



REPORT TO CITY COUNCIL

Approved by:

Anthony R. Forestiere

Anthony R. Forestiere, Interim Director of

Financial Services

Arnoldo Rodriguez

Arnoldo Rodriguez, City Manager

Council Meeting of: September 1, 2021

Agenda Number: B-4

SUBJECT:

Consulting Services Agreement with Demsey, Filliger & Associates, LLC

RECOMMENDATION:

Adopt a resolution approving a Consulting Services Agreement between the City and Demsey, Filliger & Associates, LLC to prepare the City's OPEB (Other Post-Employment Benefits) Actuarial Report as of June 30, 2021

SUMMARY:

Governmental Accounting Standards Board (GASB) 75 requires public employers to perform periodic actuarial valuations to measure and disclose their post-retirement benefit obligations. Demsey, Filliger & Associates, LLC has previously prepared the City's OPEB Actuarial Report and has extensive knowledge about the City of Madera that would allow for timely and accurate reports.

DISCUSSION:

The City of Madera is required to complete an OPEB valuation by a licensed actuarial firm every two years. In preparation for the Fiscal Year 2020/21 and 2021/22 audits, staff reached out to companies that specialize in preparing OPEB Actuarial Reports. The City received three (3) quotes as follows:

| Consultant | Quote |
|------------------------------------|----------|
| Demsey, Filliger & Associates, LLC | \$5,000 |
| Jefferson Solutions, Inc | \$5,875 |
| Bartel Associates, LLC | \$12,500 |

Since Demsey, Filliger & Associates, LLC has completed quality work for the City in previous years and because they are the lowest bidder, staff is recommending that Demsey, Filliger & Associates, LLC prepare the Actuarial Report for the fiscal year ending June 30, 2021, to be used in the preparation of our financial statements for Fiscal Years 2020/21 and 2021/22.

FINANCIAL IMPACT:

Approval of the agreement will provide ongoing financial reporting support for the City. The agreement amount of \$5,000 was budgeted under the contracted services line item for the Finance Department.

CONSISTENCY WITH THE VISION MADERA 2025 PLAN:

Approval of this agreement is not specifically addressed in the vision 2025 plan, but falls within the parameters to provide for A Well-Planned City.

ALTERNATIVES:

Should Council not take action on the agreement, the City would need to explore other potential consultants to prepare the GASB required OPEB valuation for the 2020/21 and 2021/22 fiscal year audits.

ATTACHMENTS:

1. Resolution
2. Agreement for Consulting Services with Demsey, Filliger, & Associates, LLC
Exhibit A: Scope and Fees

RESOLUTION NO. _____

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MADERA, CALIFORNIA, APPROVING A CONSULTING SERVICES AGREEMENT BETWEEN THE CITY OF MADERA AND DEMSEY, FILLIGER & ASSOCIATES, LLC FOR THE PREPARATION OF THE CITY'S OPEB ACTUARIAL REPORT FOR THE FISCAL YEARS 2020/21 AND 2021/22

WHEREAS, the City of Madera (the "City") has a fiduciary responsibility to have its financial records and transactions audited each fiscal year by an independent Certified Public Accounting (CPA) firm; and

WHEREAS, the City of Madera is also required to have an OPEB (Other Post Employment Benefits) valuation completed by a licensed actuarial firm every two years; and

WHEREAS, the audit of the fiscal year 2020/2021 City of Madera financial statements is currently in process and requires an OPEB valuation be completed in order to receive an unqualified opinion on its financial statements; and

WHEREAS, City staff has requested pricing from three different vendors and obtained the lowest quote from Demsey, Filliger & Associates, LLC for the amount of \$5,000;

WHEREAS, Demsey, Filliger & Associates, LLC is qualified to perform the required services.

