



REPORT TO CITY COUNCIL

Approved by:



Keith Helmuth, City Engineer



Arnaldo Rodriguez, City Manager

Council Meeting of: October 4, 2023

Agenda Number: D-3

SUBJECT:

Contract Award for the Renovation of the Cook Water Tower, City Project No. W-22 and W-34

RECOMMENDATION:

1. Adopt a Resolution approving the contract award for the Renovation of the Cook Water Tower, City Project No. W-22 and W-34 in the amount of \$2,920,732.00 to Unified Field Services Corporation and a contingency of 10 percent of the contract amount, and a CEQA Class 1 Categorical Exemption (Existing Facilities).
2. Adopt a Resolution Approving Project Funding Amendments Appropriating \$604,078.00 to the Fiscal Year (FY) 2023/24 Capital Projects Budgets

SUMMARY:

Loy Cook Water Tower, located on the southwest corner of South and Columbia Streets, was constructed in 1962 and has a capacity of 1 million gallons of water. The tower is due for renovations consisting of structural upgrades to meet current seismic codes, removal and replacement of the interior coating, removal and repainting of the tank's exterior, and replacement of the 16-inch water supply line and valves supplying the water tower.

On December 15, 2021, the City Council approved an agreement with Beyaz & Patel, Inc. for the structural evaluation and interior and exterior coating evaluation of the Loy Cook Water Tower. As part of the agreement, the consultant was required to perform field investigations of the tower to provide structural recommendations to bring the water tower up to current seismic and building codes should the tower be found to be structurally deficient.

Subsequently, on December 21, 2022, the City approved an Amendment with Beyaz & Patel, Inc., to prepare plans and specifications for the interior and exterior coating and structural upgrades to the tower.

On September 14, 2023, the City received two bids for the Renovation of the Loy Cook Water Tower, City Project No. W-22 and W-34 (Project). The Project combines two Capital Improvement Plan (CIP) projects W-22 and W-34, funded with American Rescue Plan Act (ARPA) funds designated for water and sewer infrastructure improvements by Council.

Unified Field Services Corporation submitted the lowest, responsive bid. The Fiscal Year (FY) 2023/24 Capital Projects Budget includes funding for both projects. Additional funds are needed to meet the recommended contract award amount.

BACKGROUND:

The water tower, named after Loy E. Cook, who served as the water superintendent at the time and was a long-time employee of the City for 35 years, has a capacity of over 1 million gallons, a height of 134 feet, and a diameter of 76 feet. The iconic structure is the only remaining elevated water storage tank still in use by the City. The other tower, located at the Frank Bergon Center, is not actively used.

In 2021, the engineering firm Beyaz and Patel Inc, under contract with the City, performed a condition assessment of the tower's structural systems, steel integrity, internal coating and external paint. The conclusions in the report were as follows:

- The structural integrity of the tower is in good condition. Minor upgrades are necessary to bring the tower in compliance with current seismic building codes.
- The interior coating is in safe but deteriorating condition with removal and replacement of the interior coating recommended.
- The exterior paint is deteriorating with spot corrosion of the underlying steel and spot peeling throughout the tower. Repainting the tower is recommended by one of two provided options:
 - Strip all existing paint and repaint. This method was selected for the reasons discussed below.
 - Spot repair corroded areas and paint over existing paint.

It was recommended that to preserve the tower for the next 40-50 years with the least maintenance, complete removal of existing exterior paint and repainting of the tower should be done.

Unified Field Services Corporation submitted the lowest, responsive, and responsible bid that meets the contract requirements. It is therefore recommended for award.

Water Utility funds are programed in the FY 2023/24 CIP as W-22 and W-34.

