



REPORT TO CITY COUNCIL

Approved by:

Handwritten signature of Daniel Foss in blue ink.

Daniel Foss, Interim Department Director

Handwritten signature of Arnaldo Rodriguez in blue ink.

Arnaldo Rodriguez, City Manager

Council Meeting of: June 3, 2020

Agenda Number: D-3

SUBJECT:

Agreement with Talley Oil, Inc. for Asphalt Pavement Crack Sealing.

RECOMMENDATION:

Adopt a Resolution approving the Agreement with Talley Oil, Inc. for Asphalt Pavement Crack Sealing in the amount of \$380,160.

SUMMARY:

In February 2020, the City published Request for Proposals (RFP) No. 201920-06 for Asphalt Pavement Crack Sealing services for 16 locations listed in Table 1. The purpose of this RFP was to solicit professional consultants with a strong background in capital improvement projects to provide services in support of City staff for future projects relating to asphalt preservation. The RFP was responded to by two qualified professional service providers that specialize in this area, Talley Oil, Inc. and Graham Contractors, Inc. Based on staff's ranking, Talley Oil, Inc. provided the best overall proposal. Therefore, the recommended agreement with Talley Oil, Inc., is a one-year agreement, with the option to extend for an additional two years with mutual written consent of both parties.

| Table 1: Project List | | | | | |
|------------------------------|-----------------|--------------------|---------------|---------------------|----------------------|
| <i>Priority</i> | <i>Name</i> | <i>From</i> | <i>To</i> | <i>Width (Feet)</i> | <i>Length (Feet)</i> |
| 1 | Almond Ave | Madera Ave | Emily Way | 50 | 1,518 |
| 2 | E St | 4th St | Central Ave | 48 | 1,596 |
| 3 | B St | 6th St | Clinton St | 48 | 992 |
| 4 | Westberry Blvd | Riverview Dr | Howard Rd | 48 | 4,417 |
| 5 | K St | Yosemite Ave | Olive Ave | 48 | 2,194 |
| 6 | E St | Clinton St | Yosemite Ave | 44 | 1,401 |
| 7 | Pine St | Sunset Ave | 3rd St | 48 | 1,331 |
| 8 | Kennedy St | Chapin St | Creekside Dr | 38 | 2,175 |
| 9 | Stadium Rd | Pecan Ave | Gary Ln | 47 | 1,285 |
| 10 | C St | 12th St | Roosevelt Ave | 48 | 1,463 |
| 11 | Lilly St | Sunrise Ave | Clinton St | 48 | 2,510 |
| 12 | Almond Ave | Westberry Dr | Granada Dr | 48 | 2,626 |
| 13 | Merced St | Ellis St | Kennedy St | 52 | 1,771 |
| 14 | Sonora St | Sherwood Way | Adell St | 48 | 1,958 |
| 15 | Monterey St | 150 S of Olive Ave | Walnut St | 36 | 1,103 |
| 16 | Country Club Dr | Cleveland Ave | Adell St | 65 | 2,756 |

DISCUSSION:

Table 2 provides a comparison of the Proposal Cost Schedules submitted by both Graham Contractors, Inc. and Talley Oil, Inc. Although Graham Contractors, Inc. provided a lower overall project cost of \$380,000, the RFP states that the award will not be solely based on the lowest bid but will be based on the overall best proposal. In this case, the best proposal is Talley Oil, Inc., since Graham Contractors, Inc. cost proposal is front loaded. For example, their Schedule 1 proposal for 1 to 200 Linear Feet (LF) would cost the City \$120,000, whereas, Tally Oil Inc.'s Schedule 1 proposal would only cost \$10,560. In addition, the sum comparisons of Proposal Cost Schedules 1 and 2 illustrate a significant difference of \$123,840 due to Graham Contractors, Inc.'s high initial rates. Therefore, Graham Contractors Inc.'s proposal could be materially unbalanced due to the cost of money that must be paid out early versus over the normal construction of the project. Moreover, The Federal Highway Administration (FHWA) states that if a bid is front loaded, regardless if it is the lowest bid, it should be viewed as materialistically unbalanced, since acceptance of the bid would result in the same evils as an advance payment and an advance payment is prohibited by law. Therefore, Talley Oil Inc. is being recommended, since their rates are consistent and cost efficient across each proposal schedule.

