


REPORT TO CITY COUNCIL AND MADERA PUBLIC FINANCING AUTHORITY

Approved by:



Roger Sanchez, Director of Financial Services



Arnoldo Rodriguez, City Manager

Council Meeting of: August 4, 2021

Agenda Number: B-12

SUBJECT:

Consulting Services Agreement with Thales Consulting, Inc.

RECOMMENDATION:

Adopt the resolution approving a Consulting Services Agreement between the City, Madera Public Financing Authority and Thales Consulting, Inc. for three fiscal years totaling \$13,500 to prepare and file the City Financial Transaction Report, the Financing Authority Special District Report, and the Annual Transit Report.

BACKGROUND:

Every City and Special District is required to report its financial transactions annually to the State Controller's Office. In addition, the City is required to file a Financing Authority Special District Report and an Annual Transit Report. It is recommended Council approve a Consulting Services Agreement with Thales Consulting to prepare and file the indicated reports on behalf of the City. The proposed agreement is for three (3) years at a total cost of \$4,500 each year for the reports.

DISCUSSION

The City may elect to file the City Financial Transaction Report, Financing Authority Special District Report, and Annual Transit Report through an independent auditor, via consultant, or even by using City staff members. In reviewing available options, it is staff's opinion that retaining a consultant continues to be the best and most cost-efficient method for the preparation of the necessary reports. Thales Consulting, Inc., has prepared the subject reports for the City since 2012. The previous agreement with Thales Consulting, Inc. expired after preparation of the FY 2019/2020 reports.

Review and selection were done in accordance with the City's purchasing policies as it relates to the hiring of consultants for this type of work. Three firms were contacted for a price quote, however two declined to quote as they offer these consulting services only to their audit clients. Based upon our findings it is recommended that the Council approve an agreement with Thales

Consulting, Inc., to prepare the required reports for the fiscal years 2020/2021, 2021/2022, and 2022/2023.

FINANCIAL IMPACT:

The cost to prepare the reports is \$4,500 each, and \$13,500 total for all three years. Adequate funds have been appropriated for the FY 2020/2021 reports in the current budget for the Finance Department in the Contracted Services account. Table 1 provides a summary of the proposed fees.

Table 1: Synopsis of Fees to Prepare Required Reports			
Report Name	FY 2020/21*	FY 2021/22	FY 2022/23
City Financial Transactions Report	\$3,300	\$3,300	\$3,300
Transit Report	\$800	\$800	\$800
Financing Authority Transaction Report	\$400	\$400	\$400
Total Cost	\$4,500	\$4,500	\$4,500

**Year noted is year of report, not City budget year. Reports for a particular Fiscal Year are prepared and submitted in the following Fiscal Year.*

CONSISTENCY WITH THE VISION MADERA 2025 PLAN:

Approval of this item is consistent with Strategy 115 of the Vision Plan – Economic Resource Provision: Ensure sufficient economic resources to provide adequate City services and prepare for future growth.

ALTERNATIVES:

Council may direct staff to find another consultant or prepare the reports internally.

ATTACHMENTS:

1. Resolution
 - a. Agreement for Consulting Services between the City, Madera Public Financing Authority, and Thales Consulting, Inc.

RESOLUTION NO. _____
MPFA RES. NO. _____

**JOINT RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MADERA,
CALIFORNIA, AND MADERA PUBLIC FINANCING AUTHORITY APPROVING AN
AGREEMENT WITH THALES CONSULTING, INC. TO PREPARE AND FILE CITY'S
FINANCIAL TRANSACTIONS REPORT, FINANCING AUTHORITY SPECIAL DISTRICT
REPORT, AND ANNUAL TRANSIT REPORT FOR FISCAL YEARS 2020/21,
2021/2022 AND 2022/2023**

WHEREAS, the City of Madera and the Public Financing Authority have a responsibility to provide certain reports relating to financial transactions, financing authority and transit to the State of California; and

WHEREAS, the City contacted three firms; and

WHEREAS, two of the three firms declined to provide a quote; and

WHEREAS, the firm of Thales Consulting, Inc. has agreed to provide the necessary reporting services in accordance with the terms of the Agreement; and

WHEREAS, Thales Consulting, Inc. has prepared the above reports for the City of Madera and the Public Financing Authority since FY 2012/2013; and

WHEREAS, the prices proposed for services as indicated in the agreement from Thales Consulting, Inc. are found to be fair and reasonable.

