



REPORT TO CITY COUNCIL

Approved by:

Roger Sanchez, Director of Financial Services

Arnoldo Rodriguez, City Manager

Council Meeting of: October 21, 2020

Agenda Number: D-1

SUBJECT:

Agreement with NBS Consultants for the preparation of the Water, Sewer, Storm Drainage and Solid Waste Rate Studies

RECOMMENDATION:

Adopt a Resolution that approves a contract with NBS Consultants for consulting services to prepare a rate study for the water, sewer, storm drainage and solid waste utilities

SUMMARY:

The City issued a Request for Proposal (RFP) in August 2020 for a study of the utility rates for water, sewer, storm drainage, and solid waste services. Seven proposals were received and evaluated by City staff. The evaluating team is recommending the selection of NBS Consulting to perform the utility rate studies.

The City completed its last rate study for water and sewer utility rates in 2015, with the resulting water and sewer rates taking effect in July 2015 with incremental increases through January 2020. In December 2018, the Council considered a revision to the water conservation portion of the water rates and reduced the planned increase from 10 percent to 6 percent for the fiscal year 2018/19. The storm drainage rates have not been adjusted since 1992. The solid waste services are contracted to a third party, and the fee schedule was updated in March 2017.

DISCUSSION:

Madera is a full-service city that provides water, sewer, solid waste, and storm drainage services to its residents. There are approximately 14,200 residential, commercial, and industrial utility customers. The last rate study prepared by the City was completed in 2015, which updated the utility rates for water and sewer, taking effect incrementally July 2015 through January 2020. Those rates were increased between 9-10 percent during each of the 5 years covered in the rate schedule, except for Fiscal Year (FY) 2018/19 when Council considered a revised water rate analysis and adjusted the increase to 6 percent. The storm drainage rates have not been adjusted since 1992, and do not have an annual inflation index. The solid waste services are contracted to a third party and the fee schedule was last updated in March 2017.

While a single RFP was prepared, four rate studies will be prepared. They include:

1. Water rates
2. Sewer Rates
3. Storm Drainage Rates
4. Solid Waste Rates (this includes street sweeping)

The four rate studies to be prepared as a part of this study are intended to assist the City in establishing utility rates for customers that achieve the following objectives:

- Ensure that the revenues generated by the City’s utility rates are adequate to maintain all operations at current service levels, while accounting for anticipated cost increases in the immediate or foreseeable future, taking into consideration capital needs and system depreciation.
- Affirm the appropriateness of existing user fee classifications (i.e. single-family, multi-family, commercial, etc.) and/or develop new classification recommendations as necessary to achieve clarity and equity.
- Address the historically unfunded deferred maintenance of infrastructure by incorporating reasonable projections for long term facility replacement within the revenue requirement and rate calculations.
- Ensure that revenues are adequate to meet debt service coverage ratios for existing bond covenants, and any future debt that may be needed to finance capital improvements.
- Affirm or establish policies regarding adequate reserve amounts for operations, rate stabilization, and capital improvement debt expenses.
- Ensure that the water rates are consistent with the requirements of the 2014 Sustainable Groundwater Management Act (SGMA).
- Ensure that the proposed rates are in compliance with all applicable laws, including but not limited to, the provisions of Proposition 218 (Prop. 218).

Consultant Selection Process

A competitive RFP for consultant services was released on August 11, 2020, which ran through September 11, 2020. The City’s team, composed of employees from Public Works, Finance, Engineering, and Administration, evaluated seven proposals from specialized consultants. Proposals were received from the following consultants, listed in no particular order:

Table 1: Consultant Names and Proposal Amounts	
NBS Consulting	\$114,320
HF&H Consultants, LLC	\$117,890
Raftelis	\$161,538
Bartle Wells	\$109,005
FCS	\$221,810
IB Consulting	\$121,332
ARRC	\$54,235

NBS Consulting received the highest score from the team. The recommendation is not based solely on the lowest price. The recommended award is based on the best overall value to the City, including competitive pricing and the required services as outlined in the RFP. The evaluation criteria included the following:

Table 2: Evaluation Criteria and Maximum Evaluation Score	
<i>Criteria</i>	<i>Max. Evaluation Score</i>
Ability to meet the stated requirements including adequacy of proposed staffing, techniques and procedures	20
Past Performance and Experience with emphasis on comparable government experience	20
Conformance to terms of RFP in preparing and submitting the proposal	10
Implementation Plan	15
Cost Proposal Rates	35
<i>Total Maximum Score</i>	<i>100</i>

NBS’s proposal was structured to fully update the critical components of the City’s utilities. Their approach will be to work closely with City staff to develop final recommendations and clearly communicate the results to the City’s customers. The study report will provide the administrative record necessary to comply with Prop. 218. While other proposals met the RFP requirements and were competitive, the evaluating team concluded that the NBS proposal best met the requirements of the City’s utility rate study.

Since 1996, NBS has been providing services to municipalities, serving more than 500 agencies, including cities, counties, school districts, utilities, and special districts. While NBS provides a full range of revenue consulting services, they focus on sustainable water and wastewater utility rate programs, cost allocation plans, cost recovery, and legally-justified fee design.

The scope of services incorporates a comprehensive rate study, made up of three major components:

1. financial plan/revenue requirements
2. cost-of-service analysis
3. rate design analysis

Municipal agencies are required to demonstrate the cost basis for utility rates. Consequently, the rate study must include a rationale for how costs have been equitably allocated to customer classes, the equity of the rate designs, and the cost basis for rate alternatives. Additionally, projected rates over the next five years will need to provide sufficient revenues to cover all operational and administrative costs.

NBS will work cooperatively with City staff to develop financial plans and rate recommendations that are well suited to the City’s needs, as well as customers. As such, the following are the tasks that compose the scope of service:

- Kick-off meeting and data collection
- Financial plan – 10-year financial projection model

- Cost-of-service analysis – equitably allocate costs to each customer class based on cost of service principles that comply with Prop. 218
- Rate design analysis
- Prepare rate models
- Prepare written study report
- Meetings and presentations
- Prop. 218 assistance – provide guidance on drafting the public notice, assist in public hearing and advise on the rate adoption process

One of the strong points of the NBS proposal was the examples provided in the proposal outlining the financial plan summary schedule and graphs that would be incorporated in the report and presented to the public. This is key to educating City staff and the public and providing justification for utility rates. The project is scheduled to commence once the contract is approved, and staff anticipates the draft report in February 2021. NBS has proposed to spend 578 staff hours to complete the project, with an option of additional site visits/presentations if necessary. The total consultant contract is proposed for \$114,320, with additional site visits/presentations quoted at \$4,080.

FINANCIAL IMPACT:

According to Prop. 218, any new property-related fee or charge, or increase to same, must comply with both the substantive and procedural requirements of the Act. Substantive requirements of Prop. 218 include the following conditions:

- Revenues derived from fees must not exceed the funds to provide the service.
- Revenues derived from fees must not be used for any purpose other than that for which the fee is imposed.
- Fees may not be imposed unless the service is actually used by property owner.
- Fees must not exceed the proportional cost of the service attributable to parcel.
- No fee may be imposed for general governmental services (police, parks, fire, etc.)

Procedural requirements include the following conditions:

- Provide written notice by mail to property owners regarding:
 - Proposed amount of fees
 - Basis upon which fees were calculated
 - Explanation of new or fee adjustments
- A public hearing must be held at least 45 calendar days after the mailing of the notice.

The cost of the NBS proposal is \$114,320 and will be allocated to the Water, Sewer, Solid Waste and Storm Drainage Enterprise Funds.

CONSISTENCY WITH THE VISION MADERA 2025 PLAN:

The utility rate study will further apply to core vision statements of the Vision Plan of “A Safe, Healthy Environment” by providing utility services to the residents at a fair charge.

