


## REPORT TO CITY COUNCIL

Approved by:

  
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Department Director

  
\_\_\_\_\_

Arnaldo Rodriguez, City Manager

Council Meeting of: June 19, 2019

Agenda Number:     B-3    

### SUBJECT:

**CONSIDERATION OF A RESOLUTION APPROVING AMENDMENT NO. 3 FOR THE 2017/2018 COMMUNITY DEVELOPMENT BLOCK GRANT AGREEMENT FOR THE GEORGE WASHINGTON ELEMENTARY SCHOOL SIDEWALK IMPROVEMENT PROJECT AND AUTHORIZING THE MAYOR TO SIGN THE AMENDMENT**

### RECOMMENDATION:

Staff recommends City Council (Council) adopt the resolution approving Amendment No. 3 with the City of Madera (City) Engineering Department (Department) for the George Washington Elementary School Sidewalk Improvement Project. The Department received a Community Development Block Grant (CDBG) allocation of \$185,836 for Fiscal Year (FY) 2017/2018.

### DISCUSSION:

The FY 2017/2018 CDBG Action Plan was submitted to the U.S. Department of Housing and Urban Development (HUD) on May 18, 2017, before the CDBG final formula allocations for all entitlement communities were announced. During this meeting, Council approved a contingency for how to allocate the funds should HUD's final formula allocation be larger or smaller than what was approved. This strategy was used in order to advance City's Action Plan through HUD's review progress. The Agreement for Services, funded by the City's CDBG FY 2017/2018 allocation, to construct sidewalks including Americans with Disabilities Act (ADA) compliant corner ramps and approaches to Lincoln Avenue, South Street and Austin Street, adjacent to George Washington Elementary School, was approved by the Council on September 20, 2017 (Attachment A). The City received HUD confirmation of the CDBG formula grant allocation notice on October 17, 2017 after HUD approved final formula allocations.

Agreements with subrecipients are a central part of the subrecipient requirements of the CDBG program for Entitlement Communities. It fulfills a legal requirement by presenting a concise statement of the rules for the CDBG program and the conditions under which funds are provided. In addition, Federal regulations at 24 CFR 570.503, require that grantees have written agreements in effect for each subrecipient before giving out any CDBG funds. The written

Agreement must remain in effect during any period that the subrecipient has control over any CDBG funds.

During a regular Council meeting, Amendment No. 1 was approved on November 15, 2017. It consisted of new indemnity provisions updated by Human Resources. On January 11, 2018, the Department submitted Amendment No. 2 to request for an extension to the Period of Performance in the Agreement for Services and it was approved by Council on February 7, 2018 (Attachment B). The request outlined the delays the Department needed to factor into the completion of the George Washington Elementary School Sidewalk Improvement Project.

The request for Amendment No. 3 was received from the Department May 30, 2019 (Attachment C). Staff consider Amendment No. 3 justified based upon the project's right-of-way (ROW) necessary acquisition, including on-going negotiation with two property owners and ADA requirements. Based on the Project Schedule, the project is due to be completed June 30, 2020 (Attachment C). The construction phase is anticipated to be complete well before the requested contract expiration date thus expending the bulk of the grant's funds. The new agreement specifies a project completion date of June 30, 2020 (Attachment D).

**Factors Contributing to Amendment No. 3:**

- The project requires ROW acquisition from six parcels to comply with the ADA requirements.
- Four property owners have accepted the City's acquisition offers.
- The Department is currently negotiating with the two remaining property owners.

**FINANCIAL IMPACT:**

Approval of Amendment No. 3 by Resolution (Attachment E) will not impact the General Fund because the project's budget consists of CDBG, Local Transportation and Measure T Funds. CDBG funds drawn before May 2, 2020 help meet HUD's timeliness expenditure requirement thereby not jeopardizing City's future allocations.

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

The project meets the Plan's Strategies as follows:

- **113.3:** Establish budgets to ensure City facilities that provide services to the public are ADA compliant.
- **121.10:** Add facilities and amenities for the public.
- **126.6:** Establish budgets to redevelop existing streets to install sidewalks, curb cuts, streetlights, and landscaping strips.
- **132.2:** Update arterials and collector streets to accommodate bicycles, pedestrians and transit vehicles.

**ALTERNATIVES:**

1. Deny Amendment No. 3.
2. Direct Department to proceed with construction within existing and acquired ROW.
3. Direct staff to reprogram the funds.

