



REQUEST FOR PROPOSAL

BACKUP GENERATOR ANNUAL SERVICE

RFP #201920-03

September 30, 2019

1. INSTRUCTIONS AND CONDITIONS

- A. No proposal will be considered for award unless submitted in the proposal format described in this Request for Proposal (RFP). The proposal must be fully complete and executed. Each response shall contain four (4) copies of the completed proposals which will include; three (3) bound and one (1) unbound copy with a copy of this RFP attached to the front of each proposal, with appropriate responses included.

Format: Proposal should be 8 ½ x 11 inches, printed two-sided on recycled paper with removable bindings, bound in a single document and organized in sections.

Each proposal must be submitted in a sealed envelope addressed to Becky McCurdy, Procurement Services Manager, City of Madera, Purchasing-Central Supply, 1030 South Gateway Drive, Madera, California 93637, and delivered prior to the time and date specified in this document. Each sealed envelope containing a proposal must have, on the outside, the name of the proposer, proposer's address and the statement "DO NOT OPEN UNTIL THE TIME OF PROPOSAL OPENING" and in addition, must be plainly marked on the outside as follows:

Proposal: BACKUP GENERATOR ANNUAL SERVICE
RFP #: 201920-03
Filing Deadline: Monday, November 4, 2019 - 3:00 P.M.

- B. Attention of proposers is especially directed to the specifications which, in addition to the proposal and these instructions, are basis for evaluation and will be part of any agreement with the successful proposer. Any deviations from the specifications in this notice shall be proper reason for rejection of all or any part of the proposal.
- C. The City of Madera recognizes its policy of providing equal opportunity to all qualified persons and reaffirms its commitment that there shall be no discrimination against qualified applicants or employees on the basis of race, gender, color, national origin, religion, age, disability, sexual orientation or marital status.

- D. The City reserves the right to reject or accept any or all proposals or parts thereof, and to accept or reject the alternatives individually or jointly, for any reason.
- E. The City reserves the right to consider any minor deviations from the specifications and determine the acceptance or rejection of such deviation. The City reserves the right to seek supplementary information from any proposer at any time after official proposal opening and before the award. Such information will be limited to clarification or amplification of information asked in the original proposal.
- F. The City reserves the right to modify this Request for Proposal (RFP) at any time. In the event it becomes necessary to modify or revise the RFP, a written amendment or addenda issued by City's Purchasing-Central Supply Division is the only method which should be relied on with respect to changes to the RFP. Proposer is responsible to contact City's Purchasing-Central Supply Division prior to submitting a proposal to determine if any amendments were made to the RFP. Documents, amendments, addenda, etc. will be posted to the City's Purchasing page at www.madera.gov/purchasing under Bid Announcement and Results.

Questions and suggestions concerning the RFP must be submitted in writing no later than 3:00 P.M. Monday, October 28, 2019. Written questions or inquiries should be e-mailed, mailed or faxed to:

Becky McCurdy
Procurement Services Manager
City of Madera
Purchasing-Central Supply
1030 South Gateway Drive
Madera, CA 93637

rmccurdy@madera.gov

FAX: (559) 661-0760

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

A Pre-Proposal walkthrough is scheduled for Wednesday, October 23, 2019 at 9:00 a.m. Those interested in the walkthrough **must** call in advance and reserve a space. To reserve space call the Purchasing Office at (559) 661-5463 or email to rmccurdy@madera.gov. Participants will meet at the Public Works Office at 1030 South Gateway Drive, Madera, CA 93637.

- G. Proposals will be evaluated by the City. If a proposal is found to be incomplete or not in compliance with the format required, it will not be considered for evaluation. During the evaluation process, the City may find it beneficial to request additional information.
- H. Any proposal may be withdrawn at any time prior to the hour fixed for the opening, provided that a request in writing executed by the proposer, or his/her duly authorized representative, for the

withdrawal of such proposal is filed with Purchasing-Central Supply. The withdrawal of a proposal shall not prejudice the right of a proposer to file a new proposal prior to the time and date set for the opening. After the expiration of the time and date for receipt of proposals, a proposal may not be withdrawn or altered.