DISCUSSION:

The general scope of work consists of the following:

- Perform structural upgrades to the tower by replacing bracing between the legs and tank.
- Abrasive blasting of the interior of the tank to remove the existing coating, recoat the interior surfaces with a 2-coat system of Sherplate MSS-600 (suitable for potable water storage) epoxy coating (Sherwin Williams). The tank will be out of service for approximately 3 months from December 2023 through February 2024. These months were determined to have the lowest water demand on the tank during the year (winter months). The recoating of the interior will require interior scaffolding.
- Scaffolding the exterior of the tank and sandblast all existing paint off all surfaces. The entire tower must be tented to contain and filter away any airborne paint and material sandblasted from the exterior surface. The tower will then be repainted with a 3-coat system (epoxy primer coat, epoxy finish coat, and clear commercial urethane coat). The topcoat is Sherloxane 800 made by Sherwin Williams. The paint system has an estimated lifespan of 40-50 years if inspections are made every 10 years and possible maintenance in later years of the lifespan. The existing AT&T and City antennas will be protected and remain in service during all construction phases.
- The MADERA logo and sign will be repainted to its original size and color.
- Replacement of the 16-inch supply pipeline and valves were added to the scope of work at the request of Public Works due to the age of the valves and water line needing constant repair.

The construction schedule is driven by the water demand on the tower from the city's water distribution system. Historically, the lowest demand on the tower is in the cooler months of December, January, and February for domestic demand and fire suppression reserve. These months represent the lowest risk to the city if the tower is drained and taken offline, thus the contract documents require that the interior recoating be performed during this period.

On August 16, 2023 the City released the projects for public bidding on the PlanetBids web portal. Also, a "Notice Inviting Bids" was duly published in the Madera Tribune Newspaper on August 16 and August 23, 2023. Additionally, City staff contacted six firms directly by telephone at the recommendation of the Engineering Consultant. No local firms were found in the immediate vicinity capable of performing this scope of work.

On September 14, 2023 two bids were received. The bids were checked for accuracy against bidding requirements, validity of licenses, and bid security. Table 1 presents a summary of the bids received.

| Table 1: Bid Overview | | |
|------------------------------|--|-----------------------|
| | <i>Bidder</i> | <i>Total Base Bid</i> |
| 1. | Unified Field Services Corporation | \$ 2,920,732 |
| 2. | Simpson Sandblasting and Special Coatings, Inc | \$3,274,431 |
| | <i>Engineer's Opinion of Cost</i> | <i>\$1,973,000</i> |

Unified Field Services Corporation submitted the lowest, responsive, and responsible bid that meets the contract requirements and is therefore recommended for award.

Engineer's Opinion of Cost

After the Engineer's Opinion of Cost was prepared, the following became apparent:

- The estimated construction cost assumed the interior would not need any scaffolding and the exterior would only need partial scaffolding on the underside. A hanging painter's bench would have been used to paint that moves around the interior and exterior of the tank.

The assumption was incorrect and the contractors chose full scaffolding on the interior and exterior as a faster method to ensure the tank stays out of service only during the allotted time and materials for the project were underestimated.

- The 16-inch water valves and water line replacement cost estimate was also incorrect. The estimate was based on discussions with local vendors since Engineering and Public Works have no historical data for water valve and water line replacement of this size.

The cost of the structural repairs was within budget.

While the bid amount was \$947,732 over the Engineer's Opinion of Cost, the funding for the project including contingencies and construction oversight, is \$604,078.00 over budget. Staff has determined that a recommendation for approval of the contract, and budget amendment, is warranted based on several factors that include:

- **Cost:** While higher than expected, rebidding:
 - Would result in a delay of one year
 - Other factors such as inflation, the direction of the economy and the success of attempts to redesign cannot guarantee a reduced cost when looking at a one-year delay
- **Schedule:** One potential method of reducing cost is to extend the schedule as part of a rebid. Staff is uncomfortable extending the construction schedule given the risks to supply as weather increases may result in the need for the tank to be operational.

- **Maintenance:** Staff prefers the coating selections made as they are expected to result in the least required maintenance and associated cost in the long run
- **Reasonableness of Bid:** While the engineering consultant’s estimated cost of construction was significantly lower than the bid amount as a result of incorrect assumptions on scaffolding, materials, and schedule, it is not staff’s opinion that rebidding would be in the best interest of the City as staff’s review seems to confirm that the factors that led to certain higher than projected costs probably could not be addressed in a manner that bid amounts would be reduced.

