



COUNTY OF MADERA
PUBLIC WORKS DEPARTMENT
AHMAD M. ALKHAYYAT

200 West 4th Street
Madera, CA 93637
Main Line - (559) 675-7811
Special Districts - (559) 675-7820
Fairmead Landfill - (559) 665-1310

REQUEST FOR QUALIFICATIONS AND PROPOSALS

FOR

MADERA COUNTY STORM WATER RESOURCE PLAN (SWRP)

RFP 2016-013

ANNOUNCEMENT

The County of Madera hereby requests proposals to prepare a Storm Water Resource Plan.

DATE OF ADVERTISEMENT: Thursday, February 10, 2017

DEADLINE FOR SUBMITTAL: Friday, March 24, 2017

1. PROJECT INFORMATION

California Senate Bill 985, approved in September 2014, requires that a Storm Water Resource Plan (SWRP) be developed and submitted to the applicable Integrated Regional Water Management (IRWM) group for incorporation into their Integrated Regional Water Management Plans (IRWMPs) in order to receive grant funding for storm water and dry weather runoff capture projects from bond acts approved by voters after January 2014. Proposition 1 (Prop1), a water bond passed in November 2014, is currently providing grant funding for multi-benefit storm water projects. Therefore, a SWRP is needed to establish eligibility for these grant funds and to help guide public investment. To facilitate the development of a SWRP, the California State Water Resources Control Board (Water Board) issued Storm Water Resource Plan Guidelines in November 2015 (SRP Guidelines).

Copies of the RFP with description of the, scope of work, submittal requirements, selection procedure, schedule, reports and exhibits can be acquired from the County website;

Project No 2016-013 SWRP
Madera County - Department of Public Works
200 W. 4th Street, 3rd Floor
Madera, CA 93637
Website: <http://www.madera-county.com/index.php/mainbidopportunities>
Phone: (559) 675-7811

The Consultant shall bear all costs associated with the preparation and submission of the response to this RFP. The County reserves the right to reject any and all proposals, to

terminate the process at any time (and recommence it at a later time from the beginning), to waive any informalities or irregularities in any submittal, to award in whole or in part to one or more Consultants or take any other such actions that may be deemed in the best interest of the County.

Hard copies can be obtained at Creative Copy. All reproduction cost shall be paid to Creative Copy:

Ref# Madera County RFP 16-013 SWRP
 109 N R Street
 Madera, CA 93637
 (559) 675-8281

2. SCHEDULE OF EVENTS:

1. The following timetable should be used as a working guide for planning purposes. The County reserves the right to adjust this timetable as required during the course of the RFP process.

#	Events	Date	Time (PDT)
1	RFP Issued	February 10, 2017	
2	Deadline for Written Questions	March 3, 2017	4:00 p.m
3	Response to questions and amendment(s) Issued	March 10, 2017	
4	RFP Due Date	March 24, 2017	3:00 p.m.
5	Interviews	April 3, 2017	1:00-5:00 p.m.
6	Board of Supervisors Approval	April 18, 2017	

3. ELIGIBILITY:

1. In addition to other requirements stated in this document, to be eligible to respond to this RFP, the Consultant must have successfully completed, within the past three years, similar projects and services to those in this RFP. Each Consultant shall meet all legal, technical and professional requirements for providing the requested services.
2. The County reserves the right to make investigations of the Consultants' qualifications or any of its sub-consultants, to contact former employers or clients to confirm qualifications as it deems appropriate.
3. Proposals are to be concise and include only those items that are relevant to the Project Scope.
4. At a minimum there must be at least one registered Civil Engineer on the team, either as the Prime Consultant or subconsultant.

5. Only one firm shall be identified as the Prime Consultant for each Response. If other firms are part of the same Response, they shall be identified as subconsultants. A Prime Consultant shall not be a part of any other team as a subconsultant. Subconsultants can join any number of Prime consultants submitting a Response to this RFP.
6. All sealed Proposal packages must be received at the receptionist's desk in the Department of Public Works, 200 W. 4th Street, Madera, CA 93637, on **March 24, 2017 by 3:00 p.m.** PDT, at which time their receipt will be publicly documented by the Director of Public Works or his/her designee(s). All Responses must be received by the Director of Public Works by the due date and time. All Responses received after the due date and time will be returned to the Consultant unopened.