- I. Issuance of the RFP and receipt of proposals does not commit the City to award an agreement. The City reserves the right to postpone the RFP process for its own convenience, to accept or reject any or all proposals received in response to this RFP, to negotiate with other than the selected company should negotiations with the selected company be terminated, or to cancel any section of this RFP. The City also reserves the right to apportion the award among more than one proposer.
- J. An award will be made as soon as reasonably practical after the opening of Proposals. A three-year agreement will be awarded. Prices shall remain firm for a minimum of three years. The City has the option to extend the agreement for two additional one-year terms. In order to exercise this option City must notify the Service Provider in writing at the address provided in the Agreement no later than 30 days before the expiration of this agreement. Fees and Costs for the optional extension may be adjusted based upon the Consumer Price Index, Pacific Cities and U. S. Average for all urban consumers, Western Cities Category "C" or 2.5%, whichever is less.
- K. The successful Proposer shall enter into a formal agreement with City which will be very similar in content to the Attachment B "Draft" agreement which is provided for information purposes only and to help clarify City intent relevant to this Request for Proposal.
- L. The City may, at its sole option, terminate any contract/agreement that may be awarded as a result of this RFP at the end of any City Fiscal Year, for reason of non-appropriation of funds. In such event, the City will give proposer at least thirty (30) days written notice that such function will not be funded for the next fiscal period. In such event, the City will return any associated equipment to the Contractor in good working order, reasonable wear and tear excepted.
- M. Prior to beginning any work or delivering any equipment or material to be furnished under this proposal, the proposer shall secure the appropriate Business License from the City of Madera. Business license information may be obtained by calling (559) 661-5408. Should the proposer already have his license, please indicate the license number and expiration date below:

City License No. _____ Expiration Date _____

Any Federal or State of California License/Certification required to provide the services will be required. A Certificate of Insurance in accordance with the Insurance Requirements for Service Providers document included in this RFP as Attachment A will also be required.

- N. Prevailing Wages –
 - 1. This project is subject to compliance monitoring and enforcement by the Department of Industrial Relations (DIR). Contractor will be responsible for verifying compliance with all prevailing wage laws and regulations for all subcontractors.

2. As required by § 1770 and subsequent sections of the California Labor Code, the Contractor and all subcontractors shall pay no less than the prevailing rate of wages as determined by the Director of the California Department of Industrial Relations as applicable to the date of the Construction Agreement.
3. A contractor or subcontractor shall not be qualified to submit a proposal on, be listed in a proposal, subject to the requirements of Section 4104 of the Public Contract Code or engage in the performance of any contract for public work, as defined in the Labor Code, unless currently registered and qualified to perform public work pursuant to Section 1725.5. It is not a violation of this section for an unregistered contractor to submit a proposal that is authorized by Section 7029.1 of the Business and Professions Code or by Section 10164 or 20103.5 of the Public Contract Code, provided the contractor is registered to perform public work at the time the contract is awarded. Refer to DIR website, www.dir.ca.gov, to register and to find the correct wage rates and answers to questions related to prevailing wage requirements.
4. The Contractor and all subcontractors must submit to the Labor Commissioner of the DIR, on regular intervals (weekly, biweekly, or monthly), electronic certified payroll records as specified by SB 854. Payroll records shall contain all the information required pursuant to Labor Code Section 1776 and be signed under penalty of perjury.
5. The Contractor will post job site notices prescribed by DIR regulation.

O. Proposer's Proprietary Information: All documents provided by the successful proposer shall become public record.

P. It is the City's policy to encourage the purchase of supplies, services and equipment from vendors located within the boundaries of the City. Local vendors are sellers, vendors, suppliers and contractors who maintain places of business located within the limits of the City and who have a current City of Madera business license. The local vendor outreach policy shall not apply to those Agreements where State or Federal law, or other laws or regulations preclude such a preference.

Contractors will, to the greatest extent feasible, attempt to incorporate local area businesses as subcontractors and suppliers. Contractors will, upon request, provide records showing the outreach efforts made to local businesses to demonstrate that they have made a reasonable effort to inform local businesses of the opportunity.

