



**CITY OF LODI  
COUNCIL COMMUNICATION**

**AGENDA TITLE:** Adopt Resolution Authorizing City Manager to Execute Amendment No. 2 to Professional Services Agreement with R.F. MacDonald Company, of Modesto, for Boiler Cleaning and Inspection at White Slough Water Pollution Control Facility (\$11,050)

**MEETING DATE:** June 6, 2012

**PREPARED BY:** Public Works Director

**RECOMMENDED ACTION:** Adopt resolution authorizing City Manager to execute Amendment No. 2 to professional services agreement with R.F. MacDonald Company, of Modesto, for boiler cleaning and inspection at White Slough Water Pollution Control Facility, in the amount of \$11,050.

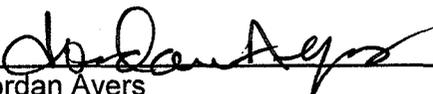
**BACKGROUND INFORMATION:** The City Manager executed a professional services agreement with R.F. MacDonald Company on March 13, 2012, in the amount of \$19,750 for the re-tube of Cleaver Brooks Boiler CB200-50 at the White Slough Water Pollution Control Facility. On May 2, 2012, Council authorized Amendment No. 1 in the amount of \$11,495, for repair of a cracked Morrison tube that was discovered during the re-tube work.

Periodic inspection of the boilers is required in order to remain compliant with permits issued by the San Joaquin County Air Pollution Control District, and the inspection is now due.

In order to meet the compliance deadline, staff recommends approval of Amendment No. 2 to the R.F. MacDonald Company professional services agreement to perform the required inspections, resulting in a net increase in contract value of \$11,050.

**FISCAL IMPACT:** Inspection of the boilers is necessary to remain compliant with permit requirements. If the compliance deadline is not met, the City may incur fines.

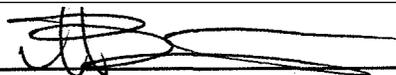
**FUNDING AVAILABLE:** Wastewater Plant Maintenance (170403): \$11,050

  
 \_\_\_\_\_  
 Jordan Ayers  
 Deputy City Manager/Internal Services Director

  
 \_\_\_\_\_  
 for F. Wally Sandelin  
 Public Works Director

Prepared by Larry Parlin, Deputy Public Works Director – Utilities  
 FWS/LP/pmf

APPROVED:

  
 \_\_\_\_\_  
 Konrad Bartlam, City Manager

AMENDMENT NO. 2

R.F. MacDonald Company  
Professional Services Agreement

THIS AMENDMENT NO. 1 TO PROFESSIONAL SERVICES AGREEMENT, is made and entered this \_\_\_\_\_ day of May, 2012, by and between the CITY OF LODI, a municipal corporation (hereinafter "CITY), and R.F. MACDONALD COMPANY (hereinafter 'CONSULTANT).

WITNESSETH:

1. WHEREAS, CONSULTANT and CITY entered into a Professional Services Agreement (Agreement) on March 13, 2012, as set forth in Exhibit 1 (attached).
2. WHEREAS, the Agreement was amended by Council action per Resolution No. 2012-50 on May 2, 2012.
3. WHEREAS, CITY requested to further amend said Agreement as set forth in Exhibit 2; and
4. WHEREAS, CONSULTANT agrees to said amendment;

NOW, THEREFORE, the parties agree to amend the Scope of Services and Fee, as set forth in the Agreement as Exhibits 1 and 2.

IN WITNESS WHEREOF, CITY and CONSULTANT have executed this Amendment No. 2 on \_\_\_\_\_, 2012.

CITY OF LODI, a municipal corporation  
Hereinabove called "CITY"

R.F. MACDONALD COMPANY  
Hereinabove called "CONSULTANT"

\_\_\_\_\_  
KONRADT BARTLAM  
City Manager

\_\_\_\_\_  
Name:  
Title:

Attest:

\_\_\_\_\_  
RANDI JOHL, City Clerk

Approved as to Form:

\_\_\_\_\_  
D. STEPHEN SCHWABAUER  
City Attorney



**AGREEMENT FOR PROFESSIONAL SERVICES**

**ARTICLE 1  
PARTIES AND PURPOSE**

**Section 1.1 Parties**

THIS AGREEMENT is entered into on Jan 13, 2012, by and between the CITY OF LODI, a municipal corporation (hereinafter "CITY"), and R.F. MacDonald (hereinafter "CONTRACTOR").

**Section 1.2 Purpose**

CITY selected the CONTRACTOR to provide the services required in accordance with attached Scope of Services, Exhibit A, attached and incorporated by this reference.

CITY wishes to enter into an agreement with CONTRACTOR for retubing of Boiler No. 1 at White Slough Water Pollution Control Facility (hereinafter "Project") as set forth in the Scope of Services attached here as Exhibit A. CONTRACTOR acknowledges that it is qualified to provide such services to CITY.

**ARTICLE 2  
SCOPE OF SERVICES**

**Section 2.1 Scope of Services**

CONTRACTOR, for the benefit and at the direction of CITY, shall perform the Scope of Services as set forth in Exhibit A,

**Section 2.2 Time For Commencement and Completion of Work**

CONTRACTOR shall commence work pursuant to this Agreement, upon receipt of a written notice to proceed from CITY or on the date set forth in Section 2.6, whichever occurs first, and shall perform all services diligently and complete work under this Agreement based on a mutually agreed upon timeline or as otherwise designated in the Scope of Services.

CONTRACTOR shall submit to CITY such reports, diagrams, drawings and other work products as may be designated in the Scope of Services.

CONTRACTOR shall not be responsible for delays caused by the failure of CITY staff to provide required data or review documents within the appropriate time frames. The review time by CITY and any other agencies involved in the project shall not be

counted against CONTRACTOR's contract performance period. Also, any delays due to weather, vandalism, acts of God, etc., shall not be counted. CONTRACTOR shall remain in contact with reviewing agencies and make all efforts to review and return all comments.