4. QUESTIONS AND CLARIFICATIONS

1. Written requests regarding information or clarification in reference to this RFP must be submitted, in writing, within the timeframe identified. Include the project number with each question. Send all questions by fax or e-mail by **March 3, 2017 at 4:00 p.m.** Pacific Daylight Time (PDT) to:

Dario Dominguez – Engineer III
Madera County Department of Public Works
Phone: (559) 675-7811
Fax: (559) 675-7631
E-mail: dario.dominguez@madera-county.com

2. Consultants must clearly understand that the only official answer or position of the County will be the one stated in writing. Questions seeking clarification or interpretation of the RFP must be made in writing to the contact persons listed above. No inquiries received after the deadline will be considered. The question asked, along with any written response made thereto by the County, will be distributed as an amendment to the RFP to all the persons on the bidders list. However, the County is not obligated to respond to any question asked, and the County's failure to respond to any such question will not relieve the Consultants of any obligations or conditions imposed by this RFP. Written response to the questions will be issued as an amendment no later than seven (7) calendar days before the Proposal due date.
3. If the County finds it necessary to add to, or amend this document prior to the Response submittal deadline, the County will issue written addenda/addendum after the Meeting and distribute it to all the persons on the bidders list. Each Consultant must acknowledge receipt of each addendum by signing the acknowledgement (Appendix A) and providing it with its Response.
4. The County shall keep a record of the bidders list. To be on the County's bidders list please contact:

Dario Dominguez, Engineer III
Madera County - Department of Public Works
Phone: (559) 675-7811
Fax: (559) 675-7631
E-mail: dario.dominguez@madera-county.com

5. FEES AND INSURANCE

Proposals shall include estimated fees to complete the project as described under Project Scope:

1. Estimated fees must include all labor, materials, equipment, professional services, insurance, travel, profit, and all other costs and expenses for the proposed project.
2. Submit an itemized fee schedule as a basis for all proposed services and any extra services not included in item (a) above, if applicable.
3. Insurance coverage for proposed services shall include general liability and property damage insurance that shall include automobile liability insurance in a combined single limit of not less than \$1 million dollars. Professional Liability Insurance (E&O) coverage of \$1 million is also required.
4. The selected firm shall provide within ten (10) calendar days after the notice of award is issued a copy of their existing liability insurance certificate naming the County of Madera and its officers and employees as an additionally named insured on said policies. Such insurance coverage shall be maintained in full force and effect for the duration of the Contract and must be in a form satisfactory to the County.

6. PROPOSAL SUBMITTAL

1. All sealed Proposal packages must be received at the receptionist's desk in the Department of Public Works, 200 West 4th Street, Madera, CA 93637, on **March 24, 2017 by 3:00 p.m.** PDT, at which time their receipt will be publicly documented by the Public Works Director or his/her designee(s). All Responses must be received by the Public Works Director by the due date and time. All Responses received after the due date and time will be returned to the Consultant unopened.
2. Each consultant shall submit one (1) original photocopies of each Response, and one (1) electronic copy in .PDF. The sections shall follow the order given below. No material other than that listed in this Section shall be included in the Response.
3. Cover Letter - A cover letter (limited to two pages) indicating the Consultants' interest in providing the services to the County and a statement on why the consultant should be selected for the award. The letter shall include the name of the Prime Consultant and those of the sub-consultants, explanation of the type of contractual agreement between

them, if different from that of Prime and sub-consultant. A representative who is authorized to contractually bind the Consultant shall sign this letter.

4. Table of Contents - A one-page table of contents identifying the sections and page numbers.
5. Organization Chart - A one-page, proposed organization chart identifying key professionals and sub-consultants, and their area(s) of responsibility.
6. Project Understanding and Approach - Up to ten (10) pages, Summary of approach to be taken for the project. A definitive work program and schedule, including schedule for completion of the Report. Identify and include all tasks not under Consultant's control, and provide estimated times based upon prior experience. List any information and tasks expected from the County. Any information or tasks needed but not listed is the responsibility of the winning bidder.
7. Resumes - Up to five (5) pages, for resumes of the persons, including the Project Manager and Registered Civil Engineer that will be assigned to the project. The resumes shall include a description of projects providing services similar to those identified in the scope of services, and identify the roles and responsibilities on those projects.
8. Project Experience - Up to five (5) pages, a description of projects providing services similar to those identified in the scope of services. The emphasis shall be given to the projects in California AND the tasks performed by the persons identified in the Response. Include in the project descriptions (a) the length of the contract; (b) the scope of services provided; (c) the type of contract (pro bono, retainer, project based fee, other); (d) specific accomplishments, if any; and (e) a contact name, phone number and e-mail address for each client. If the consultant team includes sub-consultant(s), there must be at least one project for each sub-consultant.
9. Sealed Fee Proposal - The fee proposal shall be enclosed in a separate, sealed, envelope identified as "Fee Proposal Madera County SWRP."
10. All costs for preparation of proposals shall be borne by the proposer.