**ATTACHMENTS:**

1. Resolution 19-\_\_\_\_
2. Attachment A, Agreement for Services
3. Attachment B, Request for Extension for George Washington Elementary School Sidewalk Improvements Project and Scope of Modifications dated January 11, 2018
4. Attachment C, May 30, 2019 Extension Request and Revised Project Schedule
5. Attachment D, Amendment Agreement

**Attachment No. 1**

**RESOLUTION NO: 19-\_\_\_\_\_**

**A RESOLUTION OF THE CITY COUNCIL, OF THE CITY OF MADERA, CALIFORNIA,  
APPROVING AMENDMENT NO. 3 FOR THE 2017/2018 COMMUNITY DEVELOPMENT  
BLOCK GRANT AGREEMENT FOR SERVICES FOR THE GEORGE WASHINGTON  
ELEMENTARY SCHOOL SIDEWALK IMPROVEMENT PROJECT AND  
AUTHORIZING THE MAYOR TO SIGN THE AMENDMENT**

**WHEREAS:** the Agreement for Services Funded by the City of Madera Community Development Block Grant (CDBG) to construct sidewalks, Americans with Disabilities Act (ADA) compliant corner ramps and approaches to Lincoln Avenue, South Street and Austin Street adjacent to George Washington Elementary School was approved by the City Council on September 20, 2017, and confirmation of the final formula allocation was received October 17, 2017; and

**WHEREAS:** the 2017/2018 CDBG Annual Action Plan was submitted to the U.S. Department of Housing and Urban Development (HUD) on May 18, 2017 before HUD released final formula allocations for all Entitlement Communities were announced; and

**WHEREAS:** the 2017/2018 Action Plan approvals occurred on October 28, 2018 and December 11, 2018; and

**WHEREAS:** agreements with subrecipients are a central part of the subrecipient requirements of the CDBG program for Entitlement Communities and they provide a yardstick for monitoring subrecipient performance; and

**WHEREAS:** the written Agreement must remain in effect during any period that the subrecipient has control over any CDBG funds; and

**WHEREAS:** in consideration of the potential financial risk to the City, several City of Madera CDBG-funded services and projects could not incur expenses until confirmation of the final formula allocation; and

**WHEREAS:** staff and the City Council acknowledge the factors with the potential to delay completion of the George Washington Elementary School Sidewalk Improvement Project; and

**WHEREAS:** the period of performance from July 1, 2017 to June 30, 2018 was extended by Amendment No. 2 to July 1, 2017 to June 30, 2019; and by Amendment No. 3 from June 30, 2019 to June 30, 2020.

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

1. The above recitals are true and correct.
2. Amendment No. 3 to the Agreement for Services funded by the City of Madera, California, to construct sidewalks, ADA compliant corner ramps and approaches to Lincoln Avenue, South Street and Austin Street adjacent to George Washington Elementary School is on file in the office of the City Clerk and to which reference is hereby made for full particulars is hereby approved, and the Mayor is authorized and directed to execute Amendment No. 3 to the Agreement for and on behalf of the City of Madera.
3. The City Clerk is hereby authorized and directed to forward a copy of the Resolution to the Grants Administrator.
4. This resolution is effective immediately upon adoption.
5. The Mayor is authorized to sign the Amendment.

\* \* \*

## **AGREEMENT FOR SERVICES FUNDED BY CITY OF MADERA**

This Agreement is entered into, effective on the date of July 1, 2017.

### **PARTIES:**

The City of Madera, hereafter referred to as "CITY", and the City of Madera Engineering Department, hereafter referred to as the "CONTRACTOR."

### **RECITALS:**

WHEREAS, the CITY has been designated as the sponsoring agency to administer and implement the program for the Community Development Block Grant (CDBG) activities of the CITY, and in accordance with the provisions of Title I of the Housing and Community Development Act of 1974, as amended, and the laws of the State of California; and

WHEREAS, the Madera City Council has determined a project to construct new, 5-foot-wide sidewalks with ADA compliant corner ramps and approaches on Lincoln Avenue, South Street and Austin Street adjacent to George Washington Elementary School are eligible under 24 CFR Part 570.201(c); and

WHEREAS, the CONTRACTOR is dedicated to ensuring the safety and protection of Madera and its community members through adequate first response to emergencies and to maintaining sufficient resources for expanding protection as the community grows; and

WHEREAS, the CONTRACTOR submitted a project plan and budget to purchase and install air conditioning and heating consistent with the intent and purpose of the provisions of Title I of the Housing and Community Development Act of 1974, as amended, and which has been approved by the City Council.