Q. The City intends that other public agencies (county, special district, public authority, public agency, school district or other political subdivision of the state of California) shall have the option to participate in any agreement created because of this Request for Proposal. The City of Madera shall incur no financial responsibility in connection with a purchase order from another public entity. Vendor's agreement or failure to agree to the "piggyback" agreement will not be a factor in the award. This piggyback will remain available for one year from the date of the award.

Check one of the following:

- i. Agree to extend all prices, terms, and conditions of my proposal to any other public agency located in the State of California with no exceptions.
- ii. Agree to extend all prices, terms, and conditions of my proposal to any other public agency located in the State of California with the following exceptions noted, as attached.
- iii. The Vendor does not agree to extend pricing, terms and conditions in our Proposal to any other agency.

2. GENERAL INFORMATION

The City of Madera is requesting a proposal for preventative maintenance, servicing, and load bank testing of its backup generators on an annual basis. A list of the items to be serviced and maintenance is provided in Section 3.

An annual cost must be provided for each unit.

All parts, materials, travel, and labor must be included in the price for the listed service.

An hourly rate must be provided for service and repairs not outlined in this document that includes travel time and expenses.

All parts and materials furnished under award of this RFP shall be new, unused, and the same as the manufacturer's current production model.

3. SPECIFICATIONS

Backup generators consist of various makes, models, and sizes. Units are located at various locations throughout the City and must be serviced on regularly scheduled workdays Monday through Thursday between the hours of 7:00 am and 3:30 pm.

Service times must be scheduled with the City of Madera Fleet Operations Manager in advance of arrival for service. Most sites are locked and will require a City Employee to allow entry.

Annual service is to be approximately twelve months between completion dates.

All waste oil, filter, and other materials must be removed from the site and disposed of properly. Any spills must be reported and cleaned up per federal, state, and local requirements.

Vendor shall supply records of all service items that have been checked or performed, along with a list of parts used, the date, time, location, engine hours, and name of technician performing the work with the respective invoice. This information will be provided to the City of Madera Fleet Operations Manager.

Any additional parts, materials, or labor required to properly maintain the generators not in the standard service must be approved by the City of Madera Fleet Operations Manager. prior to the work being done.

Proposals must be submitted on the forms supplied by the City of Madera and include all applicable taxes and charges.

The generators to be serviced are listed below. The City reserves the right to add or delete any generators from the list should the need arise. It is the vendors responsibility to inspect all units if needed to ensure a full understanding of the condition, make, model, and service requirements. The opportunity to inspect the units will be provided in the Pre-Proposal Walkthrough as described in Section 1 item F above.

- City Hall – 205 W. 4th Street
 - Kohler 60RH0Z81 Ser# 012964

- Police Department – 330 South C Street
 - Onan 500DFEK Ser# D060909603 Spec#F

- Waste Water Treatment Plant – 13048 Road 21-1/2
 - Onan ASCO 7000 Ser# 350173FP

- Public Works – 1030 S. Gateway Drive
 - Cummins 12GSAA-6707A Ser# K080221975

- Well 18 – 805 N. Gateway Drive
 - Cummins DFEJ-1420770 Ser# L140775798

- 375 kW portable – location can vary, typically 1030 S. Gateway Drive
 - CAT XQ375 Ser# CATXQ375TX3F00119

- 125 kW portable – location can vary, typically 1030 S. Gateway Drive
 - CAT XQ125 Ser# CATXQ125ECK500272

- Fire station #56 – 317 N. Lake Street
 - Cummins GG02-1790637 Ser# L170251864

- Loy Cook Water Tower – 716 Columbia Street
 - Onan GGFC-3387753 Ser# A000055381

