



TOWN OF FAIRFAX

STAFF REPORT

September 4, 2019

TO: Mayor and Town Council

FROM: Garrett Toy, Town Manager GT

SUBJECT: Approve contract with C.R. Baumsteiger Construction for a bank stabilization project at approximately 6 Bridge Ct. for an amount not to exceed \$59,200.

RECOMMENDATION

- 1) Approve contract with C.R. Baumsteiger Construction for a bank stabilization project at approximately 6 Bridge Ct. for an amount not to exceed \$59,200
- 2) Approve contingency reserve of \$11,800 for unforeseen field conditions
- 3) Appropriate \$71,000 in Fund 52-534 (storm recovery) for the project.

BACKGROUND

In January and February 2017, severe rainfalls caused significant damage to numerous Town roadways and some properties. In February and April, the President declared the January and February storms federal disasters, respectively, allowing the Town to seek funding from FEMA for disaster recovery costs. The 2017 winter storms severely scoured (i.e., undermined) a culvert in the Fairfax creek located at approximately 6 Bridge Court. FEMA approved the initial funding for preliminary engineering work to better define the project.

DISCUSSION

The project design has been completed. However, the 2019 Winter Storms exacerbated the condition and requires the Town to take action to stabilize the bank prior to the next winter's storms and permanent construction. Most likely this work would have had to be done as part of the permanent repair. The permanent repair will involve more tiebacks, helicals, some rip-rap, and filling the voids under the culvert.

However, the permanent design will require permits from a variety of local, state, and federal agencies because of the work in the creek. This will be a time-consuming process that will necessitate retaining an environmental consultant to assist with the JARPA (Joint Aquatic Resource Permit Application) process. The contractor is able to perform the bank stabilization work without entering the creek, and thus, there was no JARPA permit requirement.

FISCAL IMPACT

The FY19-20 Town budget (Fund 52-534) included \$40,000 for project design but not construction costs. Staff is working with FEMA to ensure these costs are eligible for reimbursement. FEMA and CalOES (California Office of Emergency Services) together will cover 93.75% of the eligible costs. The local share is 6.25% which will be covered by either capital fund or general fund reserves.

ATTACHMENT

Contract with scope of work

TOWN OF FAIRFAX
AGREEMENT FOR PROFESSIONAL SERVICES (small capital projects)

This Agreement is entered into as of _____, 2019, between the Town of Fairfax ("Town") and C.R. Baumsteiger Construction ("Consultant").