NOW THEREFORE, the parties hereto agree as follows:

1. Services

The CONTRACTOR shall provide all services and responsibilities as set forth in the project design, which is attached to this Agreement, marked as Exhibit "A," and incorporated herein by reference.

2. Funding and Method of Payment

a. Compensation

Payments shall be made after receipt and verification of actual expenditures incurred by the CONTRACTOR in the performance of this Agreement and shall be documented to the CITY by the fifteenth (15<sup>th</sup>) day of the month following the end of the quarter. Allowable expenditures under

this Agreement are specifically established and attached hereto marked Exhibit "B" and incorporated herein by reference. The total CDBG obligation of the CITY under this Agreement shall not exceed \$185,836 in fiscal year 2017-2018. Any compensation not consumed by expenditures of the CONTRACTOR by the expiration of this Agreement shall automatically revert to the CITY.

b. Public Information

The CONTRACTOR shall disclose in all public information its funding source.

c. Lobbying Activity

The CONTRACTOR shall not directly or indirectly use any of the funds provided under this Agreement for publicity, lobbying, or propaganda purposes designed to support or defeat legislation pending before the Congress of the United States or the Legislature of the State of California.

d. Political Activity

The CONTRACTOR shall not directly or indirectly use any of the funds under this Agreement for any political activity or to further the election or defeat of any candidate for public office.

3. Fiscal Compliance

The CONTRACTOR shall be subject to the same fiscal regulations imposed on CITY by the U. S. Department of Housing and Urban Development for the use of Community Development Block Grant funds.

Program Income

CONTRACTOR shall report quarterly all program income as required under 24 CFR 570.503(b) (3) generated by activities carried out with CDBG funds made available under this contract. The use of program income by the CONTRACTOR shall comply with the requirements set forth at 24 CFR 570.504. By way of further limitations, the CONTRACTOR may use such income during the contract period for activities permitted under this contract and shall reduce requests for additional funds by the amount of any such program income balances on hand. All unexpended program income shall be returned to CITY at the end of the contract period. Any interest earned on cash advances from the U.S. Treasury and from funds held in a revolving fund account is not program income and shall be remitted promptly to CITY.

4. Compliance With Laws

If the CONTRACTOR receives CDBG funding under this Agreement, CONTRACTOR shall comply with all rules and regulations established pursuant to the Housing and Community Development Act of 1974 and its amendments and Uniform Administrative Requirements under 24

CFR 570.503(b)(4). The CONTRACTOR and any subcontractors shall comply with all applicable local, State and Federal regulations, including but not limited to those requirements listed in Exhibit "C" attached hereto and incorporated herein by reference.

Administrative Requirements/Financial Management/Accounting Standards

CONTRACTOR agrees to comply with 24 CFR 84.21-28 and agrees to adhere to the accounting principles and procedures required therein, utilize adequate internal controls, and maintain necessary source documentation for all costs incurred.

Costs Principles

CONTRACTOR shall administer its program in conformance with OMB Circulars A-122, "Cost Principles for Non-Profit Organizations," or A-21, "Cost Principles for Educational Institutions," as applicable. These principles shall be applied for all costs incurred whether charged on a direct or indirect basis.

5. Contract Administrator

CITY shall retain the right to administer this Agreement so as to verify that CONTRACTOR are performing their obligations in accordance with the terms and conditions thereof. CONTRACTOR and CITY shall comply with all applicable provisions of law and the rules and regulations, if any, of governmental authorities having jurisdiction over matters the subject thereof.

6. Period of Performance

The CONTRACTOR shall commence performance under this contract July 1, 2017 and shall end its performance June 30, 2018, unless terminated sooner as provided for elsewhere in this Agreement. Agreement may be extended upon written approval of the CITY.

7. Records

a. Record Establishment and Maintenance

CONTRACTOR shall establish and maintain records in accordance with those requirements prescribed by CITY, with respect to all matters covered by this Agreement. CONTRACTOR shall retain all fiscal books, account records, and client files for services performed under this Agreement for at least three (3) years from the date of the final payment under this Agreement or until all State and Federal audits are completed for that fiscal year, whichever is later. Pursuant to State and Federal law, it is the intent of the parties to this Agreement that the CONTRACTOR shall be reimbursed for actual costs incurred in the performance of this Agreement but that no profit is to accrue to the CONTRACTOR on account of such performance.