NOW THEREFORE, THE COUNCIL OF THE CITY OF MADERA AND THE BOARD OF DIRECTORS OF THE PUBLIC FINANCING AUTHORITY do hereby resolve, find and order as follows:

1. The above recitals are true and correct.
2. The Consulting Services Agreement between the City of Madera, Madera Public Financing Authority and Thales Consulting, Inc., in an amount not to exceed \$13,500, a copy of which is attached to this resolution as Exhibit 1 and incorporated by reference is hereby approved.
3. The Mayor is hereby authorized to execute the agreement with Thales Consulting, Inc.
4. The resolution is effective immediately upon adoption.

AGREEMENT

FOR CONSULTING SERVICES BETWEEN THE CITY OF MADERA, MADERA PUBLIC FINANCING AUTHORITY AND THALES CONSULTING, INC. TO PREPARE AND FILE CITY'S FINANCIAL TRANSACTION REPORT FOR THE CITY OF MADERA, FINANCING AUTHORITY SPECIAL DISTRICT REPORT AND ANNUAL TRANSIT REPORT FOR FISCAL YEARS 2020/21, 2021/22 AND 2022/23

This Consulting Services Agreement ("Agreement") is made and entered into on this 4th day of August between the City of Madera, a city under the laws of the State of California, and the Madera Public Financing Authority hereinafter collectively referred to as "City" and Thales Consulting, Inc. ("Consultant").

RECITALS

WHEREAS, the City and the Madera Public Financing Authority are required to provide certain financial transaction and transit reports to the State Controller's Office pursuant to Government Code Section 53891; and

WHEREAS, the City has the authority to contract for said services through a designated individual or entity; and

WHEREAS, Consultant is qualified to provide the services of preparing said financial transaction and transit reports, hereinafter referred to as "Services".

AGREEMENT

NOW, THEREFORE, and in consideration of the mutual promises, covenants and conditions herein contained, the parties hereby agree as follows:

I. SCOPE OF SERVICES

1.1 General Scope of Services

Consultant shall provide Services related to the City and Authority. Services shall be completed in accordance with the State Controller's guidelines and will include, but not be limited to, all other duties and responsibilities as set forth in the Scope of Work attached hereto as Exhibit A and incorporated herein by this reference.

1.2 Term

The term of Agreement shall begin on August 4, 2021 and continue until the reports for fiscal year ending June 30, 2024 have been completed and filed, or until terminated by City or Consultant pursuant to the provisions of this Agreement.

II. COMPENSATION

Services shall be compensated on a per report basis in accordance with the fee schedule as follows:

Report Name	FY 2020/21	FY 2021/22	FY 2022/2023	Total
City Financial Transaction Report	\$ 3,300	\$ 3,300	\$ 3,300	\$ 9,900
Financing Authority Transaction Rpt	\$ 800	\$ 800	\$ 800	\$ 2,400
Annual Transit Report	\$ 400	\$ 400	\$ 400	\$ 1,200
Total amount each fiscal year	\$ 4,500	\$ 4,500	\$ 4,500	\$13,500

III. METHOD OF PAYMENT

Consultant shall submit an invoice within thirty days of performing services stating the amount owed. Invoices are a per report basis.

Payment of the invoice will be made after acceptance by the City. Such acceptance shall not be unreasonably withheld.

IV. INDEMNIFICATION AND INSURANCE

4.1 Indemnity

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, judgments, 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 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.