**Section 2.3 Meetings**

CONTRACTOR shall attend meetings as may be set forth in the Scope of Services.

**Section 2.4 Staffing**

CONTRACTOR acknowledges that CITY has relied on CONTRACTOR's capabilities and on the qualifications of CONTRACTOR's principals and staff as identified in its proposal to CITY. The Scope of Services shall be performed by CONTRACTOR, unless agreed to otherwise by CITY in writing. CITY shall be notified by CONTRACTOR of any change of Project Manager and CITY is granted the right of approval of all original, additional and replacement personnel at CITY's sole discretion and shall be notified by CONTRACTOR of any changes of CONTRACTOR's project staff prior to any change.

CONTRACTOR represents it is prepared to and can perform all services within the Scope of Services (Exhibit A) and is prepared to and can perform all services specified therein. CONTRACTOR represents that it has, or will have at the time this Agreement is executed, all licenses, permits, qualifications, insurance and approvals of whatsoever nature are legally required for CONTRACTOR to practice its profession, and that CONTRACTOR shall, at its own cost and expense, keep in effect during the life of this Agreement all such licenses, permits, qualifications, insurance and approvals, and shall indemnify, defend and hold harmless CITY against any costs associated with such licenses, permits, qualifications, insurance and approvals which may be imposed against CITY under this Agreement.

**Section 2.5 Subcontracts**

Unless prior written approval of CITY is obtained, CONTRACTOR shall not enter into any subcontract with any other party for purposes of providing any work or services covered by this Agreement.

**Section 2.6 Term**

The term of this Agreement commences on October 1, 2012 and terminates upon the completion of the Scope of Services or on October 1, 2012, whichever occurs first,

**ARTICLE 3**  
**COMPENSATION**

**Section 3.1 Compensation**

CONTRACTOR's compensation for all work under this Agreement shall conform to the provisions of the Fee Proposal, attached hereto as Exhibit B and incorporated by this reference.

CONTRACTOR shall not undertake any work beyond the scope of this Agreement unless such additional work is approved in advance and in writing by CITY.

**Section 3.2 Method of Payment**

CONTRACTOR shall submit invoices for completed work on a monthly basis, or as otherwise agreed, providing, without limitation, details as to amount of hours, individual performing said work, hourly rate, and indicating to what aspect of the Scope of Services said work is attributable. CONTRACTOR's compensation for all work under this Agreement shall not exceed the amount of the Fee Proposal.

**Section 3.3 Costs**

The Fee Proposal shall include all reimbursable costs required for the performance of the Scope of Services. Payment of additional reimbursable costs considered to be over and above those inherent in the original Scope of Services shall be approved in advanced and in writing, by CITY,

**Section 3.4 Auditing**

CITY reserves the right to periodically audit all charges made by CONTRACTOR to CITY for services under this Agreement. Upon request, CONTRACTOR agrees to furnish CITY, or a designated representative, with necessary information and assistance needed to conduct such an audit.

CONTRACTOR agrees that CITY or its delegate will have the right to review, obtain and copy all records pertaining to performance of this Agreement, CONTRACTOR agrees to provide CITY or its delegate with any relevant information requested and shall permit CITY or its delegate access to its premises, upon reasonable notice, during normal business hours for the purpose of interviewing employees and inspecting and copying such books, records, accounts, and other material that may be relevant to a matter under investigation for the purpose of determining compliance with this requirement. CONTRACTOR further agrees to maintain such records for a period of three (3) years after final payment under this Agreement.

ARTICLE 4  
MISCELLANEOUS IVISIK

**Section 4.1 Nondiscrimination**

In performing services under this Agreement, CONTRACTOR shall not discriminate in the employment of its employees or in the engagement of any sub CONTRACTOR on the basis of race, color, religion, sex, sexual orientation, marital status, national origin, ancestry, age, or any other criteria prohibited by law.

**Section 4.2 ADA Compliance**

in performing services under this Agreement, CONTRACTOR shall comply with the Americans with Disabilities Act (ADA) of 1990, and all amendments thereto, as well as all applicable regulations and guidelines issued pursuant to the ADA.

**Section 4.3 Indemnification and Responsibility for Damage**

CONTRACTOR to the fullest extent permitted by law, shall indemnify and hold harmless CITY, its elected and appointed officials, directors, officers, employees and volunteers from and against any claims, damages, losses, and expenses (including reasonable attorney's fees), arising out of performance of the services to be performed under this Agreement, provided that any such claim, damage, loss, or expense is caused by the negligent acts, errors or omissions of CONTRACTOR, any subcontractor employed directly by CONTRACTOR, anyone directly or indirectly employed by any of them, or anyone for whose acts they may be liable, except those injuries or damages arising out of the active negligence of the City of Lodi or its officers or agents.

**Section 4.4 No Personal Liability**

Neither the City Council, nor any other officer or authorized assistant or agent or City employee shall be personally responsible for any liability arising under this Agreement.

**Section 4.5 Responsibility of CITY**

CITY shall not be held responsible for the care or protection of any material or parts of the work described in the Scope of Services prior to final acceptance by CITY, except as expressly provided herein.

**Section 4.6 insurance Requirements for CONTRACTOR**

CONTRACTOR shall take out and maintain during the life of this Agreement, insurance coverage as set forth in Exhibit C attached hereto and incorporated by this reference.

**Section 4.7 Successors and Assigns**

CITY and CONTRACTOR each bind themselves, their partners, successors, assigns, and legal representatives to this Agreement without the written consent of the others, CONTRACTOR shall not assign or transfer any interest in this Agreement without the prior written consent of CITY. Consent to any such transfer shall be at the sole discretion of CITY.

