the State Bar of California.
- Have no direct relationship with the City of Madera, such as through current employment, having a relative employed by the City, or being under contract with the City.
- Be able to perform the Scope of Services and other agreement requirements.
- Be able to conduct hearing remotely via videoconferencing.
- Be able to conduct hearings at Madera City Hall located at 205 West 4th Street in Madera.
- Be in possession of a City of Madera business license or be able to obtain one.

Experience in municipal and public agency laws is desirable.

V. 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. While the listed insurance limits are preferred, if the proposer currently maintains lower limits, those limits must be disclosed with their proposal.

Minimum Scope and Limits of Insurance

Consultant shall maintain limits no less than:

- **\$2,000,000 General Liability** (including operations, products and completed operations) per occurrence, \$4,000,000 general aggregate, for bodily injury, personal injury, and property damage, including without limitation, blanket contractual liability. Coverage shall be at least as broad as Insurance Services Office (ISO) Commercial General Liability coverage form CG 00 01. General liability policies shall be endorsed using ISO form CG 20 10 that the City and its officers, officials, employees, and agents shall be additional insureds under such policies.

- **\$2,000,000 Automobile Liability** combined single limit per accident for bodily injury or property damage at least as broad as ISO Form CA 00 01 for all activities of Consultant arising out of or in connection with Work to be performed under this Agreement, including coverage for any owned, hired, non-owned or rented vehicles. Automobile Liability policies shall be endorsed to provide that the City and its officers, officials, employees, and agents shall be additional insureds under such policies.
- **Worker's Compensation** as required by the State of California and **\$1,000,000 Employer's Liability** per accident for bodily injury or disease. Consultant shall submit to the City, along with the certificate of insurance, a Waiver of Subrogation endorsement in favor of the City, its officers, agents, employees, and volunteers.
- **\$1,000,000 Professional Liability (Errors & Omissions)** per claim and in the aggregate. Consultant shall maintain professional liability insurance that insures against professional errors and omission that may be made in performing the Services to be rendered in connection with this Agreement. Any policy inception date, continuity date, or retroactive date must be before the effective date of this Agreement, and Consultant agrees to maintain continuous coverage through a period no less than three years after completion of the services required by this Agreement. The cost of such insurance shall be included in Consultant's bid.

Maintenance of Coverage

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

Proof of Insurance

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

Acceptable Insurers

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

Waiver of Subrogation

All insurance coverage maintained or procured pursuant to this agreement shall be endorsed to waive subrogation against the City, its elected or appointed officers, agents, officials, employees,

and volunteers, or shall specifically allow Consultant, or others providing insurance evidence in compliance with these specifications, to waive their right of recovery prior to a loss. Consultant hereby waives its own right of recovery against the City and shall require similar written express waivers and insurance clauses from each of its subconsultants or subcontractors.

Enforcement of Contract Provisions (non estoppel)

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

Specifications not Limiting

Requirements of specific coverage features or limits contained in this Section are not intended as a limitation on coverage, limits or other requirements, or a waiver of any coverage normally provided by any insurance. Specific reference to a given coverage feature is for purposes of clarification only as it pertains to a given issue and is not intended by any party or insured to be all inclusive, or to the exclusion of other coverage, or a waiver of any type. If Consultant maintains higher limits than the minimums required above, the entity shall be entitled to coverage at the higher limits maintained by Consultant.

Notice of Cancellation

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

Self-insured Retentions

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

Timely Notice of Claims

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

Additional Insurance

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

VI. PROPOSAL REQUIREMENTS

These guidelines are provided for standardizing the preparation and submission of Proposal/Proposals by all Consultants. The intent of these guidelines is to assist Consultants in preparation of their proposals, to simplify the review process, and to help assure consistency in format and content.

Proposals shall contain the following information in the order listed:

- A. Cover letter describing relevant experience, education, and training, along with active California State Bar number
- B. Qualifications and experience
- C. Scope of services and scheduling
- D. Three (3) professional references
- E. Rate(s) of compensation and description of any reimbursable charges

VII. PROPOSAL EVALUATION

Evaluation Process

All proposals will be evaluated by a City of Madera Selection Committee (Committee). The Committee may be composed of City of Madera staff and other parties that may have expertise or experience in the services described herein. The Committee will review the submittals and will rank the proposers. The evaluation of the proposals shall be within the sole judgment and discretion of the Committee. All contacts during the evaluation phase shall be through the City of Madera Purchasing Division only. Proposers shall neither contact nor lobby evaluators during the evaluation process. Attempts by Proposer to contact members of the Committee may jeopardize the integrity of the evaluation and selection process and risk possible disqualification of Proposer.

The Committee will evaluate each proposal meeting the qualification requirements set forth in this RFP. Proposers should bear in mind that any proposal that is unrealistic in terms of the technical or schedule commitments may be deemed reflective of an inherent lack of technical competence or indicative of a failure to comprehend the complexity and risk of the City of Madera requirements as set forth in this RFP.