ALTERNATIVES:

Potential Council alternatives include:

- Not approve the proposed Agreement
- Direct staff to re-release RFP for water, sewer, storm drainage, and solid waste rate studies
- Direct staff to negotiate with a different consultant

ATTACHMENTS:

1. Resolution
2. Professional Services Agreement with NBS

ATTACHMENT 1

Resolution

RESOLUTION NO. _____

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MADERA, CALIFORNIA
APPROVING AN AGREEMENT WITH NBS FOR THE PREPARATION OF WATER,
SEWER, STORM DRAINAGE AND SOLID WASTE RATE STUDIES**

WHEREAS, the City is in need of a qualified and experienced consulting firm to prepare a Water, Sewer, Storm Drainage, and Solid Waste Rate Studies; and

WHEREAS, the City released a request for proposal on August 11, 2020, seeking experienced and qualified consultants to assist the City in reviewing water, sewer, storm drainage, and solid waste utility rates and developing supporting report; and

WHEREAS, the City received seven responses to the Request for Proposal; and

WHEREAS, City's review concluded the most qualified applicant to complete the water, sewer, storm drainage and solid waste rate studies is NBS; and

WHEREAS, City has prepared an Agreement with NBS for the completion the water, sewer, storm drainage and solid waste rate studies and such Agreement is on file in the office of the City Clerk and referred to for more particulars.

NOW, THEREFORE, THE City of Madera hereby finds, determines, resolves and orders as follows:

1. The recitals listed above are true and correct.
2. The Agreement as described above is approved.
3. The Mayor of the City of Madera is authorized to execute the Agreement on behalf of the City.
4. The resolution is effective immediately upon adoption.

ATTACHMENT 2

Professional Services Agreement

**CITY OF MADERA
PROFESSIONAL SERVICES AGREEMENT**

THIS PROFESSIONAL SERVICES AGREEMENT (the "Agreement") is made and entered into this 21st day of October, 2020, ("Effective Date") by and between the City of Madera, a municipal corporation ("City") and NBS, (hereinafter referred to as the "Consultant").

RECITALS

- A. The City desires to have studies prepared to consider adoption of new fees related to water, sewer, solid waste, and storm drainage services (hereafter "rate studies").
- B. City has sought by a Request for Proposals to select a qualified consultant to prepare said rate studies.
- C. Consultant is a firm that has the necessary experience and qualifications to prepare rate studies for the City.
- D. City desires to have Consultant perform said services on the terms and conditions set forth in this Agreement.

AGREEMENT

Based on the foregoing Recitals and for good and valuable consideration, the receipt and sufficiency of which is acknowledged by both parties, City and Consultant agree as follows:

ARTICLE 1

RESPONSIBILITIES OF CONSULTANT

1.1 Scope of Services.

Consultant shall perform any and all work necessary for the completion of the tasks and services set forth in the "Scope of Services" attached hereto and incorporated herein as Exhibit "A," in a manner satisfactory to City.

1.2 Schedule of Performance.

Consultant shall furnish to City, following the approval of this Agreement by City Council, proof of insurance coverage as required under Article 5, Insurance. After receipt of satisfactory proof

of insurance, City will promptly issue a written Notice to Proceed authorizing Consultant to commence performance of work. Consultant is not authorized to perform and will not be paid for performing any work under this Agreement until the effective date of the Notice to Proceed. Consultant shall begin work under the Agreement within five (5) days of the effective date of the Notice to Proceed. Consultant shall exercise reasonable diligence to have the services as set forth in Exhibit "A" completed and submitted to City for final approval as soon as reasonably practicable, but not later than April 2021, provided that Consultant shall be entitled to an extension of time for any delays caused by events or occurrences beyond Consultant's reasonable control.

1.3 Identity of Persons Performing Work.

Consultant represents that it employs or will employ at its own expense all personnel required for the satisfactory performance of any and all tasks and services set forth herein.

