



REPORT TO CITY COUNCIL

A handwritten signature in blue ink, appearing to read "Keith Helmuth".

Keith Helmuth, Department Director

A handwritten signature in blue ink, appearing to read "Arnaldo Rodriguez".

Arnaldo Rodriguez, City Manager

Council Meeting of: October 20, 2021

Agenda Number: B-6

SUBJECT:

Subscriber Agreement with California Surveying and Drafting Supply Inc.

RECOMMENDATION:

Adopt a Resolution Approving a Virtual Surveying Network Subscriber Agreement with California Surveying and Drafting Supply Inc. (CSDS) for Virtual Surveying Network Service for Surveying Various City Projects

SUMMARY:

CSDS will be providing Global Positioning System (GPS) network service to new survey equipment recently purchased by the City of Madera (City). The equipment is called a GPS Rover and used to provide horizontal and vertical survey measurement for engineering design purposes. The GPS Rover requires connection to this vendor's GPS network service to provide horizontal and vertical data.

DISCUSSION:

CSDS previously had an agreement with the City for use of their GPS network on a daily fee rate of \$70.00. However, as of the end of October, CSDS no longer offers daily rate fee option. The updated Agreement includes a discounted rate of \$2,000 for the first year of service and \$4,000 per year thereafter.

The City has several of projects under design that would benefit from using the CSDS GPS network service. This enables the City to obtain required survey data faster and more cost-effective manner than hiring a survey consultant.

FINANCIAL IMPACT:

There is no adverse fiscal impact to the City's General Fund. Cost for the CSDS network service will be applied to the Local Transportation Fund (LTF). Where appropriate, costs will be charged to individual projects on a pro-rata basis.

CONSISTENCY WITH THE VISION MADERA 2025 PLAN:

Strategy 126: Provide safe, clean and attractive streets consistent with the Madera Vision 2025 plan

ALTERNATIVES:

The Council may reject the Subscriber Agreement with CSDS, however, rejection of the agreement will result in the inability for staff to obtain in-house topographic surveying data. The cost for hiring a survey consultant is substantially higher.

ATTACHMENTS:

1. Resolution
 - a. Exhibit 1 - Master Agreement

ATTACHMENT 1

Resolution

RESOLUTION NO. 21-_____

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MADERA, CALIFORNIA
APPROVING A VIRTUAL SURVEYING NETWORK SUBSCRIBER AGREEMENT WITH
CALIFORNIA SURVEYING AND DRAFTING SUPPLY, INC. (CSDS) FOR VIRUAL
SURVEYING NETWORK SERVICE FOR VARIOUS CITY PROJECTS**

WHEREAS, the City of Madera (City) has utilized California Surveying and Drafting Supply, Inc. (CSDS) for Virtual Surveying Network Service for Surveying Various City Projects through a Subscriber Agreement; and

WHEREAS, a new Agreement between the City and CSDS is needed at this time; and

WHEREAS, funds are available in the Capital Improvement Projects budget.

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 Council approves the Virtual Surveying Network Subscriber Agreement between the City of Madera and California Surveying and Drafting Supply, Inc. a copy of which is attached hereto as Exhibit 1 and referred to for particulars.
3. This Resolution is effective immediately upon adoption.

EXHIBIT 1

Virtual Surveying Network Subscriber Agreement

CSDS VIRTUAL SURVEYING NETWORK SUBSCRIBER AGREEMENT

This Subscriber Agreement (the "Agreement"), dated October 20, 2021 ("Effective Date") is by and between California Surveying & Drafting Supply, Inc. ("CSDS"), and the undersigned subscriber ("Subscriber") identify on the signature page of this Agreement. This Agreement will serve as a master agreement covering all User(s) (as defined below) the Subscriber may control.

1. BACKGROUND AND OBJECTIVES. CSDS is in the process of establishing a Real Time Kinematic (RTK) Network ("the CSDS VSN") within Northern California. The CSDS VSN is currently servicing the greater Sacramento region, the Bay Area and the Central Valley, and CSDS plans to expand to additional areas until all surrounding areas are virtually seamless and combined into one CSDS VSN covering Northern California that have data cellular telephone coverage. Using Trimble Reference Stations, Trimble Pivot software, the Subscriber with a GPS Rover ("Rover") working within the CSDS VSN will be able to obtain RTK accuracies using Dual Frequency GPS Receivers.