- Fairgrounds – 1850 W. Cleveland Ave
 - Onan GGFC-3387753 Ser# A000055382

- SIU - 330 South C Street
 - Cummins GGPC-5756103 Ser# I100159147

- Fire station #58 – 2558 Condor Drive
 - Cummins QSB5-G6

MINIMUM SERVICE REQUIREMENTS

- Visual inspection of the site and unit
- Check and adjust all fluid levels and pressures for correct operation
- Inspect and service air filtration system, change filter if necessary
- Inspect exhaust system – including manifold, piping, muffler
- Inspect turbocharger – oil leaks, abnormal noise, and end play
- Inspect cooling system – radiator, hoses, water pump, belts, pulleys, clamps, and fan assembly. Inspect for leaks or cracks
- Inspect engine fan drive belts and adjustment
- Inspect and test radiator cap for correct pressure
- Inspect engine block heater – proper operating temperature, coolant flow, hoses and heater
- Inspect fuel system – fuel lines, filters, tanks, priming pumps, transfer pumps, level indicator, water instruction, DEF tank, DEF lines, DEF level indicator, and any leaks
- Inspect oil system – oil level, pressure, crankcase breather, excessive blow-by
- Inspect starting system – batteries, voltages, clean connections, test starter and alternator operation and charging rates
- Inspect and test monitoring and safety control systems – ensure proper operation
- Controls – inspect control pane condition and operation, start/stop/auto operation, and meter operation
- Inspect automatic transfer switch – check proper operation
- Service air filters and clean housing
- Replace fuel filter and service primary filter
- Drain and replace engine oil and filters, sample oil for lab analysis
- Service water separator
- Grease bearings, fans shafts, linkages, and equipment fittings as required
- Inspect generator end bearing for condition and lubricate as necessary. Inspect exciter, generator conductors, connection, and generator fan assembly
- Inspect generator circuit breakers and tighten connections. Inspect and clean engine/generator control panel and connection panel
- Inspect and service automatic transfer switch and enclosure. Check for proper operation and timing of ATS and controls
- Load bank testing – put generator on resistive load bank capable of 100% of nameplate rating for minimum of 2 hours. All operating parameters will be monitored during the load test.

Note: This entire packet must be completed and returned with the Proposal.

**City of Madera
Proposal
Backup Generator Services
RFP #201920-03**

Annual price for each location is to be entered in the table below. Total price for all units is to be entered at the bottom of this table.

<u>Location</u>	<u>Year 1 Cost</u>	<u>Year 2 Cost</u>	<u>Year 3 Cost</u>
City Hall			
PD			
WWTP			
Public Works			
Well 18			
375 kW Port			
125 kW Port			
Fire Station #56			
Water Tower			
Fairgrounds			
SIU - PD			
Fire Station #58			
TOTAL			

In addition, provide the following rates:

Hourly Service Rate for additional work \$ _____

**CITY OF MADERA
PROPOSAL AUTHORIZATION
BACKUP GENERATOR SERVICE
RFP #201920-03**

COMPANY NAME _____

STREET ADDRESS _____

CITY / STATE / ZIP _____

PHONE NUMBER _____

EMAIL _____

PERSON PREPARING PROPOSAL _____

POSITION _____

SIGNATURE _____

DATE _____

MADERA BUS. LIC. NO. _____

PUBLIC WORKS CONTRACTORS
REGISTRATION NUMBER _____

Attachment A

Insurance Requirements for Service Providers

Without limiting Service Provider's indemnification of City, and prior to commencement of Work, Service Provider shall obtain, provide, and continuously maintain at its own expense during the term of the Agreement, and shall require any and all Subcontractors and Subconsultants of every Tier to obtain and maintain, policies of insurance of the type and amounts described below and in form satisfactory to the City.

Minimum Scope and Limits of Insurance

Service Provider shall maintain limits no less than:

- \$2,000,000 **General Liability** (including operations, products and completed operations) per occurrence, \$4,000,000 general aggregate, for bodily injury, personal injury and property damage, including without limitation, blanket contractual liability. Coverage shall be at least as broad as Insurance Services Office (ISO) Commercial General Liability coverage form CG 00 01. General liability policies shall be endorsed using ISO form CG 20 10 that the City and its officers, officials, employees and agents shall be additional insureds under such policies.
- \$1,000,000 **Automobile Liability** combined single limit per accident for bodily injury or property damage at least as broad as ISO Form CA 00 01 for all activities of Service Provider arising out of or in connection with Work to be performed under this Agreement, including coverage for any owned, hired, non-owned or rented vehicles. Automobile Liability policies shall be endorsed to provide that the City and its officers, officials, employees and agents shall be additional insureds under such policies.
- **Worker's Compensation** as required by the State of California and \$1,000,000 **Employer's Liability** per accident for bodily injury or disease. Service Provider shall submit to the City, along with the certificate of insurance, a Waiver of Subrogation endorsement in favor of the City, its officers, agents, employees, and volunteers.