NOW THEREFORE, THE COUNCIL OF THE CITY OF MADERA does hereby resolve, find and order as follows:

1. The above recitals are true and correct.
2. The Consulting Agreement between the City of Madera and Demsey, Filliger & Associates, LLC in an amount not to exceed \$5,000, a copy of which is attached to this resolution and incorporated by reference, is hereby approved.
3. The resolution is effective immediately upon adoption.

**AGREEMENT FOR CONSULTING SERVICES BETWEEN THE CITY OF
MADERA AND DEMSEY, FILLIGER & ASSOCIATES LLC TO PREPARE
THE CITY'S OPEB (OTHER POST-EMPLOYMENT BENEFITS)
ACTUARIAL REPORT FOR FY 2020/21**

This Consulting Services Agreement ("Agreement") is made and entered into this 1st day of September, 2021 between the City of Madera, a municipal corporation of the State of California, ("CITY"), and Demsey, Filliger & Associates LLC ("CONSULTANT").

RECITALS

WHEREAS, CITY is required to complete an OPEB Actuarial Report every two years in preparation for the fiscal year 2020/21 and 2021/22 financial statements (hereinafter referred to as "Services"); and

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

WHEREAS, CONSULTANT is qualified to provide the required professional services and is knowledgeable of Federal, State and City standard policies and regulatory requirements; and

AGREEMENT

NOW, THEREFORE, the Parties incorporate the foregoing recitals and agree as follows:

I. STATEMENT OF WORK

A. Scope of Services

CONSULTANT shall provide the professional services as set forth in Exhibit 'A', Scope and Fees, attached hereto and incorporated herein by reference as if fully set forth. CONSULTANT's Project Manager shall meet with CITY's Finance department, as needed, to discuss progress on the project.

II. COMPENSATION

The work to be performed under this AGREEMENT is described in Article I Statement of Work and the approved CONSULTANT's Cost Proposal dated January 26, 2021. The approved CONSULTANT's Compensation is attached hereto as Exhibit 'A', Scope and Fees and incorporated by reference as if fully set forth. If there is any conflict between the approved Compensation and this AGREEMENT, this AGREEMENT shall take precedence. The consideration to be paid to CONSULTANT as provided herein, shall be in compensation for all of CONSULTANT's expenses incurred in the performance hereof, including travel and per diem,

unless otherwise expressly so provided.

III. METHOD OF PAYMENT

Consultant shall submit an invoice within thirty (30) days of performing services stating the amount. 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:

City of Madera
Attn: Anthony Forestiere
205 West Fourth Street
Madera, CA 93637
(559) 661-5453

CONSULTANT:

DFA, LLC
Attn: Carlos Diaz, Actuary
46 Costa Brava Drive
Laguna Niguel, CA 92677

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 an 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 and Demsey, Filliger & Associates LLC have executed this Agreement as of the date set forth above.

ATTEST:

CITY CLERK of the City of
Madera, California

Approved as to form:

City Attorney

CITY OF MADERA

By: _____

Its: Santos Garcia, Mayor

Dated: _____, 2021

CONSULTANT

By: _____

Its: _____

Dated: _____

EXHIBIT A



January 26, 2021

Dear Roger:

Thank you for this opportunity to provide the City with the following proposal for actuarial services. City of Madera has been a DFA, LLC (DFA) client since 2014. We value our relationship and hope to continue it for many years into the future.

Fees

Our flat fee, for the scope of work (described below) will be as follows:

| | |
|---|-----------|
| Actuarial Report as of July 1, 2020 | \$3,500 |
| GASB 75 footnote information for fiscal year ending June 30, 2021 | \$750 |
| GASB 75 footnote information for fiscal year ending June 30, 2022 | \$750 |
| Meeting with City staff or board to explain the report and discuss any other issues or concerns | No Charge |
| Total Fee | \$5,000 |

While we believe our fees to be quite competitive, please contact us immediately if you have any concerns about the level of fees. We would not want fees to affect our relationship and are available to discuss any concerns.

