



REPORT TO CITY COUNCIL

Approved by:

Joseph Hebert
Joseph Hebert, Parks & Community Services Director

Council Meeting of: January 17, 2024

Agenda Number: D-5

Arnoldo Rodriguez
Arnoldo Rodriguez, City Manager

SUBJECT:

Agreement for Lions Town & Country Park Restroom Renovation Project

RECOMMENDATION:

Adopt a Resolution awarding a contract under Invitation for Bids (IFB) No. 202324-05 to David J. Boyle Electric Shop for the Lions Town & Country Park Restroom Renovation for \$164,000

SUMMARY:

On December 21, 2023, the City received three bids in response to the Invitation for Bids (IFB) for Contractor services aimed at renovating the existing restroom at LT&C Park. The scope of work includes the comprehensive renovation of the restroom interior along with the painting of its exterior.

Funding for the restroom renovation comes from the State of California Department of Parks & Recreation, Per Capita Grant Program funded by Proposition 68. The City was appropriated \$177,952 for an eligible capital outlay related project. This renovation project aligns with the grant's criteria, focusing on enhancing the LT&C Park restroom between Fields 1 & 2, acknowledged as the park's most utilized restroom necessitating capital improvements.

DISCUSSION:

The Per Capita Grant Program originates from Proposition 68, placed on the ballot via Senate Bill 5 and approved by voters on June 5, 2018. It includes the General Per Capita Program and the Urban County Per Capita Program, which represent a combined total of over \$198 Million in funding. The funding allocation for this renovation project is determined based on the population of eligible cities, counties, or other districts. The Program, administered by the California State Park's Office of Grants and Local Services (OGALS), is specifically designed to supplement existing capital outlay expenditures for recreational purposes within communities.

Based on the City's population, a total of \$177,952 was allocated to the City. Since the allocation, staff conducted a deeper assessment for the capital improvements needed at the restroom, that included planning for ADA compliance in and around the restroom site as well. The restroom, facing Howard Road, primarily serves the large baseball diamonds, Fields 1 & 2. These fields are designated for Little League and Babe Ruth baseball leagues that run for several months during the year. The baseball fields also hold many tournaments and are used for public recreational use throughout the year.

The existing restroom is in dire need of improvements to replace fixtures such as the toilets, sinks, urinals, and partitions. Furthermore, new floors and walls will also be installed, along with enhanced interior and exterior lighting. It is worth noting that the existing restroom does not meet ADA accessible requirements.

To proceed with the renovation, staff prepared IFB No. 202324-05. The IFB was released on November 18, 2023, with bids due on Thursday December 21, 2023. The IFB notice was duly published in the Madera Tribune on November 18 and 25, 2023. In addition, IFB was published on the following platforms:

- City of Madera PlanetBids Vendor Portal
- Construction Bidboard (Ebidboard)
- Dodge Data & Analytics
- Placer Country Contractors Association & Builders Exchange
- Builders' Exchange of San Joaquin
- Central California Builders Exchange
- Valley Builders Exchange

Regarding the bidding process, 59 bidders from the City's online vendor registry were notified. An additional 250 potential bidders licensed to perform the work identified in the scope of the IFB were notified through PlanetBids. A total of 9 potential bidders downloaded the project bid documents and indicated that they would bid. Bids were ultimately received from three vendors as highlighted on Table 1. The three bids received were evaluated by City staff for responsiveness and cost.

Table 1 shows vendors ranked by cost, with staff recommendation for awarding the contract to David J. Boyle Electrical Shop, being the lowest responsive, responsible bid per the requirements set forth in the project's contract documents.

Table 1: Bids Received Ranked by Cost		
<i>Rank</i>	<i>Firm</i>	<i>Bid Amount</i>
1	David J. Boyle Electrical Shop	\$164,000
2	Better Enterprises, Inc.	\$279,068
3	GCB1, Inc. dba GC Builders	\$296,602

Among the three bids received for the project, one of the submissions came from David J. Boyle Electric Shop, a reputable local contractor located in town, with a long-standing history in our community. David J. Boyle Electric Shop specializes in electrical installations and various building improvements. The company, established in 1920, has been involved in general engineering, construction, and electrical contracting work. Notably, the City has engaged in prior collaborations with David J. Boyle Electric Shop on various municipal projects, encompassing electrical installations and building constructions.