**Section 4.8 Notices**

Any notice required to be given by the terms of this Agreement shall be in writing signed by an authorized representative of the sender and shall be deemed to have been given when the same is personally served or upon receipt by express or overnight delivery, postage prepaid, or three (3) days from the time of mailing if sent by first class or certified mail, postage prepaid, addressed to the respective parties as follows:

To CITY:                   City of Lodi  
                                  221 West Pine Street  
                                  P.O. Box 3006  
                                  Lodi, CA 95241-1910  
                                  Attn: Kenny Capitanich

To CONTRACTOR:   R.F. MacDonald Co.  
                                  1549 Cummins Drive  
                                  Modesto, CA 95358  
                                  Attn: Anthony Marino

**Section 4.9 Cooperation of CITY**

CITY shall cooperate fully and in a timely manner in providing relevant information it has at its disposal relevant to the Scope of Services.

**Section 4.10 CONTRACTOR is Not an Employee of CITY**

CONTRACTOR agrees that in undertaking the duties to be performed under this Agreement, it shall act as an independent contractor for and on behalf of CITY and not an employee of CITY, CITY shall not direct the work and means for accomplishment of the services and work to be performed hereunder. CITY, however, retains the right to require that work performed by CONTRACTOR meet specific standards without regard to the manner and means of accomplishment thereof.

**Section 4.11 Termination**

CITY may terminate this Agreement, with or without cause, by giving CONTRACTOR at least ten (10) days written notice. Where phases are anticipated within the Scope of Services, at which an intermediate decision is required concerning whether to proceed further, CITY may terminate at the conclusion of any such phase.

Upon termination, CONTRACTOR shall be entitled to payment as set forth in the attached Exhibit B *to the extent that* the work has been performed. Upon termination, CONTRACTOR shall immediately suspend all work on the Project and deliver any documents or work in progress to CITY. However, CITY shall assume no liability for costs, expenses or lost profits resulting from services not completed or for contracts entered into by CONTRACTOR with third parties in reliance upon this Agreement.

**Section 4.12 Confidentiality**

CONTRACTOR agrees to maintain confidentiality of all work and work products produced under this Agreement, except to the extent otherwise required by law or permitted in writing by CITY. CITY agrees to maintain confidentiality of any documents owned by CONTRACTOR and clearly marked by CONTRACTOR as “Confidential” or “Proprietary”, except to the extent otherwise required by law or permitted in writing by CONTRACTOR. CONTRACTOR acknowledges that CITY is subject to the California Public Records Act.

**Section 4.13 Applicable Law, Jurisdiction, Severability, and Attorney’s Fees**

This Agreement shall be governed by the laws of the State of California. Jurisdiction of litigation arising from this Agreement shall be venued with the San Joaquin County Superior Court. If any part of this Agreement is found to conflict with applicable laws, such part shall be inoperative, null, and void insofar as it is in conflict with said laws, but the remainder of this Agreement shall be in force and effect. In the event any dispute between the parties arises under or regarding this Agreement, the prevailing party in any litigation of the dispute shall be entitled to reasonable attorney’s fees from the party who does not prevail as determined by the San Joaquin County Superior Court.

**Section 4.14 City Business License Requirement**

CONTRACTOR acknowledges that Lodi Municipal Code Section 3.01.020 requires CONTRACTOR to have a city business license and CONTRACTOR agrees to secure such license and pay the appropriate fees prior to performing any work hereunder.

**Section 4.15 Captions**

The captions of the sections and subsections of this Agreement are for convenience only and shall not be deemed to be relevant in resolving any question or interpretation or intent hereunder.

**Section 4.16 Integration and Modification**

This Agreement represents the entire understanding of CITY and CONTRACTOR as to those matters contained herein. No prior oral or written understanding shall be of any force or effect with respect to those matters covered hereunder. This Agreement may not be modified or altered except in writing, signed by both parties.

**Section 4.17 Contract Terms Prevail**

All exhibits and this Agreement are intended to be construed as a single document. Should any inconsistency occur between the specific terms of this Agreement and the attached exhibits, the terms of this Agreement shall prevail.

**Section 4.18 Severability**

The invalidity in whole or in part of any provision of this Agreement shall not void or affect the validity of any other provision of this Agreement.

**Section 4.19 Ownership of Documents**

All documents, photographs, reports, analyses, audits, computer media, or other material documents or data, and working papers, whether or not in final form, which have been obtained or prepared under this Agreement, shall be deemed the property of CITY. Upon CITY's request, CONTRACTOR shall allow CITY to inspect all such documents during CONTRACTOR's regular business hours. Upon termination or completion of services under this Agreement, all information collected, work product and documents shall be delivered by CONTRACTOR to CITY within ten (10) calendar days,

CITY agrees to indemnify, defend and hold CONTRACTOR harmless from any liability resulting from CITY's use of such documents for any purpose other than the purpose for which they were intended.

**Section 4.20 Authority**

The undersigned hereby represent and warrant that they are authorized by the parties to execute this Agreement.

**Section 4.21 Federal Transit Funding Conditions**

If the box at left is checked, the Federal Transit Funding conditions attached as Exhibit apply to this contract. In the event of a conflict between the terms of this contract or any of its other exhibits, and the Federal Transit Funding Conditions, the Federal Transit Funding Conditions will control.

**IN WITNESS WHEREOF, CITY and CONTRACTOR have executed this Agreement as of the date first above written.**

CITY OF LODI, a municipal corporation

ATTEST:

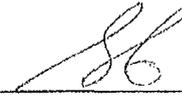
  
\_\_\_\_\_  
RANDI JOHL  
City Clerk

  
\_\_\_\_\_  
KONRADT BARTLAM, City Manager

APPROVED AS TO FORM:  
D. STEPHEN SCHWABAUER, City Attorney  
JANICE D. MAGDICH, Deputy City Attorney

CONTRACTOR:  
R.F. MACDONALD CO.

(By \_\_\_\_\_

By:   
\_\_\_\_\_  
Name: Sean Skille  
Title: General Mgr.