CONTRACTOR shall maintain all records required by the Federal regulations specified in 24 CFR 570.506, that are pertinent to the activities to be funded under this Agreement. Such records



shall include but not be limited to:

1. Records providing a full description of each activity undertaken;
2. Records demonstrating that each activity undertaken meets one of the National Objectives of the CDBG program;
3. Records required to determine the eligibility of activities;
4. Records required to document the acquisition, improvement, use or disposition of real property acquired or improved with CDBG assistance;
5. Records documenting compliance with the fair housing and equal opportunity components of the CDBG program;
6. Financial records as required by 24 CFR 570.502, and 24 CFR 84.21-28; and
7. Other records necessary to document compliance with 24 CFR 570.503(b) (5).

**b. Reports/Required Notifications**

The CONTRACTOR shall submit reimbursement claims with substantiating invoices and time cards signed by both the employee and applicable Department Head/Authorizing Official. Reports shall consist of the Quarterly Reporting Form. This form is contained in Exhibit "A-1" attached hereto and incorporated herein by reference.

The CONTRACTOR shall also furnish to the CITY such statements, records, reports, data, and information as the CITY may request pertaining to matters covered by this Agreement. In the event that the CONTRACTOR fails to provide such reports, it shall be deemed sufficient cause for the CITY to withhold payments until there is compliance. In addition, the CONTRACTOR shall provide written notification and explanation to the CITY within five (5) days of any funds received from another source to conduct the same services covered by this Agreement.

CITY shall notify CONTRACTOR in writing within thirty (30) days of any potential State or Federal exception discovered during an examination. Where findings indicate that program requirements are not being met and State and Federal participation in this program may be imperiled in the event that corrections are not accomplished by CONTRACTOR within thirty (30) days, written notification shall constitute CITY's intent to terminate this Agreement.

CONTRACTOR shall report to CITY promptly and in written detail, each notice of claim of copyright infringement received by CONTRACTOR with respect to all subject data delivered under this Agreement. CONTRACTOR shall not affix any restrictive markings upon any data. If markings are affixed, CITY shall have the right at any time to modify, remove, obliterate, or ignore such markings.

c. CDBG Reporting Requirements

The CITY will inform CONTRACTOR in writing if CDBG funds are provided under this Agreement, which require CONTRACTOR to submit an application or to complete a record as an integral part of receiving these funds.

CONTRACTOR shall submit with each quarterly invoice copies of paid invoices/receipts, copies of cash receipts or checks used to pay each invoice submitted, copies of time cards and related pay stubs for reimbursement.

8. Assignment

CITY and CONTRACTOR may not assign, or transfer their obligation of this Agreement or any rights hereunder without the prior written consent of the other party.

9. Subcontracts

If the CONTRACTOR should propose to subcontract with one or more third parties to carry out a portion of those services described in Exhibit "A" insofar as it deems proper or efficient, any such subcontract shall be in writing and approved as to form and content by the CITY prior to execution and implementation. Any such subcontract, together with all other activities performed, or caused by the CONTRACTOR, shall not allow compensation greater than the total project budget contained in Exhibit

B. An executed copy of any such subcontract shall be received by the CITY before any implementation and shall be retained by the CITY.

The CONTRACTOR shall be responsible to the CITY for the proper performance of any subcontract. Any subcontractor shall be subject to all of the same terms and conditions that the CONTRACTOR is subject to under this Agreement. No officer or director of the CONTRACTOR shall have any direct monetary interest in any subcontract made by the CONTRACTOR. A direct monetary interest contrary to this paragraph shall be deemed to exist, if an officer or director of the CONTRACTOR is also an owner, officer, or director of a corporation, association, or partnership subcontracting with the CONTRACTOR.

In addition, if the CONTRACTOR receives CDBG funds under this Agreement, the subcontractor shall be subject to CDBG federal regulations, including those listed in Exhibit "C."

10. Conflict of Interest

No officer, employee, or agent of the CITY who exercises any function or responsibility for planning and carrying out of the services provided under this Agreement shall have any direct or indirect personal financial interest in this Agreement. The CONTRACTOR shall comply with all Federal, State and local conflict of interest laws, statutes, and regulations, which shall be applicable to all parties and beneficiaries under this Agreement and any officer, employee, or agent of the CITY.