| Table 2: Proposal Cost Schedule Comparison | | | | | | |
|--|--------------------|---|--|--|--|--|
| <i>Item</i> | <i>Description</i> | <i>Approx. Quantity of Cracks in Street</i> | <i>Unit Price for Graham Contractors, Inc.</i> | <i>Unit Price for Talley Oil, Inc.</i> | <i>Total Amount for Graham Contractors, Inc.</i> | <i>Total Amount for Talley Oil, Inc.</i> |
| Schedule 1 for 1 Linear Foot (LF) to 200 Linear Feet (LF) | | | | | | |
| 1 | ¼" Width crack | 200 | \$100 | \$13.20 | \$20,000 | \$2,640 |
| 2 | ½" Width crack | 200 | \$150 | \$13.20 | \$30,000 | \$2,640 |
| 3 | ¾" Width crack | 200 | \$150 | \$13.20 | \$30,000 | \$2,640 |
| 4 | 1" Width crack | 200 | \$200 | \$13.20 | \$40,000 | \$2,640 |
| Total Schedule 1 | | | | | \$120,000 | \$10,560 |
| Schedule 2 for 201LF to 2000LF | | | | | | |
| 5 | ¼" Width crack | 2,000 | \$10 | \$13.20 | \$20,000 | \$26,400 |
| 6 | ½" Width crack | 2,000 | \$15 | \$13.20 | \$30,000 | \$26,400 |
| 7 | ¾" Width crack | 2,000 | \$15 | \$13.20 | \$30,000 | \$26,400 |
| 8 | 1" Width crack | 2,000 | \$20 | \$13.20 | \$40,000 | \$26,400 |
| Total Schedule 2 | | | | | \$120,000 | \$105,600 |
| Total (Schedule 1 +Schedule 2) | | | | | \$240,000 | \$116,160 |
| Schedule 3 for 2001LF to 5000LF or more | | | | | | |
| 9 | ¼" Width crack | 5,000 | \$4 | \$13.20 | \$20,000 | \$66,000 |
| 10 | ½" Width crack | 5,000 | \$8 | \$13.20 | \$40,000 | \$66,000 |
| 11 | ¾" Width crack | 5,000 | \$8 | \$13.20 | \$40,000 | \$66,000 |
| 12 | 1" Width crack | 5,000 | \$8 | \$13.20 | \$40,000 | \$66,000 |
| Total Schedule 3 | | | | | \$140,000 | \$264,000 |
| Total Proposal Cost | | | | | | |
| Schedule 1+ Schedule 2+ Schedule 3 | | | | | \$380,000 | \$380,160 |

FINANCIAL IMPACT:

These expenditures are budgeted for annually and are included in contracted services within the Public Work's Streets Division budget.

CONSISTENCY WITH THE VISION MADERA 2025 PLAN:

The proposed action is not specifically addressed as part of the Vision Plan, nor is it in conflict with the Plan.

ALTERNATIVES:

As an alternative, the Council may:

1. Request additional information and/or clarification of the contract.
2. May request that staff publish an updated RFP.

ATTACHMENTS:

1. Resolution – Approving an Agreement
 - a. Exhibit 1 – Asphalt Pavement Crack Sealing Services Agreement
 - i. Exhibit A – Insurance Requirements

RESOLUTION NO. _____

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MADERA,
CALIFORNIA APPROVING AN AGREEMENT FOR ASPHALT PAVEMENT
CRACK SEALING WITH TALLEY OIL, INC.**

WHEREAS, the City has a need to secure Asphalt Pavement Crack Sealing services from a qualified professional; and

WHEREAS, said services were envisioned as part of the 2019/20 Fiscal Year Budget and funds were identified in contracted services; and