Finally, staff performed a preliminary environmental assessment of this project and determined that it falls within the Class 1 Categorical Exemption (Existing Facilities) set forth in California Environmental Quality Act (CEQA) Guidelines section 15301, as this contract is for the repair and rehabilitation of an existing water tower, which will not result in the expansion of capacity of the water tower or the City’s water system. Furthermore, none of the exceptions to the Categorical Exemptions set forth in CEQA Guidelines section 15300.2 apply to this project. As such, staff recommends that the City Council adopt a Class 1 Categorical Exemption for this project.

FINANCIAL IMPACT:

There is no fiscal impact on the City’s General Fund. The recommended budget for the project's construction phase is \$3,482,805.00, including construction contract, contingencies, administration, testing, and inspection. Funding for projects W-22 and W-34 is programmed in the FY 2023/24 Capital Projects Budget with Water Utility Funds (20303830), specifically American Rescue Plan Act (ARPA) funds that have a deadline of expenditure of December 2024. Additional funding is needed to complete the project. Table 2 outlines the current and proposed project budget.

| Table 2: Project Budget | |
|---|--------------------|
| <i>Projected Costs</i> | |
| Remaining Design, Bidding, and Advertising Costs | \$20,000 |
| Construction Contract – pending approval | \$ 2,920,732 |
| Contingencies, 10% of Contract Amount | \$292,073 |
| Construction Engineering, Inspection, and Testing | \$250,000 |
| Total Costs | \$3,482,805 |
| <i>Funds Programmed in FY 23/24 CIP Budget</i> | |
| W-22 | \$1,469,941 |
| W-34 | \$1,408,786 |
| Current Project Budget | \$2,878,727 |
| <i>Budget Amendment Requested</i> | |
| W-22 | \$0 |
| W-34 | \$604,078 |
| Proposed Project Budget | \$3,482,805 |

ALTERNATIVES:

Reject all bids. Rebid with changes in schedule, scope and method of painting. As noted above, this is not considered to have a high degree of confidence in lowering costs while achieving certain goals with regard to maintenance.

ATTACHMENTS:

1. Resolution approving Contract
 - a. Exhibit A – Contract
2. Budget Amendment Resolution
 - a. Exhibit A – Budget Amendment Sheet

Attachment 1

Contract Award Resolution

RESOLUTION NO. 23-_____

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MADERA,
CALIFORNIA APPROVING THE CONTRACT AWARD FOR THE RENOVATION
OF THE LOY COOK WATER TOWER, CITY PROJECT NOS. W-22 AND W-34
IN THE AMOUNT OF \$2,920,732.00 TO UNIFIED FIELD SERVICES
CORPORATION AND AUTHORIZING CONSTRUCTION CONTINGENCIES
RELATING TO THE CONTRACT**

WHEREAS, on August 16, 2023, the City of Madera (City) Engineering Department advertised a solicitation for construction bids for the Renovation of the Loy Cook Water Tower, City Project Nos. W-22 and W-34 hereinafter referred to as “the Project”;and

WHEREAS, two sealed bids were received on September 14, 2023, and opened by the City Engineer; and

WHEREAS, Unified Field Services Corporation was selected as the lowest responsive and responsible bidder; and

WHEREAS, the Project is programmed in the Capital Improvement Projects Budget for Fiscal Year 2023/24 under CIP Projects W-22 and W-34 using American Rescue Plan Act (ARPA) funds.