11. Discrimination

Eligibility for Services

The CONTRACTOR shall prepare and make available to the CITY and to the public all eligibility requirements to participate in the program plan set forth in Exhibit "A." No person shall, on the grounds of race, color, national origin, sex, religion, age, or disability status, be excluded from participation in, and denied the benefits of, or be subjected to discrimination with respect to the services funded under this Agreement.

The CONTRACTOR'S services shall be accessible to the physically disabled, and the services of a translator, signer or assistive listening device shall be made available. CONTRACTOR, in its marketing materials, shall specify assistance to access its services is available for deaf and hard-of-hearing persons by calling 711 or 1-800-735-2929 and, for voice users, 1-866-735-2922 for TTY Relay Services. CONTRACTOR shall comply with requirements set forth in Exhibit D, Accessibility for Persons with Disabilities to Non-Housing Programs funded by Community Development Block Grant Funds – Section 504 of the Rehabilitation Act of 1973, the Americans With Disabilities Act, and the Architectural Barriers Act.

b. Employment Opportunity

The CONTRACTOR shall comply with the CITY policy, the Community Development Block Grant regulations, and the Equal Employment Commission guidelines, which forbids discrimination against any person on the grounds of race, color, national origin, sex, religion, age, familial status or disability status in employment practices. Such practices include retirement, recruitment advertising, hiring, layoff, termination, upgrading, demotion, transfer, rates of pay or other forms of compensation, use of facilities, and other terms and conditions of employment.

c. Suspension of Compensation

If an allegation of discrimination occurs, the CITY shall withhold all further funds until the CONTRACTOR can show by clear and convincing evidence to the satisfaction of the CITY that funds provided under this Agreement were not used in connection with the alleged discrimination.

**d. Nepotism**

Except by written consent of the CITY, no person shall be employed by the CONTRACTOR who is related by blood or marriage or who is a member of the Board of Directors or an officer of the CONTRACTOR. In the event HUD determines a CDBG-funded CONTRACTOR'S organization/agency operations violate federal rules and regulations with regard to nepotism and/or conducts business and a conflict of interest issue arises, then CONTRACTOR shall accept all responsibility to return any CDBG funds received from CITY.

**12. Termination**

a. This Agreement may be immediately terminated by CITY for cause where in the determination of CITY, any of the following conditions exist: (1) an illegal or improper use of funds, (2) failure to comply with any terms of this Agreement, (3) a materially incorrect or incomplete report, (4) an improper performance of services.

b. Any one of or combination of the above conditions will constitute grounds for suspension or termination of the Agreement. In no event shall any payment by the CITY hereunder constitute a waiver by the CITY of any breach of this Agreement or any default which may then exist on the part of the CONTRACTOR, nor shall such payment impair or prejudice any remedy available to the CITY with respect to the breach of default. When there is a breach of this Agreement, as defined by this section, the CITY may, in its sole discretion, immediately suspend or terminate this Agreement.

c. CITY shall have the option to terminate this Agreement without obligation of CITY to reimburse CONTRACTOR from the date the Federal or State Government withholds or fails to disburse funds to CITY, in the event such government withholds or fails to disburse funds, CITY shall give CONTRACTOR notice of such funding limitation or termination within a reasonable time after CITY receives notices of same.

d. Upon thirty (30) days written notice to the other party, either party may terminate this Agreement without cause. Notice shall be deemed served upon mailing.

**13. Amendments**

Adjustment of any line item within the total approved budget contained in Exhibit "B" or changes in the nature or scope of the program plan set forth in Exhibit "A" may be approved in writing by the City Administrator, or his designee.

**14. Administration**

The City of Madera Grants Administration Department shall administer this Agreement.

15. Evaluation

The CITY shall monitor and evaluate the performance of the CONTRACTOR under this Agreement to determine to the best possible degree the success or failure of the services provided under this Agreement and the adequacy of the program plan contained in Exhibit "A." The CONTRACTOR shall participate in evaluation of the program.

CONTRACTOR shall cooperate fully with CITY, State and Federal agencies, which shall have the right to monitor and audit all work performed under this Agreement.

CONTRACTOR shall also agree to on-site monitoring and personal interviews of participants, CONTRACTOR'S staff, and employees by appropriate CITY staff on at least a quarterly basis.

16. Governing Law

Any controversy or claim arising out of or relating to this Agreement which cannot be amicably settled without court action shall be litigated only in Madera, California. The rights and obligations of the parties and all interpretations and performance of this Agreement shall be governed in all respects by the laws of the State of California.