The engineer's initial estimate for the project cost was \$134,000. David J. Boyle Electric Shop submitted a bid of approximately \$164,000, which exceeds the estimated project cost. However, the bid falls within the grant funding allocated for this project, amounting to \$177,952.

FINANCIAL IMPACT:

The funding for the renovation of the restroom aligns with the guidelines of the Proposition 68 grant. The aim of these grants is to encourage recipients to focus on rehabilitating existing infrastructure and enhancing outdoor access within their communities.

The LT&C Park restroom renovation project has been budgeted within the City's Fiscal Year 2023/24 Parks Grant Fund #4109-6356-7030. The project's approved budget amounts to \$177,952, aligning with the grant's scope of work and objectives.

During this Fiscal Year, expenditures related to the Per Capita Grant Program project have been diligently managed. Specifically, a total of \$1,325 has been allocated for costs associated with the bid advertisement of IFB No. 202324-05. These expenses are in line with the initial stages of the project, focusing on the solicitation of bids for the renovation.

ALTERNATIVES:

Staff has carefully considered the bids received for the renovation project. An alternative course of action involves rejecting all bids, which could potentially lead to several consequences that need to be taken into account.

Rebidding the project introduces uncertainties that may impact the project's overall cost. There is a possibility of receiving higher bids or encountering a lack of additional bids in a subsequent bidding process. This scenario could prolong the timeline for selecting a contractor and commencing the restroom renovation, potentially delaying essential improvements.

Moreover, failure to proceed promptly with the project poses a risk to the City's ability to meet the project completion deadline by June 30, 2024. Timely execution is crucial to ensure that the restroom renovation aligns with the designated schedule and grant compliance requirements. Any delays in initiating the project might jeopardize the City's adherence to the project timeline, potentially impacting the availability of grant funds or meeting the intended objectives within the specified timeframe.

ATTACHMENTS:

1. Resolution Awarding IFB No. 202324-05 to David J. Boyle Electrical Shop for the renovation of restroom at Town & Country Park
 - a. Exhibit A: Construction Agreement

ATTACHMENT 1

Resolution Awarding IFB No. 202324-05 to
David J. Boyle Electrical Shop
for the renovation of restroom at Town & Country Park.
a. Exhibit A: Construction Agreement

RESOLUTION NO. 24-

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MADERA,
CALIFORNIA APPROVING AWARDDING IFB NO. 202324-05 TO DAVID J.
BOYLE ELECTRICAL SHOP FOR THE RENOVATION OF RESTROOM AT TOWN
& COUNTRY PARK IN THE AMOUNT OF \$164,000**

WHEREAS, the City of Madera released an Invitation for Bids (IFB) No. 202324-05 calling for the renovation of the existing restroom building at Lions Town & Country Park; and

WHEREAS, the IFB No. 202324-05 was released on November 18, 2023; and

WHEREAS, the IFB No. 202324-05 was duly noticed and published accordingly; and

WHEREAS, a total of three bids were received as of December 21, 2023; and

WHEREAS, one bid was received from David J. Boyle Electrical Shop; and

WHEREAS, David J. Boyle Electrical Shop submitted the lowest responsible bid at \$164,000; and

WHEREAS, the City wishes to enter into a Construction Agreement with David J. Boyle Electrical Shop for the completion of the work; and

WHEREAS, the Construction Agreement is to be for \$164,000; and

WHEREAS, the work to be completed is being funded by the State of California Department of Parks and Recreation, Per Capita Grant Program.