Maintenance of Coverage

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

Proof of Insurance

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

Acceptable Insurers

All insurance policies shall be issued by an insurance company currently authorized by the Insurance commissioner to transact business of insurance in the State of California, with an assigned policyholders' Rating of

A- (or higher) and a Financial Size Category Class VII (or larger), in accordance with the latest edition of Best's Key Rating Guide.

Waiver of Subrogation

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

Enforcement of Contract Provisions (non estoppel)

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

Specifications not Limiting

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

Notice of Cancellation

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

Self-insured Retentions

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

Timely Notice of Claims

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

Additional Insurance

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

Attachment B

DRAFT
CITY OF MADERA

BACKUP GENERATOR MAINTENANCE AGREEMENT

THIS AGREEMENT made and entered into the ___ day of _____, 2019, by and between the CITY OF MADERA, a municipal corporation of the State of California, hereinafter called "City" and _____, hereinafter called "Service Provider";

RECITALS

- A. The City is in need of Backup Generator Maintenance services and the City has issued a Request for Proposals (RFP) for Backup Generator Annual Service.
- B. City requires a Backup Generator Maintenance Agreement from a qualified professional service provider.
- C. Service Provider is a firm having the necessary experience and qualifications to provide services under this Backup Generator Maintenance Agreement.
- D. After conducting an RFP process for Backup Generator Annual Service and after review and consideration, City desires to retain Service Provider to provide said services.

AGREEMENT

NOW, THEREFORE, in consideration of the foregoing and the mutual covenants and agreements herein contained, it is agreed by and between the City and the Service Provider as follows:

1. Services. The City hereby employs Service Provider to provide Backup Generator Maintenance services, herein set forth at the compensation and upon the terms and conditions herein expressed, and Service Provider hereby agrees to perform such services for said compensation, and upon said terms and conditions City hereby authorizes Service Provider to commence work on _____, 2019.

2. Obligations, duties and responsibilities of Service Provider. It shall be the duty, obligation and responsibility of the Service Provider, in a skilled and professional manner, to perform, furnish and supply to the City the services and supplies in accordance with the minimum service requirements as listed below:

- Visual inspection of the site and unit
- Check and adjust all fluid levels and pressures for correct operation
- Inspect and service air filtration system, change filter if necessary
- Inspect exhaust system – including manifold, piping, muffler
- Inspect turbocharger – oil leaks, abnormal noise, and end play

- Inspect cooling system – radiator, hoses, water pump, belts, pulleys, clamps, and fan assembly. Inspect for leaks or cracks
- Inspect engine fan drive belts and adjustment
- Inspect and test radiator cap for correct pressure
- Inspect engine block heater – proper operating temperature, coolant flow, hoses and heater
- Inspect fuel system – fuel lines, filters, tanks, priming pumps, transfer pumps, level indicator, water instruction, DEF tank, DEF lines, DEF level indicator, and any leaks
- Inspect oil system – oil level, pressure, crankcase breather, excessive blow-by
- Inspect starting system – batteries, voltages, clean connections, test starter and alternator operation and charging rates
- Inspect and test monitoring and safety control systems – ensure proper operation
- Controls – inspect control pane condition and operation, start/stop/auto operation, and meter operation
- Inspect automatic transfer switch – check proper operation
- Service air filters and clean housing
- Replace fuel filter and service primary filter
- Drain and replace engine oil and filters, sample oil for lab analysis
- Service water separator
- Grease bearings, fans shafts, linkages and equipment fittings as required
- Inspect generator end bearing for condition and lubricate as necessary. Inspect exciter, generator conductors, connection and generator fan assembly
- Inspect generator circuit breakers and tighten connections. Inspect and clean engine/generator control panel and connection panel
- Inspect and service automatic transfer switch and enclosure. Check for proper operation and timing of ATS and controls
- Load bank testing – put generator on resistive load bank capable of 100% of nameplate rating for minimum of 2 hours. All operating parameters will be monitored during the load test.