Consultant represents that the tasks and services required herein will be performed by Consultant or under its direct supervision, and that all personnel engaged in such work shall be fully qualified and shall be authorized and permitted under applicable State and local law to perform such tasks and services.

This Agreement contemplates the personal services of Consultant and Consultant's employees, and it is recognized by the parties hereto that a substantial inducement to City for entering into this Agreement was, and is, the professional reputation and competence of Consultant and Consultant's employees. Neither this Agreement nor any interest therein may be assigned by Consultant, except upon written consent of City.

Furthermore, Consultant shall not subcontract any portion of the performance contemplated and provided for herein without the prior written approval of City, except for those sub-consultants named in the proposal for the project. Nothing herein contained is intended to or shall be construed as preventing Consultant from employing or hiring as many employees as Consultant may deem necessary for the proper and efficient execution of this contract.

1.4 Cooperation and Coordination of Work with City.

Consultant shall work closely with City's designated representative, either individual or committee, who shall have the principal responsibility for liaison and who shall, on a continuous basis, review and approve Consultant's work. Consultant shall ensure that City has reviewed and approved all required work as the project progresses.

1.5 Compliance with Laws.

Consultant shall comply with all applicable Federal, State and local laws, ordinances and regulations now in force and as may be enacted, issued, or amended during the term of this Agreement.

1.6 Standard of Performance.

Consultant represents and warrants that it has the qualifications, experience, and facilities necessary to perform the services required under this Agreement in a thorough, competent, and professional manner. Consultant shall perform the services under this Agreement in accordance with the accepted standards of the professional disciplines involved in the project. All work shall be completed to the reasonable satisfaction of City. If City reasonably determines that the work is not satisfactory, City shall have the right to: (i) meet with Consultant to review Consultant's work and resolve matters of concern; (ii) require Consultant to repeat unsatisfactory work at no additional charge until it is satisfactory; and/or terminate this Agreement.

1.7 Changes and Additions to Scope of Services.

City may make changes within the general scope of services provided for in this Agreement. Consultant shall make no change in or addition to the character or extent of the work required by this Agreement except as may be authorized in advance in writing by City. Such supplemental authorization shall set forth the specific changes of work to be performed and related extension of time and/or adjustment of fee to be paid to Consultant by City.

ARTICLE 2

RESPONSIBILITIES OF CITY

2.1 Provision of Information.

City shall provide full information regarding its requirements for the project, and it shall furnish, without charge to Consultant, any and all information, data, plans, maps and records which are available to City and are necessary for the provision by Consultant of the tasks and services set forth herein.

2.2 Cooperation with Consultant.

City shall cooperate with Consultant in carrying out the work of the project without undue delay.

In this regard, City, including any representative thereof, shall examine plans and documents submitted by Consultant, shall consult with Consultant regarding any such plans and documents, and shall render any necessary decisions pertaining to such plans and documents as promptly as is practicable.

ARTICLE 3

PAYMENT

3.1 Payment Schedule: Maximum Payment Amount.

Subject to any limitations set forth in this Agreement, City agrees to pay Consultant per monthly invoice. Both parties agree that Consultant's total fee to complete the services under this Agreement shall not exceed \$114,320 including all amounts payable to Consultant for its overhead, payroll, profit, and all costs of whatever nature, including without limitation all costs for subcontracts, materials, equipment, supplies, and costs arising from or due to termination of this Agreement.

Billings are to be made directly to the following address:

City of Madera
Department of Finance
Attn: Vicki Crow
205 West 4th Street
Madera, CA 93637

Each month Consultant shall invoice City for all work performed and expenses incurred during the preceding month. The invoice shall detail charges by the following categories: labor (by subcategory), travel, materials, equipment, supplies, and sub-consultant contracts.

City shall independently review each invoice submitted by the Consultant to determine whether the work performed and expenses incurred are in compliance with the provisions of this Agreement. The invoiced amount shall be paid within 30 calendar days unless City disputes any charges or expenses. If any charges or expenses are disputed, City shall pay the undisputed amount, and notify Consultant of the nature and amount of the disputed charge or expense. The parties shall seek to resolve the disputed items(s) by mutual agreement.