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 of the City of Madera does hereby accept the three bids received for this project, finds that David J. Boyle Electrical Shop, is the lowest responsive and responsible bidder, and awards a construction contract for the IFB 202324-05 Lions Town & Country Park Restroom Renovation project in the amount of \$164,000 to David J. Boyle Electrical Shop. Said contract is attached hereto as Exhibit A and approved as to its material terms, and the Mayor is authorized to execute the same on behalf of the City subject as to legal form by the City Attorney.
3. This Resolution is effective immediately upon adoption.

CONSTRUCTION AGREEMENT
IFB 202324-05 TOWN AND COUNTRY PARK RESTROOM RENOVATIONS

This Construction Agreement ("Agreement") is made between the City of Madera, hereinafter called "**OWNER**," and David J. Boyle Electric Shop, LLC., doing business as (an individual), or (a partnership), or (a corporation), hereinafter "**CONTRACTOR**" and collectively called "**Parties.**" The Agreement is effective as of January 17, 2024.

WITNESSETH: The Parties agree as follows:

1. Project. The **CONTRACTOR** shall commence and complete all **WORK** required for the "IFB 202324-05 TOWN AND COUNTRY PARK RESTROOM RENOVATIONS"

2. Materials, Supplies, Equipment. 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 in this Agreement.

3. Commencement of Work and Bonds. The **CONTRACTOR** shall commence the **WORK** required by the **CONTRACT DOCUMENTS** within five (5) calendar days after the date of the **NOTICE TO PROCEED** and will complete the same within 90 calendar days. The **CONTRACTOR** shall submit a Payment Bond and Performance Bond in the amount of \$164,000.00, each and Insurance Certificates as specified in the **CONTRACT DOCUMENTS** prior to commencing any **WORK** within seven (7) working days after being notified of the award of the contract, and before **OWNER** executes this AGREEMENT.

4. Contract Amount. **OWNER** agrees to pay, and **CONTRACTOR** agrees to accept, the sum of One Hundred Sixty-Four Thousand Dollars (\$164,000.00) ("Contract Price") subject to adjustments for changes in work as may be directed in writing by **OWNER** as payment in full for the **WORK** described in the **CONTRACT DOCUMENTS**. **WORK** performed at unit prices will be paid based on actual quantities of work performed and accepted. **CONTRACTOR**

5. Contract Documents. The **CONTRACTOR** shall commence and complete all **WORK** required in accordance with the following **CONTRACT DOCUMENTS**, attached hereto as **Exhibit A:**

- (A) CONTRACTOR Bid Proposal
- (B) Insurance Requirements for Contractors
- (C) IFB 202324-05 Town and Country Park Restroom Renovations
- (D) Signed Non-Collusion Affidavit
- (E) Signed Conflict of Interest Disclosure
- (F) Addendum No. 1, dated 12/06/2023
- (G) Addendum No. 2, dated 12/14/2023
- (H) CONTRACTOR Payment Bond
- (H) CONTRACTOR Performance Bond

6. Liquidated Damages. In the event the **CONTRACTOR** does not complete the **WORK** within the time limit specified in Section 3 or within such further time as authorized, the **CONTRACTOR** shall pay to the **OWNER** liquidated damages in the amount of **FOUR HUNDRED DOLLARS (\$400.00)** per day for each and every calendar day delay in finishing the **WORK** beyond the completion date so specified.

7. Payment to Contractor. As consideration for performance of the Work required herein, **OWNER** agrees to pay **CONTRACTOR** on a time and materials basis as set forth herein, a not-to-exceed amount of \$164,000.00 ("Total Contract Price") provided that such amount shall be subject to adjustment pursuant to the applicable terms of this Contract or written change orders approved and signed in advance by the **OWNER**.

A. Periodic payments shall be made by the **OWNER** to **CONTRACTOR** within thirty (30) days of **OWNER'S** receipt of an application for payment from **CONTRACTOR** for services rendered. Payments to **CONTRACTOR** for work performed will be made on a monthly billing basis. The application shall include all information required by the **OWNER** and shall be in a format approved by the **OWNER**. This application shall be supported by evidence which is required by this Contract and such other documentation as the **OWNER** may require. The **CONTRACTOR** shall certify that the Work for which payment is requested has been done and that any materials listed are stored where indicated. **OWNER** shall review and pay the payment request in accordance with the provisions set forth in Section 20104.50 of the California Public Contract Code.