WHEREAS, the City of Madera (City) issued a Request for Proposals (RFP) for Asphalt Pavement Crack Sealing Services; and

WHEREAS, the RFP was published 02/17/2020; and

WHEREAS, Talley Oil, Inc. was the best overall proposal; and

WHEREAS, Talley Oil, Inc., has been identified as a firm having the necessary experience and qualifications to provide services under this Asphalt Pavement Crack Sealing Services Agreement; and

WHEREAS, an agreement has been prepared between the City of Madera and Talley Oil Inc., for Asphalt Pavement Crack Sealing services that is in the best interests of both parties.

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 approves the Agreement with Talley Oil Inc., which is attached hereto as Exhibit 1.
3. The Mayor of the City of Madera is authorized to execute the Agreement and any and all documents necessary to effectuate the Agreement on behalf of the City.
4. This resolution is effective immediately upon adoption.

* * * * *

Exhibit 1
CITY OF MADERA
ASPHALT PAVEMENT CRACK SEALING SERVICES

THIS AGREEMENT made and entered into the 3rd day of June 2020, by and between the CITY OF MADERA, a municipal corporation of the State of California, hereinafter called "City" and Talley Oil Inc., hereinafter called "Service Provider";

RECITALS

- A. The City is in need of Asphalt Pavement Crack Sealing services and the City has issued a Request for Proposals (RFP) for Asphalt Pavement Crack Sealing Service.
- B. City requires an Asphalt Pavement Crack Sealing Services Agreement from a qualified professional service provider.
- C. Service Provider is a firm having the necessary experience and qualifications to provide services under this Asphalt Pavement Crack Sealing Agreement.
- D. After conducting an RFP process for Asphalt Pavement Crack Sealing services 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 contracts with Service Provider to provide Asphalt Pavement Crack Sealing 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 June 3rd, 2020.

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.

Service Provider shall commence work within thirty (30) days of this authorization. No mandated schedule is set. A limited list will be provided to Service Provider as needed to allow for the completion of work. Service Provider will set its own schedule per the amount of work on the list. Service Provider will notify City's Project Manager of the schedule to allow for inspection by the City.

Crack sealing at various locations throughout the City which shall include the following:

Crack seal streets having transverse, longitudinal, block and/or reflective cracking ranging from ¼" to 1" wide. Crack sealing material shall be CRAFCO Polyflex Type 3 or approved equivalent. Contractor is not required to crack seal Alligator cracking. A light blotting of sand shall be applied to reduce tracking followed by a light post sweep of the sealed areas when applicable.

The Service Provider must provide traffic control and comply with all safety requirements as set forth in the 2015 Standard Caltrans Specifications Section 7 "LEGAL RELATIONS AND RESPONSIBILITY TO THE PUBLIC" and Section 12 TEMPORARY TRAFFIC CONTROL". The Contractor shall be responsible for the control of traffic – vehicular and pedestrian – during all phases of the work and through the life of the contract; and shall furnish all barricades, traffic cones, lights, warning and directional signs, flagmen and any other control measures needed for safety of the public and the workmen while permitting public passage. The Contractor shall post temporary NO PARKING signs containing vehicle code 22654 and all written notification shall be approved by the City prior to any posting. It shall be the responsibility of the Contractor to maintain signs and barricades overnight and on weekends and until the completion of the contract the Contractor shall provide safe vehicular and pedestrian access ways for the public to reach the homes and businesses during the time of the project. All costs incurred for labor, material or equipment and supervision for public safety and public convenience shall be considered as being included in the bid amount and no additional payment will be made therefore.

All expenses including labor, materials, equipment, removal and disposal of existing debris, clean-up, traffic control, advanced warning and construction barricades and signing along with supervision for public safety and public convenience shall be included in your proposal.

The Service Provider shall sweep and clean the roadway within the specified limits to expose the cracks, clean out each individual crack using compressed air and fill with sealant. For cracks that are ½" wide or larger backer rod shall be installed. A hot pressure feed method shall be used and any leftover material in the cavity shall be squeegeed and made flush with the surface.