**Attachments:**  
**Exhibit A – Scope of Services**  
**Exhibit B – Fee Proposal**  
**Exhibit C – Insurance Requirements**  
**Exhibit D – Federal Transit Funding Conditions (if applicable)**

Doc ID:PSA#-MSC16

FUNDING SOURCE: WASTERWATER CAPITAL (171493)

CA:rev.09.2011

**SCOPE OF SERVICES**

This project consists of R.F. MacDonald Co. retubing Boiler No. 1 and replacing the rear tube plate located at White Slough Water Pollution Control Facility. Price including Labor, Materials, and tax will be \$19,749.00. The total cost of this project shall not exceed \$19,750.00. An itemized list of work to be completed is included in the fee proposal, attached hereto as Exhibit B.



1549 Cummins Drive  
Modesto, CA 95358  
Phone: 209.576.0726  
Fax: 209.576.1312  
www.rfmacdonald.com

SAN FRANCISCO  
FRESNO  
LAS VEGAS  
LOS ANGELES  
SAN DIEGO  
RENO

Lodi Wastewater Treatment Plant  
12751 North Thornton Road  
Lodi CA

September 16, 2011

Reference Quote: LWWTMR7232011AM

Attention: Kenneth Capitanich  
Phone: 209.333.6832  
Fax: 209.333.6867  
E-Mail: Kcapitanich@lodi.gov

Kenneth,  
In response to your inquiry for a quotation, R.F. MacDonald Co. is pleased to provide the following quotation for your review and consideration.

**Retube Your Cleaver-Brooks CB200-50 SN OL096460**

- Lock **out** energy sources
- Open front and rear heads
- Cut out all (49) boiler tubes
- Remove hand hole plates and clean all gasket faces
- Wash out boiler of all loose scale and debris
- **Remove complete rear tube sheet.**
- **Clean and prep area for new rear tube sheet.**
- **Set, place and weld new tube sheet to manufacturer specifications,**
- Prepare tube sheet and perform Liquid dye test on sheet to check cracks
- Provide and install (49) 2.5" x .105 m/w SA 178A boiler tubes (**tubes are upgraded from ,095 m/w to ,105 m/w tubes**)
- Roll and bead front tube attachments and upper rear attachments
- Seal weld hot **pass** rear tube attachments
- Stress relieve seal welds
- Provide and install new **hand hole** gaskets and McD&M level control gaskets
- Fill unit
- Provide State Authorized Inspector to witness hydro test of unit
- Install new fireside gaskets and close front and rear heads
- **All welding to be done in accordance with ASME and NBIC rules and regulations**
- **File all necessary ASME and NBIC code paperwork**
- **Provide code welding inspection/inspector for NBIC compliance.**
- Combustion tuning not included in this proposal.

**Price Including Labor, Materials, and tax is.....\$19,749.00**



## R.E. MacDonald Co.

- **Not Covered:** Any work that is not specifically described above
- Unit needs to be **caol** at time of repairs
- **Any additional work found upon further inspection or during repairs will be at an additional cost**

### General Terms and Conditions

Quotation is valid for 30 days. **Sales tax**, freight, *installation* (including *boil-out*, electrical connection, insulation and utilities) start-up, etc. are not included unless specifically stated in body of quotation. **Permits from** building department and the Air Pollution Control District may be required but are not included unless specifically stated. Unless noted otherwise, we have not included **any special** air pollution emission control equipment or source **testing** that may be required. If required, please contact us for a quotation. Buyer cannot return any material without our **express** written authorization and upon terms and payments to R. F. MacDonald Co. of **any re-stocking charges up to 100% of the purchase amount**.

If work is deferred at your request, we reserve the right to re-quote if prices have changed. We have not included any provisions for handling, removing, or disposing of any asbestos containing material. All labor is at normal working hours. Night, weekend or holiday work is not included **unless** otherwise noted. Orders entered and subsequently canceled are subject to the remedies provided by the Uniform Commercial Code.

**Claims:** You are responsible for inspecting merchandise on receipt and for filing claims with the **carriers** for damage or loss. All claims for shortages and damages must be made in writing **to the carriers** within ten (10) days of receipt. We suggest you call the carrier immediately upon noticing **any** possible freight related damage and arrange for inspection before proceeding with unpacking. Photographs taken while the delivery truck is still on sight are recommended if possible.

Under no circumstances may you withhold payment or charge the Company for freight or warranty related claims. No claim for expenses incurred for corrective work **done** on merchandise provided by the Company will be considered or accepted unless specifically agreed to in writing, in advance of the work being done, by an authorized manager of the company.

**Service Charges** We reserve the right to take action to collect any invoice which is not paid when due. We also assess a late payment **SERVICE CHARGE** on the day following the due date and monthly thereafter against all amounts remaining unpaid on **each** such date. Subject to any limitations that may be imposed by applicable law, the amount of this charge is 1 1/2% of the amount remaining unpaid on each such date.

This policy will be applied to customers **who** permit their account to become delinquent. It is **your** responsibility to notify R.F. MacDonald Co. of any extenuating circumstances that may affect your payment and work out a solution. Please know that our interest lies not in collecting a service **charge**, but in receiving **timely** payment of your invoice.

**in Warranty Materials and Disclaimer of Warranties:** You will rely solely on the warranty provided by the manufacturer. Your **sole and exclusive** remedy for breach of warranty shall be as provided in the manufacturer's standard warranty unless otherwise specifically expressed **in writing**.

You will be invoiced in the **regular** manner for all **material** and parts even though it may be an in-warranty transaction. Credit will be issued promptly on our receipt of proof of **return**, and, as long as the return is within the prescribed time limit and has been properly authorized. Please note that withholding payment of any invoice in anticipation of an in-warranty credit is not consistent with our terms of **sale**.