3.2 Changes in Work.

If Consultant estimates that any proposed change within the general scope of services set forth in Exhibit "A" causes an increase or decrease in the cost and/or the time required for

performance of this Agreement, Consultant shall so notify City of that fact in advance of commencing performance of such work. An agreed upon change will be reduced to writing, signed by the parties hereto, and will modify this Agreement accordingly.

3.3 Additional Work.

City may request Consultant to perform additional services not covered by the specific scope of services set forth in Exhibit "A", and Consultant shall perform such extra services and will be paid for such extra services when they are reduced to writing, mutually agreed to, signed by the parties hereto, and made a part of this Agreement. City shall not be liable for payment of any extra services nor shall Consultant be obligated to perform any extra services except upon such written amendment.

ARTICLE 4

INDEPENDENT CONTRACTOR

Consultant is an independent contractor and not an employee of the City. Neither the City nor any of its employees shall have any control over the conduct of the Consultant or any of Consultant's employees, except as herein set forth, and Consultant expressly warrants not to, at any time or in any manner, represent that Consultant, or any of Consultant's agents, servants or employees, are in any manner agents, servants or employees of the City, it being distinctly understood that Consultant is and shall at all times remain as to the City a wholly independent contractor and that Consultant's obligations to the City are solely such as are prescribed by this Agreement.

ARTICLE 5

INDEMNITY AND INSURANCE

5.1 Indemnification.

Consultant shall indemnify, defend, and hold harmless the City, its officers, employees, agents and volunteers ("City indemnitees") from and against any and all causes of action, claims, liabilities, obligations, judgements, or damages, including reasonable legal counsels' fees and costs of litigation ("claims:"), arising out of the Consultant's performance of its obligations under this agreement or out of the operations conducted by the Consultant, except for such loss or damage arising from the sole negligence or willful misconduct of the City. In the event the City indemnitees are made a party to any action, lawsuit, or other adversarial proceeding arising from Consultant's performance of this agreement, the Consultant shall provide a defense to the City indemnitees, or at the City's option, reimburse the City indemnitees their costs of defense, including reasonable legal counsels' fees, incurred in defense of such claims.

5.2 Insurance.

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

Consultant 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.
- **\$2,000,000 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 Consultant 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. Consultant 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.
- **\$1,000,000 Professional Liability (Errors & Omissions)** per claim and in the aggregate. Consultant shall maintain professional liability insurance that insures against professional errors and omission that may be made in performing the Services to be rendered in connection with this Agreement. Any policy inception date, continuity date, or retroactive date must be before the effective date of this Agreement, and Consultant agrees to maintain continuous coverage through a period no less than three years after completion of the services required by this Agreement. The cost of such insurance shall be included in Consultant's bid.

Maintenance of Coverage

Consultant 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 Consultant, its agents, representatives, employees, subcontractors or subconsultants as specified in this Agreement.

Proof of Insurance

Consultant 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 Consultant, or others providing insurance evidence in compliance with these specifications, to waive their right of recovery prior to a loss. Consultant 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)

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

Notice of Cancellation

Consultant 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

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

Additional Insurance

Consultant 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.

ARTICLE 6

TERMINATION

This Agreement may be terminated by City for any reason, with or without cause, upon thirty days written notice to Consultant. In such event, Consultant shall be compensated for all services performed and costs incurred up to the date of notification for which Consultant has not been previously compensated, plus termination expenses reasonably incurred and properly accounted for (but in no event to exceed the amount which, when combined with other amounts paid, exceeds the amount for any uncompleted task set forth in Exhibit "A," as applicable).

Upon receipt of notice of termination from City, Consultant shall immediately stop its services, unless otherwise directed, and deliver to City all data, drawings, reports, estimates, summaries and such other information and materials as may have been accumulated by Consultant in the performance of this Agreement, whether completed or in process.