17. Reversion of Assets

The CONTRACTOR must obtain prior written approval from the CITY whenever there is any modification or change in the use of any property acquired or improved, in whole or in part, using CDBG funds. If any real or personal property acquired or improved with CDBG funds is sold and/or is utilized by the CONTRACTOR for a use which does not qualify under the CDBG program, the CONTRACTOR shall reimburse the CITY in an amount equal to the current fair market value of the property, less any portion thereof attributable to expenditures of non-CDBG funds. These requirements shall continue in effect for the life of the property. In the event the CDBG program is closed-out, the requirements of this Section shall remain in effect for activities or property funded with CDBG funds, unless action is taken by the Federal government to relieve the CITY of these obligations.

18. Breach of Agreement

In the event the CONTRACTOR fails to comply with any of the terms of this Agreement, the CITY may, at its option, deem the CONTRACTOR'S failure as a material breach of this Agreement and utilize any of the remedies set forth in 24 CFR 85.43 or that it deems appropriate. Should the CITY deem a breach of this Agreement material, the CITY shall immediately be relieved of its obligations to make further payment as provided herein. In addition to the Agreement being terminated by the CITY in accord with a material breach of this Agreement by the CONTRACTOR, this Agreement may also be terminated for convenience by the CITY in accord with 24 CFR 85.44.

19. No Third Party Beneficiaries

This Agreement is not intended to create and does not create any rights in or benefits to any third party, nor will it be deemed to confer rights or remedies upon any person or legal entity not a party to this Agreement.

20. Indemnification

IN THE EVENT HUD DETERMINES A CDBG-FUNDED CONTRACTOR HAS VIOLATED FEDERAL RULES AND REGULATIONS AND HUD REQUIRES REPAYMENT OF CDBG FUNDS, THEN THE CONTRACTOR SHALL REPAY ANY CDBG FUNDS WITHIN 90 DAYS OF A WRITTEN REQUEST FROM CITY.

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.

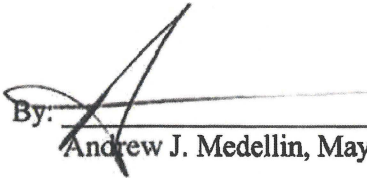
21. Entire Agreement

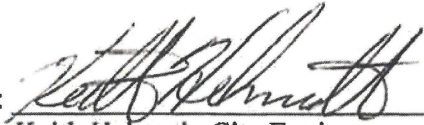
This Agreement constitutes the entire agreement between the CONTRACTOR and CITY with respect to the subject matter hereof and supersedes all previous negotiations, proposals, commitments, writings, advertisements, publications and understandings of any nature whatsoever unless expressly included in this Agreement.

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

**CITY OF MADERA:**

**THE CITY OF MADERA  
ENGINEERING DEPARTMENT:**

By:   
Andrew J. Medellin, Mayor

By:   
Keith Helmuth, City Engineer

Date: 09/20/17

Date: 09/07/17


**ATTEST:**

**APPROVED AS TO LEGAL FORM:**

By:   
Sonia Alvarez, City Clerk

By:   
Brent Richardson, City Attorney

Date: 09/20/17

Date: 09/20/17 





**RESOLUTION NO. 17- 141**

**A RESOLUTION OF THE CITY COUNCIL, OF THE CITY OF MADERA,  
CALIFORNIA, APPROVING A 2017/2018 COMMUNITY DEVELOPMENT  
BLOCK GRANT AGREEMENT FOR SERVICES WITH THE  
CITY OF MADERA ENGINEERING DEPARTMENT**

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

1. The Agreement for Services Funded by the City of Madera, California, with the City of Madera Engineering Department, to construct and install a new traffic signal with an audible push button activation and countdown pedestrian signal head to allow for ADA compliance, construct ADA compliant ramps on both sides of Yosemite Avenue and incorporate a pedestrian crosswalk thereby improving safety, accessibility, and traffic circulation at the intersection, is on file in the office of the City Clerk, and to which reference is hereby made for full particulars, is hereby approved, and the Mayor is authorized and directed to execute said Agreement for and on behalf of the City of Madera.
2. The City's participation as of July 1, 2017, pursuant to the Agreement is hereby ratified.
3. The City Clerk is hereby authorized and directed to forward a copy of the Resolution to the Grant Administrator.
4. This resolution is effective immediately upon adoption.
5. The Director of Finance is hereby authorized to take such action to implement the terms of the Resolution.