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

1. The above recitals are true and correct.
2. The City Council (Council) has reviewed and considered all of the information presented including the report to Council from the Engineering Department.
3. The City has performed a preliminary environmental assessment of this project and has determined that it falls within the Class 1 Categorical Exemption (Existing Facilities) set forth in California Environmental Quality Act (CEQA) Guidelines section 15301, as this contract is for the repair and rehabilitation of an existing water tower, which will not result in the expansion of capacity of the water tower or the City’s water system. Furthermore, none of the exceptions to the Categorical Exemptions set forth in CEQA Guidelines section 15300.2 apply to this project. As such, the Council adopts a Class 1 Categorical Exemption for this project.
4. The City finds that Unified Field Services Corporation is the lowest responsible and responsive bidder.

5. The contract for the Project in the Amount of \$2,920,732.00 to Unified Field Services Corporation, a copy of which is attached hereto as Exhibit A and referred to for particulars, is approved.
6. Council authorizes Construction Contingencies of up to 10 percent as approved by the City Engineer.
7. This Resolution is effective immediately upon adoption.

Exhibit A

Contract Agreement

AGREEMENT

THIS AGREEMENT, made this 4th day of October, 2023, between the City of Madera, hereinafter called "**OWNER**", and Unified Field Services Corp, doing business as 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 "**Renovation of the Loy Cook Water Tower, City Project No. W-22 and W-34**"
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 \$ 2,920,732.00, each and Insurance Certificates as specified in the **CONTRACT DOCUMENTS** prior to commencing any **WORK**.
4. The **CONTRACTOR** agrees to perform all of the **WORK** described in the **DOCUMENTS** for the unit and lump sum prices set forth in the Bid Schedule.
5. The term "**CONTRACT DOCUMENTS**" means and includes the following:
 - (A) Advertisement for Bids
 - (B) Information for Bidders
 - (C) Bid Proposal
 - (D) Bid Bond
 - (E) Agreement
 - (F) Payment Bond
 - (G) Performance Bond
 - (H) Insurance Requirements for Contractors
 - (I) General Conditions
 - (J) Special Conditions
 - (K) City of Madera Standard Specifications and Drawings
 - (N) State Standard Plans and Specifications
 - (O) Plans and Specifications prepared or issued by City of Madera entitled "**Renovation of the Loy Cook Water Tower City Project No. W-22 AND W-34**" dated JULY 2023.

Addenda Nos. 1, dated August 22, 2023

Addenda Nos. 2, dated August 24, 2023

Addenda Nos. _____, dated _____

6. In the event the **CONTRACTOR** does not complete the **WORK** within the time limit specified herein or within such further time as authorized, the **CONTRACTOR** shall pay to the **OWNER** liquidated damages in the amount of **Four Thousand two Hundred Dollars (\$4,200.00)** per day for each and every calendar day delay in finishing the **WORK** beyond the completion date so specified.

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

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

8A. CLAIMS RESOLUTION PROCESS FOR DISPUTES.

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

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

A. Claims:

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

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

B. The Claim Must Be Timely and in Writing:

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

C. Receipt of Claim by Owner:

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

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

D. City Council Approval:

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

E. Payment of Claim:

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

F. Meet and Confer:

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

Within 10 business days following the conclusion of the meet and confer conference, if the claim or any portion of the claim remains in dispute, the Owner shall provide the Contractor a written statement identifying the portion of the claim that remains in dispute and the portion that is undisputed. Any payment due on an undisputed portion of the claim shall be processed and made

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

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

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

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

G. Filing a Government Code Written Claim Notice:

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

H. Owner's Failure to Respond to Claim:

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

I. Interest:

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

J. Subcontractor Claims:

If a subcontractor or a lower tier subcontractor lacks legal standing to assert a claim against Owner because privity of contract does not exist, the Contractor may present to the Owner a claim on behalf of a subcontractor or lower tier subcontractor. For purposes of this paragraph, the term "subcontractor" means any type of subcontractor within the meaning of Chapter 9 (commencing with Section 7000) of Division 3 of the Business and Professions Code who either is in direct contract with the Contractor or is a lower tier subcontractor. A subcontractor may request in

writing, either on his or her own behalf or on behalf of a lower tier subcontractor, that the Contractor present a claim for work which was performed by the subcontractor or by a lower tier subcontractor on behalf of the subcontractor. The subcontractor requesting that the claim be presented to the Owner shall furnish reasonable documentation to support the claim. Within 45 days of receipt of this written request, the Contractor shall notify the subcontractor in writing as to whether the contractor presented the claim to the Owner and, if the original contractor did not present the claim, provide the subcontractor with a statement of the reasons for not having done so.

