



REPORT TO CITY COUNCIL

Approved by:

Arnoldo Rodriguez

Arnoldo Rodriguez, City Manager

Council Meeting of: February 16, 2022

Agenda Number: B-5

SUBJECT:

Administrative Hearing Officer

RECOMMENDATION:

1. Adopt a Resolution approving an Agreement for Services with David Austin to serve as the Administrative Hearing Officer
2. Approve a budget amendment not to exceed \$25,000 to cover costs associated with the Agreement

SUMMARY:

Historically, the City has maintained a volunteer, non-affiliated City individual, to conduct hearings and deliver decisions as civil disputes between an individual and the City arise. Unfortunately, the City lost its volunteer Administrative Hearing Officer (Hearing Officer) and as a result is experiencing a backlog of cases. In response, staff published a Request for Proposals (RFP) and targeted firms with experience. This item is a request to enter an agreement with David Austin to serve as the City's Hearing Officer.

DISCUSSION:

Due to the legal obligation of impartiality, administrative hearings cannot be presided over by a City employee, including a contracted attorney. As a result, the City is having to enter an agreement with an outside independent party to fulfill the duties of conducting administrative cases.

Services required of the hearing officer may be summarized as follows:

- Prepare for hearings as scheduled by City staff
- Review case documentation
- Conduct hearings and hearing testimony and evidence from parties regarding the issues

- Prepare written determinations, which sets forth the legal and evidentiary basis for the decision, and adopting findings as required by the particular provisions of the Municipal Code
- Perform all other services as outlined in the agreement for services

The Hearing Officer will also be required to perform additional tasks to those listed above. Additional required tasks are notated in the agreement under Exhibit A, Scope of Services.

On November 13, 2021, the City published an RFP for Hearing Officer for services related to the conduction of various administrative hearings. City staff reserved the option to enter agreements with multiple parties; however, as of the closing date of December 17, 2021, only one proposal was received. Staff evaluated the sole proposal based on completeness, qualifications and experience, proposed scope of services and scheduling, references, and proposed fee schedule. It was determined that the proposal submitted by the applicant David Austin met the requirements outlined by the RFP.

It is worth noting that City staff is confident moving forward with the sole proposal received as the consultant's experience is highly desired. David Austin previously served as the City's Hearing Officer in a volunteer capacity over the last six years. The applicant conducted roughly 500 hearings and rendered decisions in all cases. Due to the consultant's familiarity with the Municipal Ordinance and his qualifications and additional experience, staff is recommending Council enter an agreement with David Austin in lieu of releasing an additional RFP to receive supplemental proposals.

FINANCIAL IMPACT:

Due to the current backlog of cases, the initial cost is expected to be higher than what may be required in future years. With the current number of cases staff, staff is recommending that the Council allocate \$25,000.

It is noted that historically, funds have not been allocated for a hearing officer given that this service was provided on a volunteer basis.

ALTERNATIVES:

As an alternative, Council may direct staff to recirculate the RFP to gather additional proposals. Moreover, if Council chooses to approve the agreement but denies the budget amendment, the agreement cannot be executed.

ATTACHMENTS:

1. Resolution
 - a. Attachment A: Agreement for Services Between City and David Austin

RESOLUTION NO. _____

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MADERA,
CALIFORNIA, AWARDED RFP NO. 202122-05 TO DAVID AUSTIN AND
APPROVING A CONSULTANT SERVICES AGREEMENT**

WHEREAS, the City of Madera (City) has a need for an independent consultant to assist in conducting administrative hearings; and

WHEREAS, on November 13, 2021, the City published a Request for Proposals (RFP) for the desired services and received one (1) qualified proposal; and

WHEREAS, the proposal received in response to the RFP was reviewed and scored by a committee of City staff; and

WHEREAS, David Austin satisfied the desired qualifications and experience necessary to provide the requested service.

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 Contractor Services Agreement between the City of Madera and David Austin, a copy of which is attached hereto as Exhibit A, is approved.
3. The resolution is effective immediately upon adoption.