\*\*\*\*\*

PASSED AND ADOPTED by the City Council of the City of Madera this 20<sup>th</sup> day of September, 2017 by the following vote:

**AYES:** Mayor Medellin, Council Members Foley Gallegos, Rodriguez, Holley, Robinson, Oliver, Rigby.

**NOES:** None.

**ABSTENTIONS:** None.

**ABSENT:** None.

APPROVED:



ANDREW J. MEDELLIN, Mayor

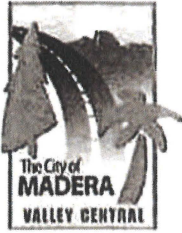
ATTEST:

  
SONIA ALVAREZ, City Clerk

APPROVED AS TO LEGAL FORM:

  
BRENT RICHARDSON, City Attorney





**CITY OF MADERA**  
**ENGINEERING DIVISION**  
205 W. 4<sup>TH</sup> STREET MADERA, CA 93637  
**TEL:** (559) 661-5418 - **FAX:** (559) 675-6605

**Date:** January 11, 2018  
**To:** Ivette Iraheta, Grants Administrator  
**From:** Keith Helmuth, City Engineer *K.H.*  
**Subject:** Request for Extension for George Washington Elementary School Sidewalk Improvements Project and Scope Modifications

The Engineering Department is requesting a one-year extension to the Agreement dated July 1, 2017 and further amended on November 15, 2017 for the CDBG funded Sidewalks and ADA ramps adjacent to George Washington Elementary Project in accordance with Section 6. Period of Performance.

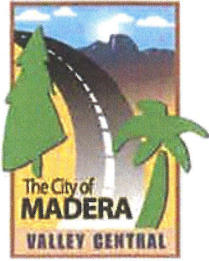
The City of Madera received confirmation of a CDBG grant for sidewalk improvements by George Washington Elementary School in late September, 2017. The project was given a contract expiration date of June 30, 2018. Since being notified of the award, a number of concerns have surfaced that have either reduced the originally anticipated one year time available for the project or caused the project design time to increase. Those concerns include:

- City of Madera received confirmation for CDBG grant in late September. Commencing work prior to confirmation might have represented a risk for the City to expend money that had not yet been received.
- Right of Way acquisition, not previously anticipated is required at 8 parcels as a result of discovering that the original road construction was not centered on the street right-of-way;
- PG&E pole relocation is required along South Street. The process for relocating the PG&E poles may take 4 to 6 months. This would jeopardize the contract expiration date of June 30, 2018.

It is therefore requested that an extension of one year be granted in order to accommodate the completion of the project including punch list items, release of retention, invoicing and completing final closeout documents. The engineering department is requesting an extension to June 30, 2019.

Furthermore, the project activity description specifically states the project will install 5-foot wide sidewalks. During pre-design activities, it has been determined that construction of 5-foot wide sidewalks at all locations may not be feasible due to available right of way or other constructability constraints. All sidewalks will be ADA compliant.

If you have any questions, or need additional information, please contact Victor Aldama, Assistant Engineer, in our department.



**CITY OF MADERA**  
**ENGINEERING DIVISION**  
205 W. 4<sup>TH</sup> STREET MADERA, CA 93637  
**TEL:** (559) 661-5418 - **FAX:** (559) 675-6605

**Date:** May 30, 2019

**To:** Ivette Iraheta, Grants Administrator

**From:** Keith Helmuth, City Engineer *K.H.*

**Subject:** Request for Extension for George Washington Elementary  
School Sidewalk Improvements Project and Scope Modifications

The Engineering Department is requesting a one year extension to the Agreement dated July 1, 2017 and further amended on November 15, 2017 and February 7, 2018 for the CDBG funded Sidewalks and ADA ramps adjacent to George Washington Elementary Project in accordance with Section 6. Period of Performance. The project was given a contract expiration date of June 30, 2019 based on the amended agreement dated February 7, 2018.

This project is scheduled to advertise in the month of July or August as noted on the April 4, 2019 City Council meeting. The project required right of way (ROW) acquisition from six parcels in order to accommodate American with Disability Act (ADA) sidewalk and curb ramps. Four property owners have accepted the acquisition offers presented to them by the City. The City is currently under negotiation with the two remaining property owners. The ROW acquisition process was originally anticipated to be completed in one-month time frame, however, the process has extended to two months due to the following reasons; unavailability of property owners, requests for additional information, and request for additional time from property owner to review the proposal provided by the City. Therefore, delaying the project by one month.