4.2 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 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.
- **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.

V. TERMINATION

This contract may be terminated by either party on thirty (30) days written notice to the other. The City and shall compensate Consultant for services performed and expenses incurred prior to the date of transmittal or receipt of said written notice.

VI. ATTORNEY'S FEES AND COSTS

In any litigation, arbitration or other proceeding by which one party either seeks to enforce its rights under this Agreement (whether in contract, tort, or both) or seeks a declaration of any rights or obligations under

this Agreement, each party shall bear its own attorney fees, together with any costs and expenses to resolve the dispute and to enforce the final judgement.

VII. NOTICES

All notices that are required to be given by one to the other under this Agreement shall be in writing to the other part.

City of Madera and Madera Public Financing Authority
Attn: Financial Services Director
205 West Fourth Street
Madera, CA 93637
(559) 661-5453

Thales Consulting, Inc.
Attn: Joe Stimac
980 Ninth Street
Sixteenth Floor, PMB 1604
Sacramento, CA 95814
(530) 979-1648

VIII. INDEPENDENT CONTRACTOR

In the furnishing of services provided herein, the Consultant is acting as an independent contractor and not an employee of the City. Consultant acknowledges and agrees that at all times, Consultant or any agent or employee of the Consultant 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. Consultant, its agents, and employees will not represent or hold themselves out to be employees of the City at any time. Consultant, or any agent or employee of Consultant 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. Consultant or any agent or employee of Consultant is liable for the acts and omissions of itself, its employees, and its agents. Consultant 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 Consultant's performing services and work, or any agent or employee of Consultant providing same. Nothing in the Agreement shall be construed as creating an employment or agency relationship between City and Consultant or any agent or employee of Consultant. Any terms in this Agreement referring to direction from City shall be construed as providing for direction as to policy and the of Consultant'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 Consultant performs work under this Agreement.

IX. COMPLIANCE WITH LAWS

In the performance of this Agreement, Consultant shall comply with all applicable local, state, federal laws and regulations and laws referenced in this section.

- 9.1 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.
- 9.2 Conflict of Interest. By executing this Agreement, Consultant 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, Consultant 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 Consultant, such information must be held by Consultant in confidence and used only in performing the Agreement. Consultant shall exercise the standard of care to protect such information as a reasonably prudent Consultant would use to protect its own proprietary or confidential information.
- 9.4 Nondiscrimination Requirements. Consultant 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 Consultant to remove from, City facilities personnel of any Consultant 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. Consultant acknowledges that this Agreement and all records related to its formation, Consultant's performance of services, and City's payment are subject to the California Public Records Act, (California Government Code Section 6250 et seq.). Such records are subject to public inspection and copying unless exempt from disclosure under federal, state, or local law.

X. MISCELLANEOUS

- 10.1 Governing Laws. 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.

- 10.2 Assignment. Neither the City nor the Consultant will assign its interest in this Agreement without the written consent of the other.
- 10.3 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 the County of Madera.
- 10.4 Entire Agreement. This Agreement and the attachments and exhibits incorporation 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.

The City, Authority, and Thales Consulting, Inc. have executed this Agreement as of the date set forth above.

ATTEST:

CITY CLERK of the City of
Madera, California

Approved as to legal form:

City Attorney

**CITY OF MADERA/MADERA PUBLIC
FINANCING AUTHORITY**

By: _____

Its: _____

Dated: _____, 2021

CONSULTANT

By: _____

Its: _____

Dated: _____, 2021

EXHIBIT A

SCOPE OF SERVICES

CONSULTANT provides services as follows:

1. Prepare and file City's Annual Financial Transactions Report for FYs 2020/21, 2021/22 and 2022/23.
2. Prepare and file the City of Madera Financing Authority's Annual Financial Report for Special Districts for the FYs 2020/21, 2021/22 and 2022/23.
3. Prepare the Annual Transit Report for the FYs 2020/21, 2021/22 and 2022/23.