* * * * *

**AGREEMENT FOR SERVICES
BETWEEN
City OF MADERA
AND
DAVID AUSTIN
(For Administrative Hearing Officer Services)**

This Services Agreement, (hereinafter referred to as the "Agreement"), effective _____, is entered between the City of Madera, a municipal corporation, (hereinafter referred to as "City"), and David Austin, an individual and a resident of Madera, California, (hereinafter referred to as "Provider").

RECITALS

WHEREAS, City issued a Request for Proposals for administrative hearing officer services; and

WHEREAS, Provider submitted a proposal for performing the requested Services and is engaged in the business of furnishing such services as a consultant and hereby warrants and represents that it is qualified, licensed, and professionally capable of performing the Services called for in the Request for Proposals and this Agreement; and

WHEREAS, City desires to obtain the Services from Provider, and Provider desires to provide the Services to City, on a non-exclusive basis and in full compliance with controlling federal, state and local laws, rules and regulations; and

WHEREAS, Provider provides such Services on a contract basis, as an independent contractor, possessed of and exercising the complete right to control the means of accomplishing said Services; and

WHEREAS, City desires to retain Consultant, and Consultant desires to provide City with the Services, on the terms and conditions as set forth in this Agreement.

NOW THEREFORE, in consideration of the above recitals, which recitals are contractual in nature, the mutual promises herein contained, and for other good and valuable consideration hereby acknowledged, the parties agree as follows:

TERMS AND CONDITIONS

1. **Term.** The term of this Agreement shall be one year, effective from the date first set forth above, with the option to extend for a second year.
2. **Scope of Work.** Provider shall perform the Services described in **Exhibit A** which is attached and incorporated by reference.
 - 2.1. Provider acknowledges and agrees that any Services he provides to City shall be on a non-exclusive basis.

- 2.2. The parties acknowledge and agree that the Provider, in his performance of this Agreement and the authority delegations provided for in this Agreement and **Exhibit A** hereto, shall exercise his independent judgment and shall not take direction, directly or indirectly, in connection therewith from the City Manager, the Mayor, the City Council (or any member thereof), or any other person.
- 2.3. Provider represents and warrants that he is qualified to act as an administrative hearing officer for purposes of Cal. Vehicle Code §§ 40200 *et seq.*, meeting all experience, training, and current requirements thereunder.

3. Compensation. City shall pay Provider as follows:

- 3.1. Provider shall be paid an hourly rate in accordance with **Exhibit B** which is attached and incorporated by reference.
- 3.2. Such fee shall be payable monthly in arrears upon City's receipt and approval of Provider's certified written payment request and within thirty (30) business days thereof. Provider shall utilize the payment certification and request form supplied by the City.
- 3.3. Provider agrees to provide any substantiation and support for Services, fees, costs, and expenses upon the reasonable request of the City for a period of one (1) year after final payment. Records of Provider's expenses pertaining to the Services shall be kept on a generally recognized accounting basis and shall be available to City or its authorized representatives upon request during regular business hours throughout the life of this Agreement and for a period of three (3) years after final payment or, if longer, for any period required by law. In addition, all books, documents, papers, and records of Provider pertaining to the Services shall be available for the purpose of making audits, examinations, excerpts, and transcriptions for the same period of time. This paragraph shall survive expiration or termination of this Agreement.
- 3.4. City will make available in its City Hall a suitable room for the conduct of hearings.

4. Termination. Remedies and Force Majeure.

- 4.1. This Agreement shall terminate without any liability of City to Provider upon thirty days (30) business days prior written notice by City to Provider or by Provider to City.
- 4.2. Immediately upon any termination of this Agreement, Provider shall (i) immediately stop all work hereunder, except for completing those hearings that have commenced and where evidence has been presented prior to termination or expiration of this Agreement; (ii) immediately cause any and all of its subcontractors to cease work, except for completing those hearings that have

commenced and where evidence has been presented prior to termination or expiration of this Agreement; and (iii) return to City any and all unearned payments and all properties and materials in the possession of Provider that are owned by City. Subject to the terms of this Agreement, Provider shall be paid compensation for satisfactory rendition of services prior to the effective date of termination. Provider shall not be paid for any work or Services performed, or costs incurred, which reasonably could have been avoided. Provider shall complete those hearings that have commenced and where evidence has been presented prior to termination or expiration of this Agreement, and subject to the terms of this Agreement, Provider shall be paid compensation for satisfactory rendition of such services. The requirements of the preceding sentence shall survive expiration or termination of this Agreement.