2. SUBSCRIPTION.

2.1 For the purpose of this Agreement, a "User" is defined as one (1) Rover activated to work within the CSDS VSN. Under the terms and condition of this Agreement, a Subscriber may have one or more Users under its control. The Subscriber agrees to pay an initial non-refundable license fee set forth in Schedule A for each User ("Initial License Fee"). Upon payment of the Initial License Fee for a new User, such User will be entitled to attend a configuration and system orientation session provided by CSDS and will be issued a username and password that will allow such User's Rover to access the CSDS VSN ("User Account"). The Subscriber is responsible for purchasing and maintaining its own equipment to access the CSDS VSN, including, but not limited to, the Rover, the cellular phone modem and all costs associated therewith.

2.2 In addition to the Initial License Fee and during the term of this Agreement, the Subscriber will be assessed a annual fee as set forth in in Schedule A for each User ("Subscription Fee"). The Subscriber acknowledges and agrees that CSDS reserves the right to change the Annual Fee once per calendar year. Unless otherwise stated, if CSDS increases the Annual Fee, CSDS will provide notice to the Subscriber at least thirty (30) days before the effective date of such fee increase. CSDS may decrease the Annual Fee without providing advance notice.

3. INITIAL TERM. The initial term of this Agreement is as of the October 20, 2021 until September 30, 2022 ("Initial Term").

4. STANDARD TERMS AND CONDITIONS. This Agreement is subject to the Standard Terms and Conditions which accompany this facing page and are expressly incorporated into this document by reference. The parties have read and agree to be bound by those Standard Terms and Conditions.

IN WITNESS WHEREOF, the parties have executed this Agreement on the date set forth below.

California Surveying & Drafting Supply, Inc.

Company: _____

Signature: _____

Tom Cardenas, President

[Name, Title]

Address: 4733 Auburn Blvd.
Sacramento, CA 95841

Address: _____

Email: tomc@csdsinc.com

Email: _____

Phone: _____

Date: _____

Date: _____

**SCHEDULE A
TO THE
SUBSCRIBER AGREEMENT**

Initial License Fee: **Billed at \$0 per User**

Annual Fee: **Billed at \$2000 per year per User for first year only**

Number of Users: **1**

***Primary Contact Name:**

Mobile Number:

Email Address:

***Secondary Contact Name:**

Mobile Number:

Email Address:

***Required for activation + Account Status Updates**

Initials: _____

SUBSCRIBER AGREEMENT STANDARD TERMS AND CONDITIONS

1. Renewals. After the Initial Term, this Agreement will automatically renew for additional one-year period at renewal fee of \$100 per year per User (“Renewal Fee”) unless the Subscriber notifies CSDS in writing 30 days prior to the annual renewal that it wishes to terminate this Agreement or reduce the number Users. The Renewal Fee is in addition to the Initial License fee and the Annual Fee. Partial credit will not be given if the Subscriber reduces the number of Users during the Initial Term or any renewal period.

2. Subscriber’s Obligations.

A. The Subscriber agrees not to re-broadcast the RTK signal.

B. The Subscriber agrees to pay CSDS all of the fees and other charges provided in this Agreement. CSDS may suspend, restrict or cancel the User Account(s) and/or this Agreement pursuant to Section 4.B. below if the Subscriber fails to make any payments under this Agreement when due.

C. The Subscriber agrees that it will only designate its agents and/or employees as Users for the purposes of utilizing the CSDS VSN, and that it will not resell, transfer or permit other people to use its User Account information to access the CSDS VSN. The Subscriber agrees to (i) immediately notify CSDS of any unauthorized use of its User Account or any breach of security, and (ii) use its best efforts to safe guard and protect its User Account information.

D. The Subscriber acknowledges and agrees that the Global Positioning System (“GPS”) is operated by the U.S. Government Department of Defense, which is solely responsible for the accuracy, daily operations and maintenance of the satellites used in that system. As a result, CSDS shall not be responsible and/or liable for the unavailability or inaccuracy of GPS data.

E. The Subscriber acknowledges and agrees that the RTK data obtained from the CSDS VSN when used outside of the limits of the CSDS VSN may result in degraded accuracies. **The Subscriber understands that proper survey practices must be followed at all times. The Subscriber agrees to practice and have knowledge of the following techniques including, but not limited to, site calibrations, checking local control, initialization checks, and the Subscriber agrees that these techniques will be followed on all surveys completed within the CSDS VSN.**

F. The Subscriber shall be liable for and shall pay all charges and taxes (local, State and Federal), including all sales and use taxes (excluding taxes based on CSDS’ net income) which may now or hereafter be imposed or levied

upon the use of the Services (as defined below) or as a result of any of the terms of this Agreement.