7. EVALUATION AND SELECTION

1. The selection committee will evaluate the Responses based on the criteria listed below. The points assigned to each criterion are also given:

#	Description	Points
1	Proposal Presentation – Professionalism, aesthetics and quality of overall report, succinct and in-depth details, presentation of figures and tables, etc. Compliance with the Response preparation and submission requirements.	20
2	Credentials and accomplishments of the Consultant in general	20

3	Credentials and accomplishments of the Consultant Project Manager and Registered Civil Engineer.	10
4	Project Understanding and Approach	30
5	Quality of the projects and accomplishments of the Consultant(s) in providing these services to entities comparable to the County	20

2. County staff will review the proposals and select the one that they believe is most advantageous to the County, prior to opening the fee proposal envelope.
3. The County may elect to conduct an oral presentation/interview of the shortlisted firms. In which case, the three (3) highest ranking proposals will be short listed and invited to an oral presentation/interview. Additional details on the oral presentations will be provided to the short-listed Consultants.
4. The fee proposal will be used as a basis for negotiations with the selected Consultant of a final scope of work and proposed fee arrangement. If no acceptable arrangement can be negotiated, the County may terminate talks with the highest-ranked Consultant and initiate negotiations with the next-ranked Consultant, and so forth until a final agreement is reached. This agreement will then be recommended to the Board of Supervisors for approval.
5. The County reserves the right to award the consultant service contract to the firm that, in the sole judgment of the County, can best accomplish the desired results. Selection criteria include, but are not limited to, consideration of the Consultant's qualifications and experience, the Consultant's understanding of and approach to the project, and the negotiated fee for services.
6. The Board of Supervisors will make the final selection and award. The Board may or may not choose to interview the recommended Consultant prior to award.
7. This request does not constitute an offer of employment or to contract for services.
8. The County reserves the option to reject any or all proposals received in response to this request for Proposals, wholly or in part.
9. The County reserves the right to retain all proposals, whether selected or rejected.
10. The successful Consultant will be expected to enter into a contract of substantially the same format as the attached sample form.

8. PROJECT SCOPE

The scope of Consultant's services shall include at least the following items described below. The County understands that the funding for projects may be inadequate to fully accomplish the work envisioned. The focus should be on Categories 3 and 4.

The fee included in each proposal will be considered estimated until such time as a detailed scope of work is negotiated between the County and the successful proposer. At that time, the

proposer may demonstrate that adjustments to the estimated fees are required because of material changes in their understanding of the required or desired scope of work.

The County's intent is to be able to agree upon a scope of work that will meet the needs of the County with a fee package providing fair compensation to the Consultant.

The following scope of work outlines the required elements and specific components to be addressed. These requirements are found in the Storm Water Resource Guidelines, published by the California State Water Resources Control Board on December 15, 2015.

- A. Description of Watershed and Sub-Watersheds
- B. Organization, Coordination, and Collaboration
- C. Quantitative Methods for Identification and Prioritization of Storm Water and Dry weather Runoff Capture projects
 - a. Identification of Projects Using Quantitative Measures
 - b. Integrated Metrics-based Analysis
 - i. Water Quality Projects Analysis
 - ii. Storm Water Capture and Use Projects Analysis
 - iii. Environmental and Community Benefits Analysis
 - c. Information and Data Management
- D. Identification and Prioritization of Multiple benefit Projects
 - a. Guidance for Prioritizing Storm Water and Dry Weather Runoff Capture projects
 - b. Multiple Benefits
- E. Plan Implementation Strategy and Scheduling Projects
 - a. Resources for Plan Implementation
 - b. Implementation
 - c. Adaptive Management – Maintaining a Living Document
 - d. Implementation Performance Measures
- F. Education, Outreach and Public Participation

Appendix A

ACKNOWLEDGMENT OF RECEIPT OF ALL AMENDMENTS

THIS FORM SHALL BE EXECUTED AND MADE A PART OF THE PROPOSAL IN RESPONSE TO THE FOLLOWING SERVICE(S):_____.