R.F. MacDonald Co. makes no warranty expressed or implied of any kind. We make no claim of fitness or merchantability or any other warranty, expressed or implied, nor is anyone else, whether employed by R.F. MacDonald Co., or not, authorized to do so on our behalf. We specifically disclaim the warranty of merchantability and the warranty of fitness.

In no event shall R.F. MacDonald Co. be liable to you or any person, corporation or other type of legal entity for any special, direct, indirect, incidental or consequential damage of any kind, including but not limited to, loss of products, loss of time, loss of use, loss of production, loss of savings or revenues, cost of replacement goods, labor costs or other charges in connection with product use or malfunction, the repair or replacement of defective parts whether such claims are alleged in strict liability, negligence, tort, contract or otherwise and even if R.F. MacDonald Co. is informed in advance of the possibility of such damages.

OK  
SS RM  
2/10/12

**Normal Use and Service:** Normal use and service implies that failure due to accident, misuse, abuse, or neglect is not covered by the warranty. Any damage caused by replacement parts not provided by R. F. MacDonald Co. or (he manufacturer will void the warranty. Deviation from recommended application, system design; installation or service practices may be considered misuse and/or abuse.

Warranties are conditioned upon the equipment being properly maintained and operated within the equipment's capacity under normal load conditions with competent supervised operators, and proper water conditioning (where applicable).

**Not Covered Costs:** Warranty does not include routine and preventative maintenance service. Typical routine and maintenance items:

- Misc. adjustments (i.e. pilots, igniters, level controls, pressure/temperature switches, other limit switches, flame scanner alignment, etc)
  - General cleaning (Oil, water, gas, air Filters or strainers)
  - Torque of bolts (valve packing, boiler flange bolts, valve flange bolts, etc)
  - Refractory care (i.e. Minor expansion crack repair, wash-coating, etc.)
  - Combustion and/or linkage adjustment (Four combustion checks and adjustments annually are typical)
- Please refer to the manufacturers operating and maintenance instructions for additional details of the requirements of your new equipment.

Acceptance: \_\_\_\_\_ Date: \_\_\_\_\_

Print Name of Person: \_\_\_\_\_

Purchase Order No. \_\_\_\_\_

Regards:  
R.F. MacDonald Co.  
*Anthony Marino*  
Anthony Marino  
Aftermarket Sales  
(209) 747-1817

Mike Flora  
Mike Flora  
Boilermaker Foreman  
RF MacDonald Co.  
Office (209)576-0726  
Cell (209)595-6172  
Fax (209)576-0751

EXHIBIT C



**Insurance Requirements for Contractor** The Contractor shall take out and maintain during the life of this contract, insurance coverage as listed below. These insurance policies shall protect the Contractor and any subcontractor performing work covered by this contract from claims for damages for personal injury, including accidental death, as well as from claims for property damages, which may arise from Contractor's operations under this contract, whether such operations be by Contractor or by any subcontractor or by anyone directly or indirectly employed by either of them, and the amount of such insurance shall be as follows:

- |   |  |
|---|--|
| 1. <u>COMPREHENSIVE GENERAL LIABILITY</u> | 2. <u>COMPREHENSIVE AUTOMOBILE LIABILITY</u> |
| \$1,000,000 Ea. Occurrence                | \$1,000,000 - Ea. Occurrence                 |

NOTE: Contractor agrees and stipulates that any insurance coverage provided to the City of Lodi shall provide for a claims period following termination of coverage which is at least consistent with the claims period or statutes of limitations found in the California Tort Claims Act (California Government Code Section 810 et seq.).

NOTE: (1) The street address of the CITY OF LODI must be shown along with (a) and (b) above: 221 West Pine Street, Lodi, California, 95241-1910; (2) The insurance certificate must state, on its face or as an endorsement, a description of the project that it is insuring.

A copy of the certificate of insurance with the following endorsements shall be furnished to the City:

- (a) Additional Named Insured Endorsement  
Such insurance as is afforded by this policy shall also apply to the City of Lodi, its elected and appointed Boards, Commissions, Officers, Agents, Employees, and Volunteers as additional named insureds.  
  
(This endorsement shall be on a form furnished to the City and shall be included with Contractor's policies.)
- (b) Primary Insurance Endorsement  
Such insurance as is afforded by the endorsement for the Additional Insureds shall apply as primary Insurance. Any other insurance maintained by the City of Lodi or its officers and employees shall be excess only and not contributing with the insurance afforded by this endorsement.
- (c) Severability of Interest Clause  
The term "insured" is used severally and not collectively, but the inclusion herein of more than one insured shall not operate to increase the limit of the company's liability.
- (d) Notice of Cancellation or Change in Coverage Endorsement  
This policy may not be canceled nor the coverage reduced by the company without 30 days' prior written notice of such cancellation or reduction in coverage to the Risk Manager, City of Lodi, 221 W. Pine St., Lodi, CA 96240.

**Compensation Insurance** The Contractor shall take out and maintain during the life of this contract, Worker's Compensation Insurance for all of Contractor's employees employed at the site of the project and, if any work is sublet, Contractor shall require the subcontractors similarly to provide Worker's Compensation Insurance for all of the latter's employees unless such employees are covered by the protection afforded by the Contractor. In case any class of employees engaged in hazardous work under this contract at the site of the project is not protected under the Worker's Compensation Statute, the Contractor shall provide and shall cause each subcontractor to provide insurance for the protection of said employees. A waiver of subrogation is required for workers compensation insurance. This policy may not be canceled nor the coverage reduced by the company without 30 days' prior written notice of such cancellation or reduction in coverage to the Risk Manager, City of Lodi, 221 W. Pine St., Lodi, CA 95240.

NOTE: No contract agreement will be signed nor will any work begin on a project until the proper insurance certificate is received by the City.