- 4.3. Upon any termination or expiration of the Agreement, City may (i) exercise any right, remedy (in contract, law or equity), or privilege which may be available to it under applicable laws of the State of California or any other applicable law; (ii) proceed by appropriate court action to enforce the terms of the Agreement; and/or (iii) recover all direct, indirect, consequential, economic and incidental damages for the breach of the Agreement.
- 4.4. Provider shall be liable for default unless nonperformance is caused by an occurrence beyond the reasonable control of Provider and without its fault or negligence, such as: acts of God or the public enemy; acts of City in its contractual capacity; fires; floods; epidemics; quarantine restrictions; strikes; unusually severe weather; and delays of common carriers. Provider shall notify City Manager in writing as soon as it is reasonably possible after the commencement of any excusable delay, setting forth the full particulars in connection therewith, and shall remedy such occurrence with all reasonable dispatch, and shall promptly give written notice to City Manager of the cessation of such occurrence.

5. Indemnification and Insurance.

- 5.1. Indemnification and Defense. 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.

5.2. Insurance. Consultant shall obtain and maintain in full force and effect during the term of this Agreement the insurance policies set forth in **Exhibit C** attached hereto and incorporated herein by this reference. All insurance policies shall be subject to City approval as to form and content. Consultant shall provide City with copies of required certificates of insurance upon request.

5.3 The provision will survive expiration or termination of this Agreement.

6. **Conflict of Interest.** Prior to City's execution of this Agreement, Provider shall complete a City of Madera Conflict of Interest Disclosure Statement. Said Statement is attached hereto as **Exhibit D** and incorporated herein by reference. During the term of this Agreement, Provider shall have the obligation and duty to immediately notify City in writing of any change to the information provided by Provider on **Exhibit D**.

6.1. Provider shall not employ or retain the services of any person while such person either is employed by City or is a member of any City commission, board, committee, or similar City body. This requirement may be waived in writing by the City's Chief Administrative Officer if no actual or potential conflict is involved.

6.2. Provider shall comply with all applicable laws, rules, regulations and professional canons/requirements governing avoidance of impermissible client conflicts, including without limitation the requirements of the California Political Reform Act (Government Codes Section 87100 *et seq.*) and the regulations of the Fair Political Practices Commission concerning disclosure and disqualification (2 California Code of Regulations Section 18700 *et seq.*).

6.3. Provider represents and warrants that as of the effective date hereof, he represents no client whose interests are adverse to the City's.

6.4. In performing the Services to be provided hereunder, Provider shall not be employed, managed or controlled by a person whose primary duties are parking enforcement, parking citation, processing, collection or issuance. Provider shall be separate and independent from the citation, collection or processing function.

6.5. This Section 6 shall survive expiration or termination of this Agreement.

7. **Nondiscrimination.** Provider shall not employ discriminatory practices in the provision of services, employment of personnel, or in any other respect on the basis of race, color, creed, religion, sex, sexual preference, national origin, ancestry, ethnicity, age, marital status, status as a disabled veteran or veteran of the Vietnam era, medical condition, or physical or mental disability. During the performance of this Agreement, Provider will comply with all laws and regulations, as applicable. Specifically, no person in the United

States shall, on the grounds of race, color, creed, religion, sex, sexual preference, national origin, ancestry, ethnicity, age, marital status, status as a disabled veteran or veteran of the Vietnam era, medical condition, or physical or mental disability be excluded from participation in, be denied the benefits of, or be subject to discrimination under any program or activity made possible by or resulting from this Agreement.