Backer rod shall be compressible, non-shrinking, non-staining, nonadsorbing material that is non-reactive with the joint sealant.

All work shall be done in accordance with City and State Standards and Specifications.

Locations may be added or deleted as need by written notice from the City’s Project Manager. The proposed locations are as follows:

| Priority | Project list | | | | |
|----------|------------------------|--------------------|---------------|-------|--------|
| | Name | From | To | Width | Length |
| 1 | Almond Ave | Madera Ave | Emily Way | 50 | 1518 |
| 2 | E St | 4th St | Central Ave | 48 | 1596 |
| 3 | B St | 6th St | Clinton St | 48 | 992 |
| 4 | Westberry Blvd | Riverview Dr | Howard Rd | 48 | 4417 |
| 5 | K St | Yosemite Ave | Olive Ave | 48 | 2194 |
| 6 | E St | Clinton St | Yosemite Ave | 44 | 1401 |
| 7 | Pine St | Sunset Ave | 3rd St | 48 | 1331 |
| 8 | Kennedy St | Chapin St | Creekside Dr | 38 | 2175 |
| 9 | Stadium Rd | Pecan Ave | Gary Ln | 47 | 1285 |
| 10 | C St | 12th St | Roosevelt Ave | 48 | 1463 |
| 11 | Lilly St | Sunrise Ave | Clinton St | 48 | 2510 |
| 12 | Almond Ave | Westberry Dr | Granada Dr | 48 | 2626 |
| 13 | Merced St | Ellis St | Kennedy St | 52 | 1771 |
| 14 | Sonora St | Sherwood Way | Adell St | 48 | 1958 |
| 15 | Monterey St | 150 S of Olive Ave | Walnut St | 36 | 1103 |
| 16 | Country Club Dr | Cleveland Ave | Adell St | 65 | 2756 |

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 Asphalt Pavement Crack Sealing 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

From 1LF to 200LF:

| Item | Description | Unit of Measure | Approx. Quantity | Unit Price (\$) | Total Amount (\$) |
|------|----------------|-----------------|------------------|-----------------|-------------------|
| 1 | ¼" Width crack | LF | 200 | 13.20 | 2,640.00 |
| 2 | ½" Width crack | LF | 200 | 13.20 | 2,640.00 |
| 3 | ¾" Width crack | LF | 200 | 13.20 | 2,640.00 |
| 4 | 1" Width crack | LF | 200 | 13.20 | 2,640.00 |

From 201LF to 2000LF:

| Item | Description | Unit of Measure | Approx. Quantity | Unit Price (\$) | Total Amount (\$) |
|------|----------------|-----------------|------------------|-----------------|-------------------|
| 5 | ¼" Width crack | LF | 2000 | 13.20 | 26,400.00 |
| 6 | ½" Width crack | LF | 2000 | 13.20 | 26,400.00 |
| 7 | ¾" Width crack | LF | 2000 | 13.20 | 26,400.00 |
| 8 | 1" Width crack | LF | 2000 | 13.20 | 26,400.00 |

From 2001LF to 5000LF or more:

| Item | Description | Unit of Measure | Approx. Quantity | Unit Price (\$) | Total Amount (\$) |
|------|----------------|-----------------|------------------|-----------------|-------------------|
| 9 | ¼" Width crack | LF | 5000 | 13.20 | 66,000.00 |
| 10 | ½" Width crack | LF | 5000 | 13.20 | 66,000.00 |
| 11 | ¾" Width crack | LF | 5000 | 13.20 | 66,000.00 |
| 12 | 1" Width crack | LF | 5000 | 13.20 | 66,000.00 |

3.2 How and When Payable. Once both parties agree upon finished areas, Service Provider will submit a detailed invoice with name of project, location, and details of the specific to City for work performed. City will make payment within 30 days of receipt of an invoice.

4. Effective Date and Term of Agreement. This Agreement shall be effective on June 3rd, 2020, after approval by the City Council at a duly scheduled meeting thereof and shall continue in full force and effect through June 2nd, 2021, 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.