3. CSDS’s Obligations.

A. CSDS will be responsible for implementation, operation and maintenance of the CSDS VSN (the “Services”), however, the Subscriber acknowledges and agrees that (i) the CSDS VSN is currently available in the greater Sacramento region, the Bay Area, and parts of the Central Valley such as Lodi, Stockton, and Modesto, (ii) CSDS intends to rollout additional services in surrounding areas in the future, and (iii) the performance of the CSDS VSN may vary depending on a number of factors, such as the User’s location, interference from objects, environmental factors and other factors beyond the control of CSDS. CSDS reserves the right to change and/or discontinue a service area and no guarantee is made as to the accuracy of the RTK data.

B. CSDS will use commercially reasonable efforts to maintain continuous service to the CSDS VSN. The Subscriber acknowledges and agrees that interruptions in the Services may occur and that data availability is not guaranteed. As a result, CSDS shall not be responsible and/or liable for the unavailability or inaccuracy of RTK data.

C. In CSDS’s sole discretion, CSDS agrees to establish Reference Stations at certain of its facilities, and other designated facilities that meet the network requirements at no additional cost to subscribers.

D. CSDS reserves the sole right and discretion to refuse any User access to the CSDS VSN if CSDS determines that the User is in breach of this Agreement.

4. Cancellation of User Account and/or Agreement.

A. The Subscriber may cancel the User Account(s) or terminate this Agreement at any time by providing CSDS with written notice of such cancellation or termination no less than fifteen (15) days before the end of the year in which cancellation or termination is sought.

B. CSDS reserves the right to suspend, restrict, or cancel the User Account(s) and/or this Agreement, should the Subscriber (or any of its agents and/or employees) violate any terms of this Agreement. If the User Account(s) is suspended, restricted, or cancelled under this Section 4.B., the Annual Fee and charges will accrue through the date that CSDS fully processes the suspension, restriction or cancellation. The Subscriber shall pay all fees and charges that are due under this Agreement, including reimbursement

of any reasonable costs incurred, including attorneys' fees, to collect the fees owed to CSDS.

C. In addition to the rights set forth in Section 4.B. above, CSDS reserves the right to cancel the User Account(s) or terminate this Agreement for any other reason by providing the Subscriber with written notice of such cancellation and/or termination no less than thirty (30) days prior to the date of cancellation/termination. In the event of cancellation or termination by CSDS under this Section 4.C., CSDS will fully refund a prorated portion of the Annual Fee paid by the Subscriber for the year in which the User Account(s) was cancelled or Agreement was terminated.

5. Indemnification. Subscriber agrees to indemnify, defend and hold CSDS and its officers, directors, employees and agents harmless from any claims arising out of Subscriber actions including, but not limited to, failing to follow proper survey standards (see Section 2.D. above), or violating this Agreement, any applicable law or regulation or the rights of any third party.

6. Limitation of Liability; No Consequential Damages. TO THE EXTENT PERMITTED BY LAW, CSDS LIABILITY FOR MONETARY DAMAGES FOR ANY CLAIMS SUBSCRIBER MAY HAVE AGAINST CSDS IS LIMITED TO AN AMOUNT EQUAL TO THE ANNUAL FEES WHICH HAVE BEEN PAID BY THE SUBSCRIBER TO CSDS, DURING THE THREE (3) YEARS PRECEDING THE EVENT GIVING RISE TO THE LIABILITY. UNDER NO CIRCUMSTANCES IS CSDS LIABLE FOR ANY INCIDENTAL, CONSEQUENTIAL, PUNITIVE OR SPECIAL DAMAGES OF ANY NATURE WHATSOEVER ARISING OUT OF OR RELATED TO PROVIDING OR FAILING TO PROVIDE SERVICES, INCLUDING, BUT NOT LIMITED TO, LOST PROFITS, LOSS OF BUSINESS, OR COST OF REPLACEMENT PRODUCTS AND SERVICES.