ARTICLE 7

MISCELLANEOUS

7.1 Ownership of Documents.

All data, tests, reports, documents, conclusions, opinions, recommendations and other work product generated by or produced for Consultant or its subcontractors in connection with the Services regardless of the medium, including physical drawings and materials recorded on computer discs ("Work Product"), shall be and remain the property of City. City shall have the right to use, copy, modify, and reuse the Work Product as it sees fit. Upon City's request, Consultant shall make available for inspection and copying all such Work Product and all Work Product shall be turned over to City promptly at City's request or upon termination of this Agreement, whichever occurs first. Consultant shall not release any Work Product to third parties without prior written approval of the City Manager. This obligation shall survive for four (4) years from the date of expiration or termination of this Agreement.

Any use of completed documents for projects other than that covered by this Agreement and/or any use of uncompleted documents without specific written authorization from Consultant will be at City's sole risk and without liability or legal exposure to Consultant.

7.2 Confidentiality

All data, reports, conclusions, opinions, recommendations and other work product prepared and performed by and on behalf of Consultant in connection with the Services performed pursuant to this Agreement shall be kept confidential and shall be disclosed only to City, unless otherwise provided by law or expressly authorized by City. Consultant shall not disclose or permit the disclosure of any confidential information acquired during performance of the Services, except to its agents, employees, affiliates, and subcontractors who need such confidential information in order to properly perform their duties relative to this Agreement. Consultant shall also require its subcontractors to be bound to these confidentiality provisions.

7.3 Notices.

Any notices to be given under this Agreement shall be given by enclosing the same in a sealed envelope, postage prepaid, and depositing the same in the United States mail, addressed to the following:

To the City:

City of Madera
Department of Finance
Attn: Vicki Crow
205 W. 4th Street
Madera, CA 93637

To the Consultant:

NBS
Attn: Greg Clumpner
32605 Temecula Parkway, Ste.
100
Temecula, CA 92592

7.4 Covenant Against Contingent Fees.

Consultant warrants that it has not employed or retained any company or person to solicit or secure this Agreement and that it has not paid or agreed to pay any company or person any fee or commission from the award or making of this Agreement. For breach or violation of this warranty, City shall have the right to annul this Agreement without liability or, in its discretion, to deduct from the Agreement price or consideration, or otherwise recover, the full amount of such fee or commission.

7.5 Applicable Laws, Interpretation, and Venue.

This Agreement shall be construed and interpreted both as to validity and performance of the parties in accordance with the laws of the State of California. Legal actions concerning any dispute, claim, or matter arising out of or in relation to this Agreement shall be instituted and maintained in the Superior Court of the County of Madera, State of California, or in any other appropriate court with jurisdiction in Madera County, and Consultant agrees to submit to the personal jurisdiction of such court.

7.6 Disputes.

In the event of any dispute arising under this Agreement, the injured party shall notify the defaulting party in writing of its contentions by submitting a claim, therefore. The injured party shall continue performance of its obligations hereunder so long as the defaulting party immediately commences to cure such default and completes the cure of such default with reasonable diligence and in no event to exceed 30 days after service of the notice, or such longer period as may be permitted by the injured party; provided, that if the default results in an immediate danger to the health, safety, and general welfare, City may take such immediate action as City deem warranted.

7.7 Retention of Funds.

City may withhold from any monies payable to Consultant sufficient funds to compensate City for any losses, costs, liabilities, or damages suffered by City due to default of Consultant in the performance of the services required by this Agreement.

7.8 Waiver.

No delay or omission in the exercise of any right or remedy by a non-defaulting party shall impair such right or remedy or be construed as a waiver. City's consent or waiver of one act or omission by Consultant shall not be deemed to constitute a consent or waiver of City's rights with respect to any subsequent act or omission by Consultant. Any waiver by either party of any default must be in writing.

7.9 Rights and Remedies are Cumulative.

Except as may be expressly set forth in this Agreement, the rights and remedies of the parties are cumulative and the exercise by either party of one or more of such rights or remedies or other rights or remedies as may be permitted by law or in equity shall not preclude the exercise by such party, at the same or different times, of any other rights or remedies to which such party may be entitled.