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. 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.

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.

8.1 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.

8.2 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:

- a. An illegal use of funds by Service Provider;
- b. A failure by Service Provider to comply with any material term of this Agreement;
- c. 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
Public Works – Streets Operation
Mgr. 1030 South Gateway Drive
Madera, CA 93637

To Service Provider: Talley Oil Inc.
12483 Road 29
Madera, CA 93638

9. Compliance with Laws.

9.1 Laws Incorporated by Reference. Service Provider will comply with all applicable federal, state, and local laws in performing this Agreement. The full text of the laws listed in this Section, including

enforcement and penalty provisions, are incorporated by reference into this Agreement. Service Provider represents and warrants to the City that it has and will keep in effect during the term of this Agreement all licenses (including but not limited to, the City Madera business license), permits, and approval of whatever nature which are legally required to perform Service Provider's services.

9.2 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.

9.3 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.

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

9.5 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.

9.6 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.

9.7 Prevailing Wages. Service Provider and subcontractors shall comply with State of California prevailing wages laws.

10. Notices. All notices and communications from the Service Provider shall be to City's Street's 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 affected 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. Governing Law, Jurisdiction, 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.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement.

CITY OF MADERA

BY: _____
Andrew Medellin, Mayor

DATE: _____

BY: _____
Talley Oil Inc.

DATE: _____

ATTEST:

Alicia Gonzales, City Clerk

APPROVED AS TO FORM :

Hilda Cantu Montoy, City Attorney

Exhibit A
Insurance Requirements for Contractors with Construction Risk

Without limiting Contractor's indemnification of City, and prior to commencement of Work, Contractor 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

Contractor 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 forms CG 20 10 and CG 20 37 to provide that the City and its officers, officials, employees and agents shall be additional insureds under such policies. The additional insured coverage under the Contractor's policy shall be primary and non-contributory and will not seek contribution from the City's insurance or self-insurance and shall be at least as broad as CG 20 01 04 13.
- **\$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 Contractor 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. Contractor 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.
- **Builder's Risk (Course of Construction)** insurance covering all risks of loss less policy exclusions equivalent to the completed value of the project with no coinsurance penalty provisions. Contractor may submit evidence of Builder's Risk insurance as evidence of course of construction coverage. Termination of coverage shall not occur prior to full completion of the applicable project. The City of Madera, its officers, officials, employees and agents shall be named as loss payee. Policy must include: (1) coverage for any ensuing loss from faulty workmanship, Nonconforming Work, omission, or deficiency in design or specifications; (2) coverage against machinery accidents and operational testing; (3) coverage for removal of debris, and insuring the buildings, structures, machinery, equipment, materials, facilities, fixtures, and all other properties constituting a part of the Project; (4) transit coverage, including ocean marine coverage (unless insured by the supplier), with sub-limits sufficient to insure the full replacement value of any key equipment item; and (5) coverage with sub-limits sufficient to insure the full replacement value of any property or equipment stored either on or off the Site. Such insurance shall be on a form acceptable to City to ensure adequacy of terms and sub-limits.
- **\$1,000,000 Professional Liability** for design/build, if applicable.
- Performance Bond, Payment Bond and Completion Bond for \$50,000.

Maintenance of Coverage

Contractor 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 Contractor, his agents, representatives, employees, subcontractors or subconsultants as specified in this Agreement.

Proof of Insurance

Contractor shall provide to the City certificates of insurance and endorsements, as required, as evidence of the insurance coverage required herein. 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. City 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 Contractor, or others providing insurance evidence in compliance with these specifications, to waive their right of recovery prior to a loss. Contractor 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)

Contractor acknowledges and agrees that any actual or alleged failure on the part of the Agency to inform Contractor 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 Contractor maintains higher limits than the minimums required above, the entity shall be entitled to coverage at the higher limits maintained by Contractor.

Notice of Cancellation

Contractor 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

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

Additional Insurance

Contractor 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.