Check if applicable _____

The undersigned acknowledges the receipt of the following addendum (a) to the Request for Proposals.

Addendum Number 1 _____
(Date received)

Addendum Number 2 _____
(Date received)

Addendum Number 3 _____
(Date received)

Check if applicable _____

The undersigned acknowledges the receipt of no amendments to the Request for Proposals.

Proposer:

Company Name

By: _____
(print or type name of signatory)

Address

(Signature)

City, State, Zip

Title (print or type)

Sample Agreement

MADERA COUNTY MASTER CONTRACT NO. 010

RECITALS

- A. COUNTY has determined that it is in the public interest to have performed those services described in the Master Cover Sheet (hereinafter, "the Project").
- B. COUNTY has determined the Project involves the performance of professional engineering services of a temporary nature.
- C. COUNTY does not have available employees to perform the services required for the Project.
- D. CONSULTANT has the experience and expertise necessary for the performance of the professional engineering services required for the Project.
- E. COUNTY has requested that CONSULTANT perform services for the Project and CONSULTANT has agreed to do so under the terms and conditions of this Agreement.

AGREEMENT

1. SCOPE. CONSULTANT's Scope of Work, shall be as described in COUNTY's Request for Proposal and Qualifications and CONTRACTOR's Proposal, copies of which are attached to the Master Cover Sheet, and incorporated herein by reference.

CONSULTANT shall determine the methods, details, and means of performing the scope of work. CONSULTANT shall identify, at the earliest feasible time, any factors that could severely inhibit or prohibit the ultimate completion or implementation of the Project. CONSULTANT shall promptly notify COUNTY's representative of CONSULTANT's findings regarding such factors and conclusions related thereto for the purpose of determining the feasibility of continuing with the Project.

2. COMPENSATION. COUNTY agrees to pay CONSULTANT for its services, in the amount(s) as provided in the Master Cover Sheet. Payments shall be made within thirty (30) days after CONSULTANT's regular monthly invoicing to COUNTY. COUNTY's payment obligations under this Agreement are contingent upon the receipt, in a form and substance acceptable to COUNTY, of the deliverables required by Request for Proposals. Payment to CONSULTANT shall be subject to a ten percent (10%) retention by COUNTY. In the event the Project is terminated, CONSULTANT shall be paid for the work completed, in accordance with the provisions of Section 10 below.

Page 1

3. ADDITIONAL WORK. CONSULTANT shall not perform any work or services or incur any expenses, and COUNTY shall have no obligation to pay for any work or services or expenses, costing more than the amount(s) set forth above without the prior written approval of COUNTY.

4. TIME FOR PERFORMANCE. Services to be performed pursuant to this Agreement shall be completed as set forth in the Master Cover Sheet.

5. INDEPENDENT CONTRACTOR. All services performed pursuant to this Agreement by CONSULTANT shall be performed as an independent contractor. Under no circumstances shall CONSULTANT, its officers, employees, or agents, look to COUNTY as its employer, or as a partner, agent, or principal. CONSULTANT shall not be entitled to any benefits accorded to COUNTY's employees. CONSULTANT shall be responsible for

providing, at its own expense, and in its name, disability, worker's compensation, or other insurance as well as licenses or permits usual or necessary for conducting the services hereunder. CONSULTANT shall pay, when and as due, any and all taxes incurred as a result of CONSULTANT's compensation hereunder.

6. PERFORMANCE OF SERVICES. CONSULTANT represents that it has the qualifications and ability to perform the services required under this Agreement. CONSULTANT will perform such services with reasonable care and diligence, and in a professional manner according to accepted standards. CONSULTANT shall be solely responsible for the performance of the services hereunder, and shall receive no assistance, direction, or control from COUNTY. CONSULTANT shall have sole discretion and control of its services and the manner in which performed. However, COUNTY retains the right to administer this Agreement so as to verify that CONSULTANT is performing its obligations in accordance with the terms and conditions of the Agreement.