While this request could be for a sooner date, a one year extension to June 30, 2020 was chosen because the request are typically made in one year increments. The construction phase is anticipated to be complete well before the requested expiration contract date thus expending the bulk of grant funds. Additional tasks that include punch list items, release of retention, invoicing and completing final closeout documents.

If you have any questions, or need additional information, please contact Victor Aldama, Assistant Engineer, in our department.

**CDBG PROJECT SCHEDULE FOR  
George Washington Elementary School Sidewalk Improvements**

Item of Work	Date
Advertise for Construction	July 2019 - August 2019
Construction Period	September 2019 - December 2019
Finalize Project	January 2020 - June 2020

**AMENDMENT NO. 3 TO THE AGREEMENT FOR SERVICES FUNDED BY THE  
CITY OF MADERA’S COMMUNITY DEVELOPMENT BLOCK GRANT FOR  
SERVICES FOR THE GEORGE WASHINGTON ELEMENTARY  
SCHOOL SIDEWALK IMPROVEMENT PROJECT**

This Amendment No. 3 to the Agreement for Services to construct new, 5-foot-wide sidewalks with ADA compliant corner ramps and approaches on Lincoln Avenue, South Street and Austin Street adjacent to George Washington Elementary School (hereinafter called “Agreement”), between the City of Madera (hereinafter called “CITY”) and the City of Madera Engineering Department (hereinafter called (“CONTRACTOR”)) is entered this 19<sup>th</sup> day of June 2019.

**WITNESSETH**

**WHEREAS**, CITY was provided funding for services to construct new, 5-foot-wide sidewalks with ADA compliant corner ramps and approaches on Lincoln Avenue, South Street and Austin Street adjacent to George Washington Elementary School, hereinafter called “Project”; and

**WHEREAS**, CITY and CONTRACTOR entered into an Agreement Dated July 1, 2017 to carry out the Project; and

**WHEREAS**, the City Council approved Resolution No. 17-187 to amend the Agreement on November 15, 2017; and

**WHEREAS**, it was nearly four months into the FY before Engineering could effectively begin work without placing the City at risk, and upon confirmation of the final formula allocation, City of Madera Engineering staff initiated the project and identified a need not previously anticipated which required the acquisition of right-of-way for eight parcels; and

**WHEREAS**, after initiating the project, the need for PG&E to relocate utility poles, an approximately four to six month process was identified and the Engineering Department also acknowledged that 5-foot sidewalks were not feasible in all locations; however, all sidewalks shall be ADA compliant; and

**WHEREAS**, CONTRACTOR has requested an extension to the Period of Performance; and

**WHEREAS**, Amendment No. 3 is necessary to revise the Agreement.

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

**AGREEMENT**

In consideration of the recitals listed above and the mutual obligations of the parties herein, CITY and CONTRACTOR agree that the Agreement for Services to construct new, 5-foot-wide sidewalks with ADA compliant corner ramps and approaches on Lincoln Avenue, South Street and Austin Street adjacent to George Washington Elementary School dated July 1, 2017 between CITY and CONTRACTOR shall be amended as follows:

Item No. 1: Paragraph 1 of the Agreement shall be Amended to read as follow:

**1. Services**


The CONTRACTOR shall provide all services and responsibilities as set forth in the project design, which is attached to this Agreement, marked as Exhibit "A," and incorporated herein by reference. Where physical obstructions result in significant unanticipated costs or impacts on adjacent properties to maintain a full 5-foot wide sidewalk, the sidewalks may be reduced to the extent that ADA is still met but not less than 4-feet.

Item No. 2: Paragraph 6 of the Agreement shall be Amended to read as follows:

**6. Period of Performance**

The CONTRACTOR shall commence performance under this contract July 1, 2017 and shall end its performance June 30, 2020, unless terminated sooner as provided for elsewhere in this Agreement. Agreement may be extended upon written approval of the City.

**THE CITY OF MADERA ENGINEERING  
DEPARTMENT**

By:   
Keith Helmuth, City Engineer

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

**APPROVED AS TO LEGAL FORM**

By: \_\_\_\_\_  
Hilda Cantu Montoy, Interim City Attorney

**ATTEST:**

By: \_\_\_\_\_  
Claudia Mendoza, Interim City Clerk