8. **Invalid Provisions.** The provisions of this Agreement are severable. In the event any term, covenant, condition or provision of the Agreement, or the application thereof to any person, entity, or circumstance, shall to any extent be held by a court of competent jurisdiction to be invalid, void or unenforceable, the remainder of the terms, covenants, conditions or provisions of this Agreement, or the application thereof to any person, entity, or circumstance, shall remain in full force and effect and shall in no way be affected, impaired or invalidated, provided that such invalidity, voiding or unenforceability of such covenant, condition or provision does not materially prejudice either party in its respective rights and obligations contained in the then remaining valid covenants, conditions or provisions of this Agreement.

9. **Independent Contractor.** Provider is and throughout this Agreement shall be an independent contractor and not an employee, partner or agent of the City. However, City shall retain the right to verify that Provider is performing his respective obligations in accordance with the terms hereof.
 - 9.1. Because of his status as an independent contractor, Provider shall have absolutely no right to employment rights and benefits available to City employees. Provider shall be solely liable and responsible for all payroll and tax withholding and for providing to, or on behalf of, its employees all employee benefits including, without limitation, health, welfare and retirement benefits. In addition, together with his other obligations under this Agreement, Provider shall be solely responsible for all matters relating to employment and tax withholding for and payment of Provider's employees, including, without limitation, (i) compliance with Social Security and unemployment insurance withholding, payment of workers compensation benefits, and all other laws and regulations governing matters of employee withholding, taxes and payment; and (ii) any claim of right or interest in City employment benefits, entitlements, programs and/or funds offered employees of City whether arising by reason of any common law, de facto, leased, or co-employee rights or other theory. It is acknowledged that during the term of this Agreement, Provider may be providing services to others unrelated to City or to this Agreement.

10. **Partnership/Joint Venture.** This agreement does not evidence a partnership or joint venture between Provider and City. Unless specifically provided for herein, the Provider shall have no authority to bind the City absent City's express written consent. Except to the extent otherwise provided in this Agreement, Provider shall bear his own costs/expenses in pursuit hereof.

11. **Notices.** Any notice required or intended to be given to either party under the terms of this Agreement shall be in writing and shall be deemed to be duly given if delivered personally or deposited into the United States mail, by registered or certified mail, return receipt requested with postage prepaid, addressed to the party to which notice is to be given at the party's address set forth on the signature page of this Agreement or at such other address as the parties may from time to time designate by written notice.
 - 11.1. Personal service, as aforesaid, shall be deemed served and effective upon delivery thereof. Service by mail, as aforesaid, shall be deemed to be sufficiently served and effective as of 12:00:01 AM, on the fourth (4th) calendar day following date of deposit in the United States mail of such registered or certified mail, properly addressed and postage prepaid.
12. **Non-Assignment.** This Agreement is personal to Provider and there shall be no assignment by Provider of his rights or obligations under this Agreement without the prior written approval of City.
13. **Non-Solicitation.** Provider represents and warrants that he has not paid or agreed to pay any compensation, contingent or otherwise, to solicit or procure this Agreement or any rights/benefits hereunder.
14. **Compliance with Law.** In providing the services required under this Agreement, Provider shall at all times comply with all applicable laws of the United States, the State of California and City, and with all applicable regulations promulgated by federal, state, regional, or local administrative and regulatory agencies, now in force and as they may be enacted, issued, or amended during the term of this Agreement.
15. **Governing Law and Venue.** This Agreement shall be governed by, and construed and enforced in accordance with, the laws of the State of California. Venue for purposes of the filing of any case, controversy or proceeding regarding the enforcement or interpretation of this Agreement and any rights and duties hereunder shall be Madera County, California.
16. **Attorney's Fees.** If either party is required to commence any proceeding or legal action to enforce any term, covenant or condition of this Agreement, the prevailing party in such proceeding or action shall be entitled to recover from the other party its reasonable attorney's fees and legal expenses in addition to any other relief to which such party may be entitled.
17. **Waiver.** The waiver by either party of a breach by the other of any provision of this Agreement shall not constitute a continuing waiver or a waiver of any subsequent breach of either the same or a different provision of this Agreement. No provisions of this Agreement may be waived unless in writing and signed by all parties to this Agreement. Waiver of any one provision herein shall not be deemed to be a waiver of any other provision herein.