3. Service Provider’s fees and compensation: amount, how and when payable.

3.1 Fees. For all the work and services, including supplies and equipment, pertaining to the Backup Generator Maintenance Agreement and supplies required to be furnished by the Service Provider to the City, City agrees to pay to Service Provider and Service Provider agrees to accept and receive as payment in full the following fees and compensation which shall be known as the “Fee” to be paid as hereinafter set forth.

A. Cost Schedule

<u>Location</u>	<u>Year 1 Cost</u>	<u>Year 2 Cost</u>	<u>Year 3 Cost</u>
City Hall			
PD			
WWTP			
Public Works			
Well 18			

375 kW Port			
125 kW Port			
Fire Station #56			
Water Tower			
Fairgrounds			
SIU - PD			
Fire Station #58			
TOTAL			

B. Hourly Service Rate for additional work \$ _____

4. Term of Agreement. This Agreement shall be effective on _____, 2019, after approval by the City Council at a duly scheduled meeting thereof and shall continue in full force and effect through _____, 2022, unless otherwise terminated earlier by one of the parties pursuant to Section 8 of this Agreement. This Agreement may be extended by mutual written consent annually thereafter, not to exceed two (2) additional years, by providing such notice to the parties as identified in Section 8 of this Agreement. Fees and Costs for the optional extensions may be adjusted based upon the Consumer Price Index, Pacific Cities and U. S. Average for all urban consumers, Western Cities Category "C" or 2.5%, whichever is less.

5. Hold Harmless and Insurance Requirements.

5.1 Independent contractor. In the furnishing of the services provided herein, the Service Provider is acting as an independent contractor and not as an employee of the City. Service Provider acknowledges and agrees that at all times, Service Provider or any agent or employee of Service Provider shall be deemed at all times to be an independent contractor and is wholly responsible for the manner in which it performs the services and work requested by City under this Agreement. Service Provider, its agents, and employees will not represent or hold themselves out to be employees of the City at any time. Service Provider or any agent or employee of Service Provider shall not have employee status with City, not be entitled to participate in any plans, arrangements, or distributions by City pertaining to or in connection with any retirement, health or other benefits that City may offer its employees. Service Provider or any agent or employee of Service Provider is liable for the acts and omissions of itself, its employees, and its agents. Service Provider shall be responsible for all obligations and payments, whether imposed by federal, state, or local laws, including, but not limited to, FICA, income tax withholdings, unemployment compensation, insurance, and other similar responsibilities related to Service Provider's performing services and work, or any agent or employee of Service Provider providing same. Nothing in this Agreement shall be construed as creating an employment or agency relationship between City and Service Provider or any agent or employee of Service Provider. Any terms in this Agreement referring to direction from City shall be construed as providing for direction as to policy and the result of Service Provider's work only, and not as to the means by which such a result is obtained. City does not retain the right to control the means or the method by which Service Provider performs work under this Agreement

5.2 Indemnification and Waivers. Service Provider shall defend, indemnify, save, protect, and hold harmless the City of Madera, the members of the City Council of said City and all other officers, volunteers and

employees of said City against and from all claims, suits, actions, demands or liability whatsoever to any person or persons by reason of personal injuries or death or damage or destruction of property caused by or arising out of Service Provider's operations under the terms of this Agreement, or extension thereof, or by Service Provider's failure to comply with any of the terms or provisions of said Agreement. Service Provider shall and does hereby waive any claim against the City of Madera, its officers, volunteers and employees, for any damage to equipment or other property connected with Service Provider's operations under this Agreement arising from any cause.

5.3 Insurance. During the term of this Agreement, Service Provider shall maintain, keep in force and pay all premiums required to maintain and keep in force liability and property damage insurance. The limits of such policy shall be as required by the City of Madera. A copy of the City's requirements for such insurance coverage is attached hereto as Exhibit "A".

6. Attorney's 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 attorney's 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.

7. Governing Law. The laws of the State of California shall govern the rights and obligations of the parties under this 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.