The selection process may include oral interviews. The consultant will be notified of the time and place of oral interviews and of any additional information that may be required to be submitted.

Evaluation Criteria

Proposals will be evaluated according to each Evaluation Criteria and scored on a zero to five-point rating. The scores for all the Evaluation Criteria will then be multiplied according to their

assigned weight to arrive at a weighted score for each proposal. A proposal with a high weighted total will be deemed of higher quality than a proposal with a lesser-weighted total. The final maximum score for any project is five hundred (500) points.

The Evaluation Criteria Summary and their respective weights are as follows:

No.	Written Evaluation Criteria	Weight
1	Completeness of Response	20
2	Qualifications & Experience	40
3	Scope of Services & Scheduling	10
4	References	15
5	Fee Schedule	15
Subtotal:		100

1. Completeness of Response (20 points)

- a. Responses to this RFP must be complete. Responses that do not include the Proposal content requirements identified within this RFP and subsequent addenda and do not address each of the items listed below will be considered incomplete.

2. Qualifications & Experience (20 points)

- a. Describe the qualifications and experience of the organization, entity, or individual performing services/projects within the past five years that are similar in size and scope to demonstrate competence to perform these services.
- b. Resume or curriculum vitae, listing education, training, background, and experience of the individuals conducting the hearings.
- c. Evidence of California State Bar membership of the individuals conducting the hearings.
- d. Two (2) writing samples of administrative hearing decisions and/or briefs filed with an administrative or quasi-judicial body in the State of California.

3. Scope of Services & Scheduling (10 points)

- a. Provide description of proposed services that address the scope in section IV.

- b. Provide an explanation of the purpose of informal hearings and the role of the hearing officer in the process.
- c. Describe your availability. How many days advance notice do you need for scheduling an informal hearing? Also, include any fixed days and times that you are not available. Proposed hearing schedule is during traditional business hours of Monday through Friday between the hours of 8:00 am and 5:00 pm.

4. References (15 points)

- a. Include a detailed description of a minimum of three (3) projects or contracts within the past five (5) years which include the following information:
 - i. Contracting agency
 - ii. Contracting agency contact information
 - iii. Contracting agency project manager or contract administrator contact information
 - iv. Contract amount
 - v. Date of contract
 - vi. Date of completion of contract
 - vii. Description of services provided

5. Fee Schedule (15 Points)

- a. Provide a fee schedule/pricing information for the project, including:
 - i. Hourly rate for hearings billed at quarter hour increments.
 - ii. Daily minimum hours.
 - iii. Proposed minimum charge for no-show applicants/contestants; cancellation rates (including the number of days advance notice needed prior to charging the cancellation rate).
 - iv. Initial orientation and subsequent trainings hourly rate.
 - v. Rates of compensation and description of any reimbursable charges.

Proposals shall be valid for a minimum of 180 days following submission.

ATTACHMENT A

**VENDOR INFORMATION FORM
FOR**

RFP No. 202122-05 for Administrative Hearing Officer

TYPE OF APPLICANT: ☐ NEW ☐ CURRENT VENDOR

Legal Contractual Name of Corporation: _____

Contact Person for Agreement: _____

Corporate Mailing Address: _____

City, State and Zip Code: _____

E-Mail Address: _____

Phone: _____ Fax: _____

Contact Person for Proposals: _____

Title: _____ E-Mail Address: _____

Business Telephone: _____ Business Fax: _____

Is your business: (check one)

☐ NON-PROFIT CORPORATION ☐ FOR PROFIT CORPORATION

Is your business: (check one)

☐ CORPORATION ☐ LIMITED LIABILITY PARTNERSHIP
☐ INDIVIDUAL ☐ SOLE PROPRIETORSHIP
☐ PARTNERSHIP ☐ UNINCORPORATED ASSOCIATION

Names & Titles of Corporate Board Members

(Also list Names & Titles of persons with written authorization/resolution to sign contracts)

Names	Title	Phone

Federal Tax Identification Number: _____

City of Madera Business License Number: _____

(If none, you must obtain a City of Madera Business License upon award of contract.)

City of Madera Business License Expiration Date: _____

ATTACHMENT B

FEE SCHEDULE

<i>Task</i>	<i>Description</i>	<i>Hourly Rate</i>	<i>Price per Task</i>
1	Preparation for hearings as scheduled by City staff		
2	Reviewing case documentation		
3	Conducting hearings at Madera City Hall		
4	Conducting hearings remotely		
5	Preparing written determinations		
6	All other services, including all work necessary for the effective handling of the City's administrative citation hearings.		