B. Labor and Material Releases. **CONTRACTOR** shall furnish **OWNER** with labor and material releases from all subcontractors performing work on, or furnishing materials for, the Work governed by this Contract prior to final payment by **OWNER**.

8. Disputes. 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.*

1) 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:

- a) A time extension, including, without limitation, for relief from damages or penalties for delay assessed by Owner under this Contract.
- b) 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.
- c) Payment of an amount that is disputed by the Owner.

2) 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.

3) 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.

4) 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.

5) 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.

6) 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.

7) 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.

8) 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.

9) Interest:

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

10) 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.

11) 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. No Discrimination in Employment. 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. Workers Compensation. 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. Prevailing Wages. This Agreement is subject to California Labor Code Sections 1720, et seq., and Contractor and subcontractor shall pay not less than the specified prevailing rates of wage to all workers employed in performance of the Work. Pursuant to the provisions of Section 1770 of the California Labor Code, OWNER has obtained the general prevailing rate of wages and employer payments for health and welfare, vacation, pension, and similar purposes, as determined by the Director of the Department of Industrial Relations, a copy of which is on file in the office of OWNER, and shall be made available for viewing to any interested party upon request. The Contractor and each subcontractor shall forfeit as a penalty to OWNER not more than Two Hundred Dollars (\$200) for each calendar day, or portion thereof, for each worker paid less than the stipulated prevailing wage rate in violation of the Labor Code. In addition, the difference between the prevailing wage rate and the amount paid to each worker for each calendar day or portion thereof for which each worker was paid less than the stipulated prevailing wage rate shall be paid to each worker by the Contractor.

12. Public Works Contractor Registration. Pursuant to Labor Code sections 1725.5 and 1771.1, all contractors and subcontractors that wish to bid on, be listed in a bid proposal, or enter into a contract to perform public work must be registered with the Department of Industrial Relation. No bid will be accepted, nor any contract entered into without proof of the Contractor's and subcontractors' current registration with the Department of Industrial Relations to perform public work. Contractor and its subcontractors, of any tier, shall maintain active registration with the Department of Industrial Relations for the duration of the Project. In addition, Contractor shall provide the registration number for each listed subcontractor in the space provided in the Designation of Subcontractors Form.

This Project is subject to compliance monitoring and enforcement by the Department of Relations. In executing this contract, Contractor acknowledges that it has reviewed all applicable labor compliance requirements and included the cost of complying with such requirements in its bid.

13. Payroll Records. The **CONTRACTOR** shall comply Section 1776 of the California Labor Code. 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. If **CONTRACTOR** or subcontractor does not comply after such ten (10) day period, the **CONTRACTOR** shall, as a penalty, forfeit one hundred dollars (\$100) for each 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.

In accordance with California Labor Code Section 1771.4 Section 1771.4, **CONTRACTOR** and each subcontractor shall furnish the certified payroll records directly to the Department of Industrial Relations (DIR) on a weekly basis and in the format prescribed by the DIR which may include electronic submission. **CONTRACTOR** shall comply with all applicable requirements and regulations from the DIR relating to labor compliance monitoring and enforcement.

14. Apprentices. Attention is directed to the provisions in Sections 1777.5 and 1777.6 of the California Labor Code concerning the employment of apprentices by the **CONTRACTOR** or any **SUBCONTRACTOR**. It is the **CONTRACTOR'S** responsibility to ensure compliance by both it 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.

15. Hours of Work. 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 worker is required or permitted to work, except in cases of extraordinary emergency caused by fires, flood, or danger to life and property or except as authorized under the overtime provisions in California Labor Code 1815.

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**.

16. Subcontracting. 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.

17. Change Orders. 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 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 Agreement 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.