8. Termination.

A. This Agreement may be terminated at any time by either party upon fifteen (15) calendar days written notice. In the event the Agreement is terminated by either party, Service Provider shall be compensated for services performed to the date of termination based upon the compensation rates and subject to the maximum amounts payable agreed to together with such additional services performed after termination which are authorized in writing by the City representative to wind up the work performed to date of termination.

B. City may immediately suspend or terminate this Agreement in whole or in part by written notice where, if in the determination of City, there is:

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

In no event shall any payment by City or acceptance by Service Provider constitute a waiver by such party of any breach of this Agreement or any default which may then exist on the part of either party. Neither shall such payment impair or prejudice any remedy available to either party with respect to such breach or default. City shall have the right to demand of Service Provider the repayment to City of any funds disbursed to Service Provider under this Agreement which, as determined by the appropriate court or arbitrator, were not expended in accordance with the terms of this Agreement.

All notices shall be mailed to the City:

City of Madera
Fleet Operations Manager
1030 South Gateway Drive
Madera, CA 93637

To Service Provider:

9. Compliance with Laws.

A. Laws Incorporated by Reference. The full text of the laws listed in this Section, including enforcement and penalty provisions, are incorporated by reference into this Agreement.

B. Conflict of Interest. By executing this Agreement, Service Provider certifies that it does not know of any fact which constitutes a violation of Title 9, Chapter 7 of the California Government Code (Section 87100 et seq.), or Title 1, Division 4, Chapter 1, Article 4 of the California Government Code (Section 1090 et seq.), and further agrees promptly to notify the City if it becomes aware of any such fact during the term of this Agreement.

C. Proprietary Information. In the performance of Services, Service Provider may have access to City's proprietary or confidential information, the disclosure of which to third parties may damage City. If City discloses proprietary or confidential information to Service Provider, such information must be held by Service Provider in confidence and used only in performing the Agreement. Service Provider shall exercise the same standard of care to protect such information as a reasonably prudent Service Provider would use to protect its own proprietary or confidential information.

D. Nondiscrimination Requirements. Service Provider shall comply with all state and federal laws in the administration of this Agreement.

E. Alcohol and Drug-Free Workplace. City reserves the right to deny access to, or require Service Provider to remove from, City facilities personnel of any Service Provider or subcontractor who City has reasonable grounds to believe has engaged in alcohol abuse or illegal drug activity which in any way impairs City's ability to maintain safe work facilities or to protect the health and well-being of City employees and the general public. City shall have the right of final approval for the entry or re-entry of any such person previously denied access to, or removed from, City facilities. Illegal drug activity means possessing, furnishing, selling, offering, purchasing, using or being under the influence of illegal drugs or other controlled substances for which the individual lacks a valid prescription. Alcohol abuse means possessing, furnishing, selling, offering, or using alcoholic beverages, or being under the influence of alcohol.

F. Public Records Act. Contractor acknowledges that this Agreement and all records related to its formation, Contractor's performance of services, and City's payment are subject to the California Public Records Act, (California Government Code §6250 et seq.). Such records are subject to public inspection and copying unless exempt from disclosure under federal, state, or local law.

10. Notices. All notices and communications from the Service Provider shall be to City's Fleet Operations Manager. Verbal communications shall be confirmed in writing. All written notices shall be provided and addressed as indicated above.

11. Assignment. Neither the City nor the Service Provider will assign its interest in this Agreement without the written consent of the other.

12. Entire Agreement. This contract sets forth the entire Agreement between the parties, and supersedes all other oral or written provisions. Any changes to this Agreement requested by either City or Service Provider 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 a writing.

13. Venue. The formation, interpretation, and performance of this Agreement shall be governed by the laws of the State of California. Venue for all litigation relative to the formation, interpretation, and performance of this Agreement shall be in the County of Madera.

This Agreement and the attachments and exhibits incorporated herein, represents the entire agreement and understanding between the parties. Any modifications to this Agreement shall be in writing and signed by authorized representatives of the parties. One or more waivers of any term, condition or covenant by either party shall not be construed as a waiver of any other term, condition or covenant.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement at Madera, California, the day and year first above written.

CITY OF MADERA

BY: _____

BY: _____

ATTEST:

Alicia Gonzales, City Clerk

APPROVED AS TO FORM

Hilda Cantú Montoy, City Attorney