7. Limited Warranty. THE SERVICES ARE PROVIDED BY CSDS ON AN "AS IS, AS AVAILABLE" BASIS WITHOUT WARRANTY OF ANY KIND. CSDS DOES NOT WARRANT UNINTERRUPTED OR ERROR-FREE USE OR OPERATION OF THE SERVICES, OR THAT DEFECTS WILL BE CORRECTED ON A TIMELY MANNER OR IF AT ALL. The subscriber's sole remedy for a complete service interruption shall be limited to a pro-rata credit of the Annual Fees for the Services for the time period in which the Services are interrupted, not to exceed a maximum services interruption time period of two consecutive years. A credit will not be issued if the interruption is due to a problem beyond CSDS reasonable control, or due to the failure of power and/or equipment of the Subscriber.

EXCEPT AS THIS AGREEMENT EXPRESSLY STATES, WE MAKE NO EXPRESS WARRANTY

REGARDING THE SERVICES, AND DISCLAIM ANY IMPLIED WARRANTY, EITHER IN FACT OR BY OPERATION OF LAW, STATUTE, OR OTHERWISE, INCLUDING ANY WARRANTIES OF TITLE, NONINFRINGEMENT, MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, OR COMPLIANCE WITH PARTICULAR STANDARDS. CSDS MAKES NO REPRESENTATIONS OR ENDORSEMENTS REGARDING ANY THIRD PARTY EQUIPMENT, SERVICES OR MATERIALS AVAILABLE THROUGH THE SERVICES. CSDS DOES NOT AUTHORIZE ANYONE, INCLUDING, BUT NOT LIMITED TO, CSDS' EMPLOYEES, AGENTS, CONTRACTORS, OR REPRESENTATIVES, TO MAKE A WARRANTY OF ANY KIND ON CSDS' BEHALF, AND THE SUBSCRIBER SHOULD NOT RELY ON ANY SUCH STATEMENT.

8. Miscellaneous.

A. This Agreement and the Standard Terms and Conditions constitutes the entire agreement of the parties with respect to the subject matter of this Agreement. This Agreement supersedes any and all prior representations and agreements, whether oral or written, between the parties to this Agreement with respect to the subject of this Agreement. Neither party will be bound by a term, condition, representation, warranty or provision other than as specifically stated in this Agreement. Except as otherwise expressly provided herein, this Agreement may be modified only by a writing signed by an authorized representative of each party. Waiver of any one provision of this Agreement will not be deemed to be a waiver of any other provision of this Agreement.

B. Neither Party shall be liable for any default or delay in the performance of its obligations hereunder if and to the extent such default or delay is caused, directly or indirectly, by fire, flood, earthquake, elements of nature or acts of God, acts of war, terrorism, riots, civil disorders, rebellions or revolutions in the United States, or any other similar cause beyond the reasonable control of such party. In such event, the non-performing party will be excused from any further performance or observance of the obligations(s) so affected for as long as such circumstances prevail and such party continues to use all commercially reasonable efforts to recommence performance or observance whenever and to whatever extent possible without delay. Any party so delayed in its performance will immediately notify the other by telephone (to be confirmed in writing within five days of the inception of such delay) and describe at a reasonable level of detail the circumstances causing such delay.

C. If any provision of this Agreement shall be held to be invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining provisions shall not in any

way be affected or impaired thereby, and such provision shall be deemed to be restated to reflect the original intentions of the parties as nearly as possible in accordance with applicable law(s).

D. This Agreement shall be governed by the laws of the State of California as such laws are applied to contracts which are entered into and performed entirely within the State of California including the conflicts of law principles thereof. The sole and exclusive venue for any litigation or informal dispute resolution shall be Sacramento County, California.

E. Except as otherwise specified, any notices hereunder will be given to the appropriate party at the address specified in the Agreement or at such other

as the party will specify in writing. Notice will be deemed given: upon personal delivery; if sent by fax or email, upon confirmation of receipt; or if sent by certified or registered mail, postage prepaid, when sent.

F. The Subscriber shall not have any rights or ability to assign (including any assignment by operation of law), or transfer any obligations or benefit hereunder without the written consent of CSDS, which consent will not be unreasonably withheld or delayed. Notwithstanding the foregoing, the Subscriber may assign this Agreement or its rights and obligations hereunder to a successor in interest without obtaining consent from CSDS in the event of a merger, consolidation, reorganization or sale of all or substantially all of the assets of the Subscriber. This Agreement will be binding upon and inure to the benefit of the parties hereto and their heirs, executors, administrators, successors, legal representatives and permitted assigns.