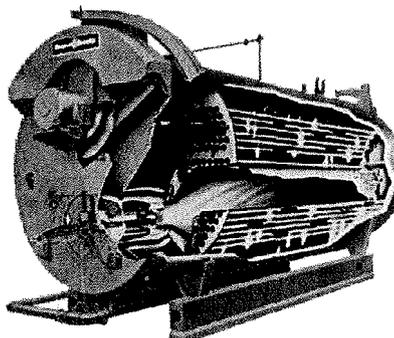


1549 Cummins Drive  
 Modesto, CA 95358  
 Phone: 209.576.0726  
 Fax: 209.576.1312  
 www.rfmacdonald.com

April 16,2012

City of Lodi — WWTP  
 White Slough- Thornton Road  
 Lodi, CA 95241

Attention: Ken Capitanich  
 KCapitanich@lodi.gov  
 Ref Quote: CL-AM04162012



SAN FRANCISCO  
 FRESNO  
 LAS VEGAS  
 LOS ANGELES  
 SAN DIEGO  
 RENO

**Equipment List**

Cleaver Brooks CBLE 700-50 SNOL106106- Boiler #3 Tuned on NG/Digester Fuel  
 Cleaver Brooks CB 700-50 SN L96460 Boiler #1 Tuned on NG/Digester Fuel.  
 Cleaver Brooks CB 700-50 SN L97261 Boiler #2 Tuned on NG/Digester Fuel.

Mr. Capitanich:

At **R.F. MacDonald Co.** we understand the importance of:

- Safe work practices and Safe Equipment Operation in Compliance with all Manufacturer’s, Insurance Company’s, **Local**, State and National Regulations
- Maximizing Operational Efficiency to reduce fuel costs
- Equipment and System reliability for maximum up time.
- Air Pollution Regulation Compliance

**R. F. MacDonald Co.** is pleased to announce that we have developed a scheduled maintenance and compliance program designed specifically to provide value to customers with safe, efficient, reliable and low emission operation of your fired equipment. Our scheduled maintenance/compliance plan is really an Assured Efficiency/Emission Compliance Plan, **AECP**. Clients of our program are introduced to our **AECP** Team members who will support your boiler plant operations to maximize efficiency and full emission compliance.

As the source owner, it is your responsibility to comply with SJVUAPCD permit requirements which includes record keeping. Don’t add unnecessary cost or penalties to your business. At **R.F. MacDonald Co.** we have the staff, the experience, and the equipment to provide you value for your dollar.

One low annual price takes care **of** your scheduled boiler plant service and you can rest assured that optimum efficiency is obtained from your boilers at all times. You only pay extra for parts and service (if and when they are needed).

As a **PREFERRED CUSTOMER**, under the **AECP** programs you are entitled to a special discount **of 15%** on spare or replacement parts for the equipment covered in this contract. After all, if we are to keep good customers we must provide expert service and protect your interest and money.

Please review the attached plan outline and proposal. Feel free to call us for additional details or a visit from one of our representatives.

It is important to note that **AECP** customers will have priority on emergency service calls.



City of Lodi. Quote CL-AM04162012  
April 16, 2012  
Page 2 of 8

**ASSURED EFFICIENCY/COMPLIANCE PLAN FOR ANNUAL  
BOILER EFFICIENCY AND PLANT SERVICES**

**SECTION I** includes complete annual boiler cleaning and inspection to clean heat transfer surfaces for maximum efficiency.

**SECTION II** includes complete periodic preventative maintenance services and fine-tuning to factory specifications for absolute maximum combustion efficiency.

- The attached Section I and II reports forms are completed as applicable by our service personnel on completion of the inspections and submitted for your permanent records.
- This contract is not transferable.
- This contract is available for renewal from year to year. A new contract will be submitted by R.F. MacDonald Co. prior to the due date of the next annual renewal fee.
- This contract does not include the furnishing of repair or replacement parts or any other material that may fail or require replacement due to normal wear and tear except as noted. (15% Preferred Customer Discount on Parts).
- Any calls in addition to those included in the **AECP** contract at the request of the owner or his agent shall be billed and paid for at the standard service rate of R.F. MacDonald Co.



City of Lodi. Quote CL-AM04162012  
April 16, 2012  
Page 3 of 8

**SECTION I**  
**COMPLETE BOILER CLEANING**  
**AND INSPECTION SERVICE**

R.F. MacDonald Co. agrees to provide all labor and tools to perform the following work annually.

- Open, clean and brush fireside tubes of boiler with our power equipment, clean furnace and wire wheel rear tube sheet as required.
- Open, clean and inspect low water cut-off assemblies and piping inspection plugs. Replace w/ bull plugs if needed. Flush water column, control line and waterside removing loose scale, mud and debris. (Recommend waterside cleaning at additional cost if hard and/or excessive scale is present.)
- Check MacDonnell and Miller float controls for wear (M&M recommends head replacement every 5 years regardless of condition of unit. (Not included, quoted separately)
- Check for globe valves and proper drain piping on all column blow down lines.
- Check for Mercury switches and replace at customers discretion. Additional PO or authorization required
- Check for proper code stamping.
- Clean and rebuild Penberthy high pressure sight glasses if equipped and dirty.
- Remove Warrick probes, if equipped, clean, inspect high temp wire for wear and check for proper operation.
- Check blow down valves and piping for wear.
- Replace gauge glass and gauge glass valves on water column if required. (Does not include Penberthy sight glasses)
- Replace tri-cock valves or replace with plugs at customers discretion.
- Inspect refractory, point up (seal cracks) and wash-coat all refractory surfaces.
- Paint all hand hole plates and man way plate with Cleaver Brooks high temp aluminum paint.
- Fill unit and test for leaks.
- Check safety relief devices for correct application and setting, operation and wear. (RF MacDonald Co recommends replacing/overhauling safety relief valves annually.)