18. Cumulative Remedies. No remedy or election hereunder shall be deemed exclusive but shall, wherever possible, be cumulative with all other remedies at law or in equity.

19. General Provisions.

19.1. Once this Agreement is signed by all parties, it shall be binding upon, and shall inure to the benefit of, all parties, and each parties' respective heirs, successors, assigns, transferees, agents, servants, employees and representatives.

19.2. The section headings in this Agreement are for convenience and reference only and shall not be construed or held in any way to explain, modify or add to the interpretation or meaning of the provisions of this Agreement.

19.3. The parties acknowledge that this Agreement in its final form is the result of the combined efforts of the parties and that, should any provision of this Agreement be found to be ambiguous in any way, such ambiguity shall not be resolved by construing this Agreement in favor of or against either party, but rather by construing the terms in accordance with their generally accepted meaning.

19.4. In the event of any conflict between the body of this Agreement and any Exhibit or Attachment hereto, the terms and conditions of the body of this Agreement shall control and take precedence over the terms and conditions expressed within the Exhibit or Attachment. Furthermore, any terms or conditions contained within any Exhibit or Attachment hereto which purport to modify the allocation of risk between the parties, provided for within the body of this Agreement, shall be null and void.

19.5. The rights, interests, duties and obligations defined within this Agreement are intended for the specific parties hereto as identified in the preamble of this Agreement. Notwithstanding anything stated to the contrary in this Agreement, it is not intended that any rights or interests in this Agreement benefit or flow to the interest of any third parties.

20. Final Agreement. This Agreement and any documents, instruments and materials referenced and incorporated herein represents the entire agreement between the parties with respect to the subject matter hereof, and supersedes all prior agreements between City and Provider. This Agreement may be modified only by written instrument duly authorized and executed by both City and Provider.

Notice. Any notice required pursuant to this Agreement shall be deemed delivered if given in writing, mailed with postage prepaid, addressed and directed as follows (or at such other address as the parties may from time to time designate by written notice)

CITY:

City of Madera
Attn: Arnoldo Rodriguez
205 W. 4th Street
Madera, CA 93637
Phone: 559-661-5400

PROVIDER:

David Austin
821 Royal Drive
Madera, CA 93637
Phone:
Email: austin.david.c@gmail.com

IN WITNESS WHEREOF, the parties have executed this Agreement at Madera, California, the day and year first above written.

CITY OF MADERA

a municipal corporation

PROVIDER

an individual

By: _____
Arnoldo Rodriguez
City Manager

By: _____
David Austin

Date: _____

Date: _____

ATTEST:

By: _____
Alicia Gonzales, City Clerk

APPROVED AS TO FORM

By: _____
Hilda Cantú Montoy, City Attorney

Date: _____

Attachments:

- Exhibit A – Scope of Services
- Exhibit B – Schedule of Compensation
- Exhibit C – Insurance Requirements
- Exhibit D – Conflict of Interest Disclosure Form

EXHIBIT A
SCOPE OF SERVICES

**Agreement for Administrative Hearing Officer Services between
City of Madera and David Austin**

Provider shall perform non-exclusive administrative hearing officer services as provided in this Agreement and in accordance with the following additional requirements and descriptions:

1. Depending on the number of appeals for which Provider is assigned, Provider shall provide the number of hours of services reasonably necessary to adequately perform the services of an Administrative Hearing Officer for the cases assigned to the Provider. The assignments to Provider will be on a case by case basis. City staff shall schedule hearings in a manner that will satisfy the Provider's minimum requirement of four (4) hours.
2. Provider's point of contact with the City shall be City Manager, Arnolando Rodriguez, or other designee named by the City Manager.
3. Provider and City each acknowledge and agree that Provider will be a fair and impartial hearing officer; and that City, except for purposes of submitting evidence and testimony as part of the hearing proceeds, will not in any manner influence, directly or indirectly, decisions made or to be made by Provider.
4. Provider shall immediately notify the City Manager of (i) any specific matter coming before Provider for which Provider must recuse himself from hearing the matter because of a conflict of interest, and (ii) any practical reason why Provider is unable to serve. Under such circumstances, the City Manager may appoint another hearing officer to hear the respective administrative hearing(s) or have the matter assigned to another permanent hearing officer.
5. Provider shall sit as the trier of fact and shall rule on questions of law and admissibility of evidence. Provider shall demonstrate the objectivity necessary to conduct a fair and impartial review. Provider shall issue decisions based on applicable Municipal Code violation and shall ensure that all rulings are consistent with the Municipal Code.
6. Provider shall provide fair and impartial hearings for appeals of City-issued administrative citations, orders, decisions or determinations which may involve violations of the City's Municipal Code. Provider may be requested to provide fair and impartial hearings for appeals of City issued administrative citations, orders, decisions or determinations involving the following matters: business permit denials, suspensions and revocations, such as taxicab or massage business permits; violations, or denials, of City regulatory permits, and miscellaneous other matters such as dangerous animal determinations, parking citations, debarment of bidders, and certain appeals in the competitive procurement processes of City.

7. Provider shall be responsible for performance of all aspects of conducting the administrative hearings, including related correspondence with appellants and respondents, preparation and preservation of the hearing record and the rendering of a decision in each matter, all in accordance with and subject to controlling law and the time frames provided therein.
8. Provider shall conduct hearings as scheduled by City staff in the facility designated and provided by City. This shall include hearings held via video conferencing.
9. Provider shall keep an accounting of his time and submit to City Manager's Office on a monthly basis for the purpose of accounting and cost allocation to City Departments.

**EXHIBIT B
SCHEDULE OF COMPENSATION**

**Agreement for Administrative Hearing Officer Services between
City of Madera and David Austin**

Task	Description	Hourly Rate	Price per Task
1	Preparation for hearings as scheduled by City staff	\$55/hr	\$18.33/packet
2	Reviewing case documentation (this work is included in task #1)	\$55/hr	\$18.33/packet
3	Conducting hearings at Madera City Hall (daily minimum: 4 hours; no-show/cancellation charge: \$75 if fewer than 5 days' advance notice)	\$95/hr	N/A because cases per hour vary based on complexity
4	Conducting hearings remotely (daily minimum: 4 hours)	\$95/hr	N/A because cases per hour vary based on complexity
5	Preparing written determinations	\$95	\$31.66/packet
6	All other services, including all work necessary for the effective handling of the City's administrative citation hearings	\$45/hr	N/A
7	Initial orientation and subsequent trainings	\$45/hr	N/A
8	All other rates of compensation for reimbursable charges	\$45/hr	N/A

EXHIBIT C
INSURANCE REQUIREMENTS

**Agreement for Administrative Hearing Officer Services between
City of Madera and David Austin**

A. Insurance Requirements.

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.

EXHIBIT D

DISCLOSURE OF CONFLICT OF INTEREST

Administrative Hearing Officer

		YES*	NO
1	Are you currently in litigation with the City of Madera or any of its agents?	<input type="checkbox"/>	<input type="checkbox"/>
2	Do you represent any firm, organization or person who is in litigation with the City of Madera?	<input type="checkbox"/>	<input type="checkbox"/>
3	Do you currently represent or perform work for any clients who do business with the City of Madera?	<input type="checkbox"/>	<input type="checkbox"/>
4	Are you or any of your principals, managers or professionals, owners or investors in a business which does business with the City of Madera, or in a business which is in litigation with the City of Madera?	<input type="checkbox"/>	<input type="checkbox"/>
5	Are you or any of your principals, managers or professionals, related by blood or marriage to any City of Madera employee who has any significant role in the subject matter of this service?	<input type="checkbox"/>	<input type="checkbox"/>
6	Do you or any of your subcontractors have, or expect to have, any interest, direct or indirect, in any other contract in connection with this Project?	<input type="checkbox"/>	<input type="checkbox"/>
* If the answer to any question is yes, please explain in full below.			

Explanation: _____

Signature

(name)

(address)

(city state zip)

Additional page(s) attached.