1. Scope of Services; Compensation. The Scope of Services to be provided under this Agreement and the compensation to be paid Consultant are attached as Exhibit A. The compensation amount may not exceed \$59,200.
2. Time of Performance. The services of Consultant are to commence upon execution of this Agreement and shall continue until all authorized work is approved by the Town, and no later than November 1st, 2019.
3. Method of Payment. Consultant shall submit monthly billings to Town describing the work performed during the preceding month. Town shall pay Consultant no later than 30 days after approval of the monthly invoice by Town staff. When payments equal 90% of the maximum fee, no further payments shall be made until the final work under this Agreement has been accepted by Town.
4. Independent Contractor; Absence of Conflicts. It is understood that Consultant is acting as an independent contractor and not as an agent or employee of the Town. Consultant shall obtain no rights to retirement or other employee benefits.
Consultant (including principals, associates and other professionals) represents that it does not now have, nor will it acquire during the term of the Agreement, any investment or interest in real property, any source of income or other investment which would be affected by Consultant's performance. No person having any such interest shall perform services under this Agreement.
Consultant is not a designated employee within the meaning of the Political Reform Act because Consultant: (a) will conduct research and arrive at conclusions with respect to his/her rendition of information, advice, recommendation or counsel independent of the control and direction of the Town or of any Town official, other than normal agreement monitoring; and (b) possesses no authority with respect to any Town decision beyond rendition of information, advice, recommendation or counsel. (FPPC Reg. 18700(a)(2).)
5. Indemnity; Insurance. Consultant agrees to defend, indemnify and hold harmless the Town, its officers, agents, employees and volunteers from and against any and all claims, demands, actions, losses, damages, injuries, and liability, direct or indirect (including related costs and expenses), arising out of the performance of this Agreement, except for any such claim arising out of the sole negligence or willful misconduct of the Town, its officers, agents, employees or volunteers.
Consultant, at its own cost, shall maintain insurance as required and set forth on the attached Insurance Requirements.
6. Miscellaneous provisions.
 - a. Ownership of Documents. All plans, studies, documents and other writings prepared by Consultant under this Agreement, except working notes and internal documents, shall become the property of the Town upon payment to Consultant for the work, and the Town shall have the sole right to use the materials without further compensation to Consultant. Consultant shall, at Consultant's expense, provide such reports, plans, studies, documents and other writings to Town upon written request. Consultant shall maintain documents and records related to this Agreement for a period of three years and shall make them available at Town's request.
 - b. Compliance with Laws; Licenses. Consultant shall use the standard of care in its profession and shall comply with all applicable laws. Consultant warrants that it has all licenses, permits, qualifications, insurance and approvals which are legally required of Consultant to practice its profession. Consultant shall maintain a Town of Fairfax business license.
 - c. Entire Agreement; Amendments. This Agreement constitutes the entire Agreement between the Town and Consultant. It may be amended only in writing, signed by both parties.
 - d. Litigation. This Agreement is governed by California law, and any action brought under this Agreement shall be held exclusively in a state court in Contra Costa County. If either party begins an action arising out of this Agreement, the prevailing party is entitled to its reasonable litigation expenses, including court costs, expert witness fees, discovery expenses, and attorneys' fees.
7. Termination. This Agreement may be terminated immediately for cause or by either party without cause upon 15 days' written notice of termination. Upon termination, Consultant is entitled to compensation for services performed to the date of termination.

TOWN OF FAIRFAX

CONSULTANT

Garrett Toy, Town Manager

Title: _____

Insurance approved _____ (initial)
by Town

Business License # _____

Attachments: Insurance Requirements (reverse side); A. Scope of Services and Compensation

Insurance Requirements: Professional Services Agreement (from Agreement, paragraph 5)

a. General. Consultant, at Consultant's own cost and expense, shall procure and maintain, for the duration of the contract, the following insurance policies.

i. Workers' Compensation Coverage. Consultant shall maintain Workers' Compensation Insurance and Employer's Liability Insurance for his/her employees in accordance with the laws of the State of California. In addition, Consultant shall require each subcontractor to similarly maintain Workers' Compensation Insurance and Employer's Liability Insurance in accordance with the laws of the State of California for all of the subcontractor's employees. Any notice of cancellation or non-renewal of all Workers' Compensation policies must be received by the Town at least 30 days prior to such change. The insurer shall agree to waive all rights of subrogation against Town, its officers, agents, employees and volunteers for losses arising from work performed by Consultant for Town.

If the Consultant does not have any employees, he or she shall initial this Certificate of Exemption from Workers' Compensation Insurance: I hereby certify that in the performance of the work for which this Agreement is entered into, I shall not employ any person in a manner so as to become subject to the Workers' Compensation Laws of the State of California.

Initials _____ Date: _____

ii. General Liability Coverage. Consultant shall maintain commercial general liability insurance in an amount not less than \$2,000,000 per occurrence for bodily injury, personal injury and property damage. If a commercial general liability insurance form or other form with a general aggregate limit is used, either the general aggregate limit shall apply separately to the work to be performed under this Agreement or the general aggregate limit shall be at least twice the required occurrence limit.

iii. Automobile Liability Coverage. Consultant shall maintain automobile liability insurance covering bodily injury and property damage for all activities of the Consultant arising out of or in connection with the work to be performed under this Agreement, including coverage for owned, hired and non-owned vehicles, in an amount of not less than \$2,000,000 combined single limit for each occurrence.

b. Policy Endorsements. Each general liability and automobile liability insurance policy shall be with insurers possessing a Best's rating of no less than A:VII and shall be endorsed with the following specific language:

i. The Town of Fairfax, its elected or appointed officers, officials, employees, agents and volunteers are to be covered as additional insureds with respect to liability arising out of work performed by or on behalf of the Consultant, including materials, parts or equipment furnished in connection with such work or operations.