City of Lodi. Quote CL-AM04162012  
April 16, 2012  
Page 4 of 8

- Seal and close fireside of boiler using all new gaskets (Cleaver Brooks Boilers will be all genuine Cleaver Brooks Parts).
- Replace door bolts and nuts as needed. Apply hi-temp anti-seize to all threads
- Touch up door and door bolts with Cleaver Brooks Enamel.
- Check burner pilot and main flame ignition.
- Each boiler/burner to be checked and calibrated for optimum air/fuel mixture for each fuel and adjusted to its maximum efficiency level throughout entire modulation range. Flue gas analysis includes the monitoring of temperature, O<sub>2</sub>, CO, NO, and excess air and will be in a format to comply with the SJVUAPCD Monthly Monitoring requirement. (worn controls, metering valves, linkage or affiliated equipment replacements, if required, is not included but is available at 15% discount on parts).
- **HAWK ICS** Flash Card back-up of Controls and Panelview as applicable
- Work to be done on a regular workday basis (Monday-Friday). Additional cost for weekend or Holiday work will be billed separately unless part of and noted in this contract.
- All work will be performed by **R.F. MacDonald Co.'s own** boiler technicians and is guaranteed to be first class in quality and workmanship.
- The boiler room shall be left in the same clean condition as existed prior to start of the work.
- A field engineer's checklist and **report** will be submitted upon completion of work.

This proposal does not include any extra labor and materials that may be required to correct any condition pre-existing or not evident at the time of the inspection. No extra work will be performed without prior authorization.



City of Lodi. Quote CL-AM04162012  
April 16, 2012  
Page 5 of 8

**SECTION II**  
**PERIODIC PREVENTATIVE MAINTENANCE AND**  
**FINE TUNING SERVICE PROGRAM**

R.F. MacDonald Co. agrees to provide the following applicable semi-annual services as indicated in the **AECP** contract.

- Check flame failure safeguard control for pilot and main flame ignition.
- Check operation of blower motor and control circuitry.
- Check operation and adjust all linkages, belts and pulleys in accordance with factory specifications. (As applicable)
- Check operation of gas valves and vents.
- Check operation and adjust all boiler operating, pressure and temperature limits, stack oxygen transmitters (if present) and running interlocks.
- Check operation of low water controls on hot water closed systems. Draw down water column and check low water controls and/or feed water pump control on steam systems.
- Combustion and efficiency testing to be monitored and recorded at firing rates or of 20%, 50%, 75% & 100% of boiler/burner capacity when applicable. Combustion efficiency will be calculated and recorded at each position and will be in a format to comply with the **SJVUAPCD Monthly Monitoring** requirement.
- Upon completion of full testing, our engineers report will be submitted for your review.



City of Lodi. Quote CL-AM04162012  
 April 16, 2012  
 Page 6 of 8

**AECP CONTRACT**

This contract shall pertain only to the following equipment.

	Make	Model No.	Serial No.	AECP Section I	AECP Section II (lea)	Annual Price
Boiler No. 1	Cleaver Brooks	CB700-50	L96460	\$2,750	\$900	\$3,650
Boiler No. 2	Cleaver Brooks	CB700-50	L97261	\$2,750	\$900	\$3,650
Boiler No. 3	Cleaver Brooks	CBLE700-50	OL106106	\$2,850	\$900	\$3,750

Grand Total for all boilers (3)..... \$1 1,050.00  
 Payment Terms: On approval of credit, net 30 days from date of acceptance.

Note:

1. Contract to become effective upon the date of acceptance.
2. Initial service will be scheduled after receipt of purchase order.
3. Annualized monthly payments can be arranged if desired
4. Cancellation charges will be 50% of the balance of the contract

Company Name: \_\_\_\_\_  
 Accepted by: \_\_\_\_\_  
 Date: \_\_\_\_\_ Title: \_\_\_\_\_  
 Purchase Order #: \_\_\_\_\_  
 Contact: \_\_\_\_\_ Phone #: \_\_\_\_\_

If you have any questions don't hesitate to contact me.

Sincerely,

Anthony Marino  
 Aftermarket Sales  
**R.F. MacDonald Co.**



May 7, 2012

### SALE AND PAYMENT TERMS AND CONDITIONS

The following sets forth the sale and payment terms and condition policies of R.F. MacDonald Co. It constitutes **the general agreement between R.F. MacDonald Co. (“R.F. MacDonald Co.”, the “Company” or “we”) and you,** its customer, under which products, service and parts are sold, credit is extended and payments are expected,

This policy supersedes all previous sales and credit, payment terms and conditions, and finance policies issued by R.F. MacDonald Co. and shall remain in effect until further notice. The company reserves the right to change this policy and agreement at any time.

#### EXTENSION OF CREDIT

Credit is one of the most important services R.F. MacDonald Co. offers to you as a customer. An open line of credit is established for you based upon your needs, financial strength, and history of meeting your credit obligations.

In order to insure you the best possible prices and service, we must enforce a credit and collections policy based upon sound business principals and good judgment.

#### INVOICING AND PAYMENT TERMS

Payment Terms are 25% down payment, balance Net 30 (upon approval of credit) on all invoices unless other arrangements are made in advance of shipment. When opening a new account with an order, the Company may require payment with the initial order so as not to delay shipments while credit references and financial information are being reviewed. We reserve the right to suspend or terminate any further performance under this agreement or otherwise in the event payment is not made when due. Quotes are valid for 30 days. Equipment will not be started up unless 90% of the purchase price of the equipment has been paid.

Shipment Terms Unless otherwise specified in writing signed by an authorized representative of the Company, all shipments are F.O.B. the manufacturer’s factory or R.F. MacDonald Co. warehouse as applicable. Title to the merchandise shall pass to the buyer upon delivery to the carrier at the F.O.B. point and thereafter all risk of loss or damage shall be the buyer’s.