K. Filing of Action on Unresolved Claims:

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

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

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

10. In accordance with the provisions of Article 5, Chapter 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 CONTRACTOR", pages 37-38 of the Contract Documents.

19. Amendments- Any changes to this Agreement requested by either City or **Unified Field Services Corporation**, 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, **Unified Field Services Corporation** 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 **Unified Field Services Corporation**;
2. A failure by **Unified Field Services Corporation** to comply with any material term of this Agreement;
3. A substantially incorrect or incomplete report submitted by **Unified Field Services Corporation** to City.

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

Notice of termination shall be mailed to the City:

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

To the Contractor **Unified Field Services Corporation**

Notices. All notices and communications from the **Unified Field Services Corporation** 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 **Unified Field Services Corporation** 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 **Unified Field Services Corporation** 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 **Unified Field Services Corporation** in connection to the Project and correctly sets forth the obligations of the City and **Unified Field Services Corporation** 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 **Unified Field Services Corporation** nor City will assign its interest in this Agreement without the written consent of the other.

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

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

City of Madera
Herein Called OWNER

By: _____
Santos Garcia, Mayor

APPROVE AS TO FORM:

Shannon L. Chaffin, City Attorney

ATTEST:

Alicia Gonzales, City Clerk

BY: Unified Field Services Corporation
Herein Called CONTRACTOR

BY: _____
Joseph Watkins, Vice President

Federal Tax I.D. No. 47-5327634

Contractor License Number = 1009928

DIR Registration Number = 1000042614

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.

California Notary acknowledgement required to be attached.

Attachment 2

Budget Amendment Resolution

RESOLUTION NO. 23-_____

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MADERA,
APPROVING FUNDING AMENDMENT APPROPRIATING \$604,078 TO THE
CITY OF MADERA FISCAL YEAR (FY) 2023/24 CAPITAL PROJECTS BUDGET
FOR THE RENOVATION OF THE LOY COOK WATER TOWER, CITY PROJECT
W-34.**

WHEREAS, a project for the renovation of the Loy Cook Water Tower, City Projects W-22 and W-34, hereinafter called “the Project”, is included in the Fiscal Year (FY) 2023/24 Capital Projects Budget; and

WHEREAS, additional funds are necessary for the completion of the project construction phase including contract items, contingency and construction administration, inspection and testing; and

WHEREAS, Funds are available in the unprogrammed fund balance of the American Rescue Plan Act (ARPA) funds.

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

1. The above recitals are true and correct.
2. The FY 2023/24 Capital Projects Budget is hereby amended in accordance with Exhibit AA, Budget Amendment Breakdown which is incorporated by reference herein.
3. The City Clerk is authorized and directed to forward a copy of the resolution to the Director of Finance who is authorized to take such action as necessary to implement the terms of this resolution.
4. This resolution is effective immediately

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EXHIBIT AA
BUDGET AMENDMENT BREAKDOWN

| <i>Org Code</i> | <i>Obj Code</i> | <i>Project Code</i> | <i>Description</i> | <i>(-)</i> | <i>(+)</i> |
|-----------------|-----------------|---------------------|--|------------|------------|
| 48250000 | 4434 | ARPA | Grant Revenue | \$604,078 | |
| 48250000 | 8260 | ARPA | Transfer Out (CIP) | | \$604,078 |
| 48250000 | 4360 | ARPA | Transfer In (CIP) | \$604,078 | |
| 20303830 | 7050 | ARPA | W-000034 South Street Water Tower (Loy Cook Tank) Exterior Rehab | 0 | \$ 604,078 |