ATTACHMENT C

SAMPLE CONSULTANT SERVICES AGREEMENT

SAMPLE CONSULTANT SERVICES AGREEMENT

CONSULTANT SERVICES AGREEMENT BETWEEN THE CITY OF MADERA AND

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

RECITALS

A. City has sought, by a Request for Proposals, to select a consultant to provide

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

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

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

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

AGREEMENT

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

2. **Commencement of Services; Term of Agreement.** Consultant shall commence the Services upon City's issuance of a written "Notice to Proceed." This Agreement shall be effective on _____, 2021, after approval by the City Council at a duly scheduled meeting thereof and shall continue in full force and effect through _____, 2022, unless otherwise terminated earlier by one of the parties pursuant to Section 16 of this Agreement. This Agreement may be extended by mutual written consent annually thereafter, not to exceed one

(1) additional year, by providing such notice to the parties as identified in Section 21 of this agreement.

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

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

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

(a) Subject to any limitations set forth in this Agreement, City agrees to pay Consultant by the amounts specified in the Schedule of Compensation attached hereto as **Exhibit B** and incorporated herein by this reference. *[And if applicable add: "Both parties agree that Consultant's total compensation under this Agreement shall not exceed \$_____."]*

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

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

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

4. Independent Contractor Status. Consultant and its subcontractors shall perform the Services as independent contractors and not as officers, employees, agents, or volunteers of City. Nothing contained in this Agreement shall be deemed to create any contractual

relationship between City and Consultant's employees or subcontractors, nor shall anything contained in this Agreement be deemed to give any third party, including but not limited to Consultant's employees or subcontractors, any claim or right of action against City. Neither the City nor any of its employees shall have any control over the manner, mode, or means by which Consultant or its agents or employees perform the services under this Agreement.

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

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

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

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

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

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

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

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

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

relative to such projects. Any future position of City on such projects shall not be considered a conflict of interest for purposes of this section. City understands and acknowledges that Consultant will, perform non-related services for other governmental agencies and private parties following the completion of the Services under this Agreement, and any such future service shall not be considered a conflict of interest for purposes of this section.

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

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

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

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

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

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

d. Effect of Termination. Upon receipt of a termination notice (or completion of this Agreement), Consultant shall: (i) promptly discontinue all Services affected (unless the

notice directs otherwise); and (ii) deliver or otherwise make available to the City, without additional compensation, all data, documents, procedures, reports, estimates, summaries, and such other information and materials as may have been accumulated by the Consultant in performing this Agreement, whether completed or in process. Following the termination of this Agreement for any reason whatsoever, City shall have the right to utilize such information and other documents, or any other works of authorship fixed in any tangible medium of expression, including but not limited to physical drawings, data magnetically or otherwise recorded on computer disks, or other writings prepared or caused to be prepared under this Agreement by Consultant. Consultant may not refuse to provide such writings or materials for any reason whatsoever.

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

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

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

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

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

To City: (ADD NAME)
City of Madera
205 W. Fourth
Madera, CA 93637
Email:

To Consultant: NAME
ADDRESS
Email:

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

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

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

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

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

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

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

28. Amendments and Waiver. This Agreement shall not be modified or amended in any way, and no provision shall be waived, except in writing signed by the parties hereto. No waiver of any provision of this Agreement shall be deemed, or shall constitute, a waiver of any other provision, whether or not similar, nor shall any such waiver constitute a continuing or subsequent waiver of the same provision. Failure of either party to enforce any provision of this Agreement shall not constitute a waiver of the right to compel enforcement of the remaining provisions of this Agreement.

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

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

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

[SIGNATURES ON FOLLOWING PAGE]

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

CONSULTANT NAME

CITY OF MADERA

By: _____
(ADD NAME & POSITION)

By: _____
Santos Garcia, Mayor

Date: _____

Date: _____

APPROVE AS TO FORM:

Hilda Cantú Montoy, City Attorney

ATTEST:

Alicia Gonzales, City Clerk

EXHIBIT A

SCOPE OF SERVICES

SAMPLE

EXHIBIT B
SCHEDULE OF COMPENSATION

SAMPLE

EXHIBIT C INSURANCE

A. Insurance Requirements

Consultant shall maintain limits no less than:

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

Maintenance of Coverage

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

Proof of Insurance

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

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

Acceptable Insurers

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

Waiver of Subrogation

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

Enforcement of Contract Provisions (non estoppel)

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

Specifications not Limiting

Requirements of specific coverage features or limits contained in this Section are not intended as a limitation on coverage, limits or other requirements, or a waiver of any coverage normally provided by any insurance. Specific reference to a given coverage feature is for purposes of clarification only as it pertains to a given issue and is not intended by any party or insured to be all inclusive, or to the exclusion of other coverage, or a waiver of any type. If Consultant maintains higher limits than the minimums required above, the entity shall be entitled to coverage at the higher limits maintained by Consultant.

Notice of Cancellation

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

Self-insured Retentions

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

Timely Notice of Claims

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

Additional Insurance

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

SAMPLE