Service Charges We reserve the right to take action to collect any invoice which is not paid when due. We also assess a late payment SERVICE CHARGE on the day following the due date and monthly thereafter against all amounts remaining unpaid on each such date. Subject to any limitations that may be imposed by applicable law, the amount of this charge is 1½% of the amount remaining unpaid on each such date.

This policy will be applied to customers who permit their account to become delinquent. It is your responsibility to notify R.F. MacDonald Co. of any extenuating circumstances that may affect your payment and work out a solution. Please know that our interest lies not in collecting a service charge, but in receiving timely payments of your invoice.

#### IN WARRANTY MATERIALS AND DISCLAIMER OF WARRANTIES

You will rely solely on the warranty provided by the manufacturer. Your sole and exclusive remedy for breach of warranty shall be as provided in the manufacturer’s standard warranty unless otherwise specifically expressed in writing.

You will be invoiced in the regular manner for all materials and parts even though it may be an in-warranty transaction. Credit will be issued promptly on our receipt of proof of return, and, as long as the return is within the prescribed time limit and has been properly authorized. Please note that withholding payment of any invoice in anticipation of an in-warranty credit is not consistent with our terms of sale.

R.F. MacDonald Co. makes no warranty expressed or implied of any kind. We make no claim of fitness or merchantability or any other warranty, expressed or implied, nor is anyone else, whether employed by R.F. MacDonald Co., or not, authorized to do so on our behalf. We specifically disclaim the warranty of merchantability and the warranty of fitness

For any items or components proposed as a substitute to specified items, it is understood that seller makes no guarantee that the products submitted will be accepted by the approving authority.



# R.F. MacDonald Co.

May 7, 2012

In no event shall R.F. MacDonald Co. be liable to you or any person, corporation or other type of legal entity for any special, direct, indirect, incidental, liquidated or consequential damage of any kind, including but not limited to, loss of products, loss of time, loss of use, loss of production, loss of savings or revenues, cost of replacement goods, labor costs or other charges in connection with product use or malfunction, the repair or replacement of defective parts whether such claims are alleged in strict liability, negligence, tort, contract or otherwise and even if R.F. MacDonald Co. is informed in advance of the possibility of such damages.

### CLAIMS

You are responsible for inspecting merchandise on receipt and for filing claims with the carriers for damage or loss. All claims for shortages and damages must be made in writing to the carriers within ten (10) days of receipt. We suggest you call the carrier immediately upon noticing any possible freight related damage and arrange for inspection before proceeding with unpacking. Photographs taken while the delivery truck is still on sight are recommended if possible.

Under no circumstances may you withhold payment or charge the Company for freight or warranty related claims.

No claim for expenses incurred for corrective work done on merchandise provided by the Company will be considered or accepted unless specifically agreed to in writing, in advance of the work being done, by an authorized manager of the Company.

### INFORMATION AND ASSISTANCE

If at any time you have a question on an invoice from the Company, a call or note to our accounting department will bring prompt action toward getting the problem resolved.

If it becomes necessary, at R.F. MacDonald Co.'s discretion, to take legal action in order to collect your account, R.F. MacDonald Co. shall be entitled to recover, in addition to any other recovery, its court costs, reasonable attorney's fees and all other collection expenses.

If you have any questions regarding this policy, please contact our office.

We appreciate your business and look forward to providing you with reliable equipment, parts and service.

Please acknowledge below your receipt and agreement to the provisions of this policy statement.

### Return the original to:

R.F. MacDonald Co.  
1549 Cummins Dr.  
Modesto, CA 95358  
Phone: (209) 576-0726  
Fax: (209) 576-1312

APPLICABLE LAW: This agreement shall be governed by the substantive laws of the State of California

Acknowledged and Agreed To:

Company Name: \_\_\_\_\_

Signature: \_\_\_\_\_

Name/Title: \_\_\_\_\_

Date: \_\_\_\_\_

RESOLUTION NO. 2012-72

A RESOLUTION OF THE LODI CITY COUNCIL APPROVING  
AMENDMENT NO. 2 TO PROFESSIONAL SERVICES  
AGREEMENT WITH R.F. MACDONALD COMPANY FOR  
BOILER CLEANING AND INSPECTION AT WHITE SLOUGH  
WATER POLLUTION CONTROL FACILITY

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WHEREAS, the City Manager executed a professional services agreement with R.F. MacDonald Company, of Modesto, on March 13, 2012, in the amount of \$19,750 for the re-tube of Cleaver Brooks Boiler CB200-50 at the White Slough Water Pollution Control Facility, and on May 2, 2012, City Council authorized Amendment No. 1, in the amount of \$11,495, for repair of a cracked Morrison tube that was discovered during the re-tube work; and

WHEREAS, periodic inspection of the boilers is required in order to remain compliant with permits issued by the San Joaquin County Air Pollution Control District, and the inspection is now due; and

WHEREAS, staff recommends approval of Amendment No. 2 to the R.F. MacDonald Company professional services agreement to perform the required inspections, resulting in a net increase in contract value of \$11,050.

NOW, THEREFORE, BE IT RESOLVED that the Lodi City Council does hereby approve Amendment No. 2 to the Professional Services Agreement with R.F. MacDonald Company, of Modesto, California, for boiler cleaning and inspection at White Slough Water Pollution Control Facility, in the amount of \$11,050; and

BE IT FURTHER RESOLVED that the City Council does hereby authorize the City Manager to execute Amendment No. 2 on behalf of the City of Lodi.

Dated: June 6, 2012

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I hereby certify that Resolution No. 2012-72 was passed and adopted by the City Council of the City of Lodi in a regular meeting held June 6, 2012, by the following vote:

AYES: COUNCIL MEMBERS - Hansen, Johnson, Katzakian, Nakanishi,  
and Mayor Mounce

NOES: COUNCIL MEMBERS - None

ABSENT: COUNCIL MEMBERS - None

ABSTAIN: COUNCIL MEMBERS - None



RANDI JOHL  
City Clerk