7.10 Attorneys' Fees.

In the event either party commences an action against the other party arising out of or in connection with this Agreement, the prevailing party in such action shall be entitled to recover its reasonable costs and expenses, including without limitation reasonable attorneys' fees and costs. Attorneys' fees shall include attorneys' fees on any appeal, and in addition, a party entitled to attorneys' fees shall be entitled to all other reasonable costs for investigating such action, including the taking of depositions and discovery, expert witness fees, and all other necessary costs incurred in the litigation, suit, or other action requiring attorney time. All such fees shall be enforceable whether or not such action is prosecuted to final judgment.

7.11 Integrated Agreement.

This Agreement contains all of the agreements of the parties and cannot be amended or modified except by written agreement. No prior oral or written understanding shall be of any force or effect with respect to those matters covered in this Agreement.

7.12 Authority.

The persons executing this Agreement on behalf of the parties hereto warrant that they are duly authorized to execute this Agreement on behalf of said parties.

7.13 Execution in Counterparts.

This Agreement may be executed in counterparts such that the signatures may appear on separate signature pages. A copy or an original with all signatures appended together shall be deemed a fully executed copy.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed on the respective dates set forth opposite their signatures.

End of Text

CITY OF MADERA

By: _____

Its: _____

Dated: _____, 2020

ATTEST:

CITY CLERK of the City of
Madera, California

Approved as to form:

City Attorney

CONSULTANT

By: _____

Its: _____

Dated: _____, 2020

EXHIBIT "A"

SCOPE OF SERVICES

CONSULTANT provides services as follows:

- 1.1. Data Collection and Initial Meeting.
Consultant will meet with staff to review the overall objectives of the project, timeline for completion, key milestones, introduce personnel, and develop initial framework of utility rate studies for water, sewer, solid waste and storm drainage operations. Consultant will provide City with data request.
- 1.2. Financial Workplan Development.
Develop workplan model that identifies current and projected costs for operation of the utility systems based on following criteria:
 - a. Current and future cost of providing utility services considering established and anticipated standards and regulations.
 - b. Projected demands for utility services.
 - c. Age and condition of utility systems.
 - d. Funding requirements for current long-term liabilities and debt obligations.
 - e. Existing Capital Improvements Program implementation.
 - f. Additional financing and debt service costs to fund future capital projects.
 - g. Forecast revenue needs to meet City's revenue requirements
 - h. City's reserve policies.
 - i. Comparison of the City's cost of service to other municipal entities of similar customer size/economic placement.
 - j. Provide cost of service prediction based on all contributing factors for the current year, plus the following forward intervals: 5 year, 10 year, 15 year, and 20 year.
- 1.3. Cost of Service/Rate Analysis.
Consultant will evaluate different rate options based on the amount of revenue recovered, adjustments between fixed/variable rate split, consumption analysis and other regulatory issues. Identify rate adjustments, revenue sufficiency, affordability and whether costs should be recalibrated based on updated units of service.
- 1.4. Rate Workshop.
Consultant will prepare presentations for City Council and City staff. Rate alternatives for each utility will be discussed and how each alternative impacts customers. This analysis will show alternate rate options, financial outlook for each utility, and how revenue shifts between fixed and variable rates, with several alternatives.

- 1.5. Rate Study Reports.
Consultant will provide a draft of Cost of Service Report in compliance with Proposition 218, which will include assumptions, methodology, and explanation of underlying calculations.
- 1.6. Public Hearing.
Consultant will attend Proposition 218 hearing and will provide rate tables and graphics showing customer impacts, with a one-page summary for posting to the City's website at least 14 days prior to any public hearing.
- 1.7. Final Rate Study Reports.
Consultant will provide a final of Cost of Service Report in compliance with Proposition 218, which will include assumptions, methodology, and explanation of underlying calculations.