18. Indemnification. **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.

19. Contractor must comply with the insurance requirements as described in the section "INSURANCE REQUIREMENTS FOR CONTRACTORS" of the Contract Documents.

20. Amendments. Any changes to this Agreement requested by either City or **CONTRACTOR** 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.

21. Termination.

A. Termination of the Contract for Default.

1. General: If, prior to the acceptance of the Work, the **CONTRACTOR**:

- (a) Becomes insolvent, assigns its assets for the benefit of its creditors, or is otherwise financially unable to complete the Work;
- (b) Abandons the Work by failing to report to the Work site and diligently prosecute the Work to completion;
- (c) Disregards written instructions from the City Engineer or materially violates provisions of the Contract Documents;
- (d) Fails to prosecute the Work according to the schedule approved by the City Engineer;
- (e) Disregards laws or regulations of any public body having

jurisdiction; or

- (f) Commits continuous or repeated violations of regulatory or statutory safety requirements, then the OWNER will consider the Contractor in default of the Contract.

2. Notices: Notices and other written communications regarding default between the CONTRACTOR, the OWNER, and the SURETY shall be transmitted as follows:

- (a) Personal delivery with proof of delivery which may be made by declaration under penalty of perjury by any person over the age of 18 years. The proof of delivery shall show that delivery was performed in accordance with these provisions. Service shall be effective on the date of delivery. Notices given to the Contractor by personal delivery may be made to the Contractor's authorized representative at the Work site; or
- (b) Certified mail addressed to the mailing address of the recipient postage prepaid; return receipt requested. Service shall be effective on the date of the receipt of the mailing.

Simultaneously, the OWNER may send the same notice by regular mail. If a notice that is sent by certified mail is returned unsigned, then delivery shall be effective pursuant to regular mail, provided that the notice that was sent by regular mail is not returned.

- 3. Notice to Cure: The OWNER will issue a written notice to cure the default to the Contractor and its Surety. The Contractor shall commence satisfactory corrective actions within 5 Working Days after receipt.
- 4. Notice of Termination for Default: If the Contractor fails to commence satisfactory corrective action within 5 Working Days after receipt of the notice to cure, or to diligently continue satisfactory and timely correction of the default thereafter, then the Owner will recommend to the City Council that the Contractor be found in default of the Contract and upon such finding by the City Council will terminate the Contractor's right to perform under the Contract by issuing a written notice of termination for default to the Contractor and its Surety;

The provisions of this subsection shall be in addition to all other legal rights and remedies available to the Owner.

- 5. Responsibilities of the Surety: Upon receipt of the written notice of

termination for default, the Surety shall immediately assume all rights, obligations, and liabilities of the Contractor under the Contract. If the Surety fails to protect and maintain the Work site, the Owner may do so, and may recover all costs incurred. The Surety shall notify the Owner that it is assuming all rights, obligations, and liabilities of the Contractor under the Contract and all money that is due, or would become due, to the Contractor shall be payable to the Surety as the Work progresses, subject to the terms of the Contract.

Within 15 Working Days of receipt of the written notice of termination for default, the Surety shall submit to the Owner a written plan detailing the course of action it intends to take to remedy the default. The Owner will review the plan detailing and notify the Surety if the plan is satisfactory. If the Surety fails to submit a satisfactory plan, or if the Surety fails to maintain progress according to the plan accepted by the Owner, the Owner may, upon 48 hours written notice, exclude the Surety from the premises, take possession of all material and equipment, and complete the Work in any way the Owner deems to be expedient. The cost of completing the Work by the Owner shall be charged against the Surety and may be deducted from any monies due, or which would become due, the Surety. If the amounts due under the Contract are insufficient for completion, the Surety shall pay the Owner, within 30 Days after the Owner submits an invoice, all costs in excess of the remaining Contract Price.

6. Payment: The Surety will be paid for completion of the Work in accordance less the value of damages caused to the Owner by the acts of the Contractor.