Scope of Work

DFA will provide City of Madera with an actuarial report as of July 1, 2020, setting forth all City liabilities of the postretirement health benefit program, including a projection of City expenditures under the plan. Our report will contain the following information:

- Determination of postretirement benefit obligations and components of expense in accordance with the Statement No. 75 of the Governmental Accounting Standards Board for fiscal year beginning July 1, 2020.
- Alternative amounts for prefunding the obligations as a percent of covered employee payroll.
- Reconciliation of Total OPEB Liability with the prior actuarial report.
- Roll-forward of Net OPEB Liability to GASB 75 measurement date.
- Summary of plan provisions, actuarial assumptions, and certification.

The scope also includes:

- Preparation (or review) of the GASB 75 footnote information at the time the City prepares its financial statements for fiscal years ending June 30, 2021 and June 30, 2022.
- Meeting with City staff or board to explain the report and discuss any other issues or concerns. Meeting would be virtual, in-person, or by telephone as requested.

Why Choose DFA

Continuity and Succession – Uninterrupted Service. City of Madera has been a DFA client since 2014. We continue to maintain easy access to your historical information in a secure environment. This allows us to supplement our services with a certain level of institutional knowledge.

We value our relationship and hope to continue it for many years into the future. We have developed a succession plan, in which our credentialed actuaries will ensure uninterrupted service for the foreseeable future. Our credentialed actuaries have years of experience ranging between 11 and 33 years. Individual biographies for all team members are available upon request.

Team Approach – Quality. Our valuations are prepared and peer-reviewed under the supervision of at least two credentialed actuaries on staff. Our approach results in a higher degree of quality control, improved response times, and effective project management. In addition, our team approach facilitates individual growth among the team members who serve you.

Systems – Improving Processing Time. We have made significant investments in technology. We moved away from a homegrown actuarial system to a world-renown valuation system. The system improves our processing time, enhances our capabilities, and helps in the recruitment of top talent.

We are currently testing and will soon roll out an interactive, state-of-the-art data management system to further improve processing time and to build a comprehensive database for each client.

Professional and Commercial Insurance. DFA is covered by appropriate levels of professional and commercial insurance. We are available to provide proof of insurance upon request.

Feel free to call us with any questions about this proposal.

Sincerely,

DFA, LLC

City of Madera
GASB 75 DISCLOSURE DATA REQUEST

January 26, 2021

Dear Roger:

We are requesting the information required for the July 1, 2020, GASB 75 valuation of the retiree health insurance program.

We have prepared the checklist below to guide you through the data gathering process and to help ensure all required data is included.

- Census Data:** Complete list of all active employees and retirees as of the valuation date. The Excel workbook provided shows a sample layout and label options. Additional notes can be found throughout the Excel workbook. If you provide the census data in a different worksheet, please reference the notes in the provided Excel sheet to be sure the data you have assembled is complete.

- Health Premiums:** Premium rate sheets that show active rates, under age 65 retiree rates, and over age 65 (Medicare) retiree rates for all plans available to employees for the one-year period starting at the valuation date. This should include all benefits available to retirees such as medical, pharmacy, dental, vision, and/or life insurance.

- Employee Contracts:** Relevant sections of collective bargaining agreements (Retirees' Health Insurance), employee booklets, and/or memorandum of understanding documents describing other post-employment benefits for retirees as of the valuation date.

- Audit:** Copy of the most recent completed financial audit.

- Payroll:** Total covered payroll for benefit eligible employees for the most recent completed fiscal year. This amount represents total gross wages before adjustments for benefits.

- Contributions:** The pay-as-you-go contributions for retiree health benefits for the most recent completed fiscal year.

- OPEB Trust:** If there is an irrevocable other post-employment benefits trust account, a copy of the annual statement for the most recent completed fiscal year.

Please email the updated workbook and attachments to Carlos Diaz: cdiaz@dfa-actuaries.com.

After you have had a chance to review this information, please let us know if you have any questions.

Regards,

Carlos Diaz