7. COMPLIANCE WITH APPLICABLE LAW. CONSULTANT shall use reasonable care and diligence to comply with the applicable federal, state, and local laws in performance of work under this Agreement.

8. NON-DISCRIMINATION. During the performance of this Agreement, CONSULTANT will not discriminate against any employee or applicant for employment on any basis prohibited by state or federal law including race, religion, creed, color, national origin, sex, age or disability.

Page2

9. OWNERSHIP AND RETENTION OF DOCUMENTS. All reports and other documents prepared by CONSULTANT pursuant to this Agreement shall become the property of COUNTY. COUNTY is entitled to full and unrestricted use of such reports and other documents for this Project. COUNTY may also retain the original of the reports and other documents upon request. CONSULTANT shall not apply for copyrights or patents on all or any part of the work performed under this Agreement.

10. TERMINATION. COUNTY or CONSULTANT may terminate this Agreement without cause by giving at least thirty (30) days written notice to the other party, which notice shall include the date of termination. Upon notice of termination by CONSULTANT, CONSULTANT may continue work on the Project through the date of termination. If either party breaches a material provision of this Agreement, then the other party may, at its option, immediately terminate this Agreement by giving written notice to the breaching party of such termination and specifying the reasons therefor. If this Agreement is terminated prior to completion, CONSULTANT shall be paid for all work satisfactorily performed through the date of termination and for any additional work expressly requested by COUNTY's representative as necessary to complete the work begun prior to the date of termination. Such payment shall be in an amount based upon the hours spent on the work satisfactorily performed and the hourly billing rates for the persons performing the work as set forth in the fee structure contained in CONSULTANT's proposal.

11. REMEDIES UPON BREACH. If CONSULTANT materially breaches the terms of this Agreement, COUNTY shall have all of the following remedies:

11.01 Immediately terminate the Agreement with CONSULTANT;

11.02 Retain the reports and other documents prepared by CONSULTANT;

11.03 Complete the unfinished work under this Agreement with a different consultant;

11.04 Charge CONSULTANT with the difference between the cost of completion of the unfinished work pursuant to this Agreement and the amount that would otherwise be due CONSULTANT, had CONSULTANT completed the work.

12. **SUCCESSION AND ASSIGNMENT.** This Agreement is binding upon COUNTY and CONSULTANT and their successors. Except as otherwise provided herein, neither COUNTY nor CONSULTANT shall assign, sublet or transfer its interest in this Agreement, or any part thereof or delegate its duties hereunder without the prior written consent of the other.
Page3

13. **REPRESENTATIVES.** COUNTY and CONSULTANT shall each designate a representative. The representative shall be the primary contact person for each party regarding performance of this Agreement. The representatives shall cooperate with one another in all matters regarding this Agreement and in such a manner as will result in the performance of the work in a timely and expeditious fashion. The names and contact information for the parties' respective representatives for this Agreement are as set forth in the Master Cover Sheet.

14. **ENTIRE AGREEMENT.** These Standard Contractual Clauses and Master Contract Cover Sheet, and any exhibits specified in the Master Contract Cover Sheet and attached thereto and incorporated by reference, shall constitute the entire agreement between CONSULTANT and COUNTY with respect to the subject matter hereof and supersedes in its entirety all previous negotiations, proposals, commitments, writings, advertisements, publications, and understandings of any nature whatsoever unless expressly included in this Agreement. No other agreement, oral or otherwise, regarding the subject matter of this Agreement shall be deemed to exist or to bind either of the parties hereto.

15. **RECORD KEEPING.** Where the payment terms provide for compensation on a time and materials basis, CONSULTANT shall maintain adequate records to permit inspection and audit of its time and material charges under this Agreement by CONSULTANT or its authorized representative. All such books, records, and supporting detail shall be retained for a period of at least three (3) years after the expiration of the term of this Agreement, provided, however, that such books, records, and supporting detail shall be retained for a longer period of time as may be required by law.

16. **CONFIDENTIALITY.** COUNTY and CONSULTANT agree that until final approval by COUNTY, all reports and other documents are confidential and will not be released to third parties without the prior written consent of both parties.