B. Termination of the Contract for Convenience.

The OWNER may terminate the Contract if it becomes impossible or impracticable to proceed, or because of conditions or events beyond the control of the OWNER.

1. Notice:

The Owner will issue a written notice of termination for convenience as follows:

Personal delivery, with proof of delivery which may be made by declaration under penalty of perjury by any person over the age of 18 years. The proof of delivery shall show that delivery was performed in accordance with these provisions. Service shall be effective on the date of delivery. Notices given to the Contractor by personal delivery may be made

to the Contractor's authorized representative at the Work site; or Certified mail addressed to the mailing address of the recipient postage prepaid; return receipt requested. Service shall be effective on the date of the receipt of the mailing.

Simultaneously, the Owner may send the same notice by regular mail. If a notice that is sent by certified mail is returned unsigned, then delivery shall be effective pursuant to regular mail, provided that the notice that was sent by regular mail is not returned.

2. Cessation of Work:

Upon receipt, the Contractor shall immediately cease work, except work the Contractor is directed to complete by the Engineer or required to complete for public safety and convenience. The Contractor shall immediately notify Subcontractors and suppliers to immediately cease their work.

3. Payment:

The Contractor will be paid without duplication for:

- (a) Work completed in accordance with Contract Documents prior to the effective date of termination for convenience;
- (b) Reasonable costs incurred in settlement of terminated contracts with Subcontractors, suppliers, and others; and
- (c) Reasonable expenses directly attributable to termination.

Notice of termination shall be mailed to the City:

Arnoldo Rodriguez
City of Madera
205 West 4th Street
Madera, CA 93637

Notice of Termination shall be mailed to the Contractor:

David J. Boyle Electric Shop
308 South D Street
Madera, CA 93638

All notices and communications from 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.

22. Warranty. Contractor warrants to OWNER that all materials and equipment furnished shall be new, free from faults and defects and of good quality and conform to the requirements of the Contract Documents. Contractor hereby warrants its work against all deficiencies and defects for the period required by the Contract Documents or the longest period permitted by California Law, whichever is greater. Unless otherwise stated in the Contract Documents, warranty periods shall begin upon the filing of the Notice of Completion and shall be for one year.

This section shall not limit OWNER's rights under this Agreement or with respect to latent defects, gross mistakes, or fraud. OWNER specifically reserves all rights related to defective work, including but not limited to defect claims pursuant to California Code of Civil Procedure section 337.15.

23. Compliance with Laws. City shall at all times observe and comply, and shall cause all of its agents, subcontractors, and employees to observe and comply with all 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.

24. 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.

25. 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.

26. 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.

27. Contractor's Legal Authority. Each individual executing or attesting this Agreement on behalf of **CONTRACTOR** 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 **CONTRACTOR** is a duly organized and legally existing corporation in good standing in the State of California.

28. 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.

29. 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, **CONTRACTOR** 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.

30. Sole Agreement. This instrument constitutes the sole and only Agreement between City and **CONTRACTOR** in connection to the Project and correctly sets forth the obligations of the City and **CONTRACTOR** 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.

31. Assignment. Neither the **CONTRACTOR** nor City will assign its interest in this Agreement without the written consent of the other.

32. Binding Agreement. 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 (OWNER)

CONTRACTOR

By: _____
Santos Garcia, Mayor

By: _____
Contractor (signature)

Date: _____

Printed Name and Title

APPROVE AS TO FORM:

Shannon L. Chaffin, City Attorney

Federal Tax I.D. No.

Contractor License Number

ATTEST:

Alicia Gonzales, City Clerk

DIR Registration Number

NOTE: This Notary Acknowledgment on the following page is required for verification of Contractor's signature.

Acknowledgment

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California)

County of _____)

On _____, 2024 before me, _____
(insert name and title of officer)

Personally appeared _____,
who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are
subscribed to the within instrument and acknowledged to me that he/she/they executed the
same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the
instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the
instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing
paragraph is true and correct.

WITNESS my hand and official seal.

Signature _____ (Seal)