17. **CONFLICT OF INTEREST.** CONSULTANT shall employ no COUNTY official or employee in the performance of the work pursuant to this Agreement. No officer or employee of COUNTY shall have any financial interest in this Agreement in violation of California Government Code section 1090 and following. CONSULTANT represents that CONSULTANT and its officers and employees have no present financial or other conflict of interest that would disqualify any or all of them from entering into or performing services under this Agreement. · During the term of this Agreement, CONSULTANT, its officers and
Page4

employees shall not acquire any financial or other interest that would disqualify any or all of them from performing services under this Agreement.

18. **GOVERNING LAW.** The laws of the State of California shall govern the rights, obligations, duties and liabilities of the parties to this Agreement and shall also govern the interpretation of this Agreement. Venue for any dispute arising under this Agreement shall be at Madera County, California.

19. **A TIORNEV'S FEES AND COSTS.** If either party to this Agreement shall bring or participate in any action for relief arising out of this Agreement, the losing party shall pay to

the prevailing party a reasonable sum for attorney's fees (including the value of County Counsel services) incurred in bringing such action or enforcing any judgment granted therein, all of which shall be deemed to have accrued upon the commencement of such action and shall be paid whether or not such action is prosecuted to judgment.

20. HOLD HARMLESS. CONSULTANT shall save, keep and hold harmless COUNTY, its officers, employees, and agents from any loss, cost, expense (including attorney's fees), damage, claim or liability, resulting from, arising out of, or in any way connected with the performance of this Agreement by CONSULTANT, its officers, employees, or agents, to the extent connected with CONTRACTOR's negligence or willful misconduct arising from or related to this agreement. COUNTY will not be liable for any accident, loss or damage to the work prior to its completion and acceptance. Upon request of COUNTY, CONSULTANT shall, at no cost or expense to COUNTY, its officers, employees, or agents, defend any action asserting a claim for any loss, damage, or liability due to CONSULTANT's negligence, and CONSULTANT shall pay any costs and attorney's fees that may be incurred by COUNTY, its officers, employees, or agents, in connection with any such action.

21. INSURANCE. Without limiting CONSULTANT's indemnification of COUNTY, CONSULTANT shall provide at its own expense and maintain at all times during the term of this Agreement the following insurance with insurance companies licensed in the State of California and acceptable to COUNTY's Risk Manager. CONSULTANT shall provide satisfactory proof of all insurance to COUNTY's Risk Manager. Each insurance policy shall name COUNTY, its officers, employees, agents, and volunteers as additional insureds, shall include a provision that the coverage is primary with respect to COUNTY and its officers, employees, and agents, and shall contain a provision preventing cancellation without thirty

Page5
(30) days prior notice to COUNTY in writing at the address of COUNTY (Attention: Risk Manager), 200 West Fourth Street, Madera, California, 93637:

21.01 Worker's Compensation Insurance, in compliance with the laws of the State of California;

21.02 General Liability Insurance, with minimum liability limits as specified in the Master Cover Sheet;

21.03 Automobile Liability Insurance, with minimum liability limits as specified in the Master Cover Sheet. This insurance coverage shall extend to owned automobiles, non-owned automobiles, and hired automobiles;

21.04 Errors and Omissions/ Professional Services Liability Insurance with minimum liability limits as specified in the Master Cover Sheet.

22. DUTY OF LOYALTY. CONSULTANT acknowledges that the work to be performed under this Agreement will be safely for the benefit of COUNTY and that CONSULTANT owes its duties of performance and loyalty to COUNTY and not to any other person or entity. CONSULTANT also acknowledges and agrees that no provision of this Agreement shall in any way inure to the benefit of any third person or entity so as to constitute any such person or entity a third-party beneficiary of this Agreement or of any one or more of the terms hereof, or otherwise give rise to any cause of action in any person or entity not a party hereto.

23. SURVIVAL OF OBLIGATIONS. All obligations arising prior to the termination of this Agreement and all provisions of this Agreement allocating responsibility or liability between the parties shall survive the completion of the services hereunder and/or the

termination of this Agreement.

24. SEGREGATION. In the event that one or more provisions of this Agreement may be deemed unenforceable, the remainder of the Agreement shall continue in full force and effect.

25. SECTION HEADINGS. The section headings, enumeration, and sequence of sections appearing herein are for convenience purposes only and shall not be deemed to govern, limit, modify, or in any manner affect the scope, meaning or intent of the provisions of this Agreement.

26. TIME OF ESSENCE. Time is of the essence to this Agreement.

Page6

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IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed as of the day and year first above-written.