ii. This policy shall be considered primary insurance as respects the Town, its elected or appointed officers, officials, employees, agents and volunteers. Any insurance maintained by the Town, including any self-insured retention the Town may have, shall be considered excess insurance only and shall not contribute with it.

iii. This insurance shall act for each insured and additional insured as though a separate policy had been written for each, except with respect to the limits of liability of the insuring company.

iv. Any failure to comply with reporting provisions of the policies shall not affect coverage provided to the Town, its elected or appointed officers, officials, employees, agents or volunteers.

v. The insurance provided by this policy shall not be suspended, voided, canceled, or reduced in coverage or in limits except after 30 days written notice has been received by the Town.

c. Deductibles and Self-Insured Retentions. Any deductibles or self-insured retentions must be declared to and approved by the Town. At the Town's option, Consultant shall demonstrate financial capability for payment of such deductibles or self-insured retentions.

d. Certificates of Insurance and Endorsements. Consultant shall provide certificates of insurance with original endorsements to Town as evidence of the insurance coverage required herein. Certificates of such insurance shall be filed with the Town on or before commencement of performance of this Agreement. Current certification of insurance shall be kept on file with the Town at all times during the term of this Agreement.

C.R. BAUMSTEIGER CONSTRUCTION INC.

P.O. Box 348 Woodacre, Ca. 94971
(415) 488-4598
Lic # **694864**

Owner **RES. STRUCTURE.**
IF DEALING WITH AGENT OR RENTER, OWNERS NAME AND ADDRESS MUST APPEAR HERE.

Address **6 Bridge Ct
Fairfax CA**

Address of Owners Place of Business (if any)

PROPOSAL SUBMITTED TO (IF OTHER THAN OWNER) Town of Fairfax	JOB NAME Emergency Repair	JOB PHONE
STREET	JOB LOCATION 6 Bridge Ct. Fairfax	
CITY, STATE & ZIP	STARTING DATE (approx) 7 17 19	COMPLETION DATE (approx) 8 12 19
HOME IMPROVEMENT SALESMAN Mark Lookerby	SALESMAN'S REGISTRATION #	
SUBSTANTIAL COMMENCEMENT OF WORK SHALL CONSIST OF men and equipment onsite		

Failure by the contractor without lawful excuse to substantially commence work within (20) days from the approximate date specified in this contract when the work will begin is a violation of the Contractors License Law.

We will furnish all the required materials, which we guarantee will be as specified, and we will perform all the labor required for the completion of

- Install 4 AB CHANCE SS5810 Piers & Fndtn Brackets up to 30' @ (E) Hse. core (4) 3" dia holes thru (E) concrete failing retaining wall
- Installation of 4 AB CHANCE SS568 Helical Tiebacks to a bid length of up to 35' (actual length to be determined at time of install) and required capacities up to 33 kips ea.
- Installation of 5 AB CHANCE SS5810 Piers to a bid length of up to 40' (actual length to be determined at time of install) and required capacities 25 kip min capacity
- Installation of 5 AB CHANCE 0121 Foundation Repair Brackets Connect Brackets to (N) Helical Piers and to (E) concrete wall (footing) as required. Seat brackets to base of wall/footing.
- Installation of 4 Helical Tieback plates, 3/4"x12"x12" galv. Form and place High-strength cement grout behind plates for seating to concrete wall.
- Post tension Helical Tiebacks after backfill of wall is complete.
- Pull test 1 Helical Tieback to test load of 33 kips.
- Project to comply with STPPP outlined per sheet 6.
- To be by others following; Plans, permits, Soils, Structural Engring Special insp.

Contractors are required by law to be licensed and regulated by the Contractors' State License Board. Any questions concerning a contractor may be referred to the registrar of the board whose address is: Contractors' State License Board - P.O. Box 26000, 9835 Geoside Road, Sacramento, CA 95828

All work per Miller Pacific Engr. plan date 6 3 2019 #201.155

WE PROPOSE to perform the above work in accordance with the drawings and specifications submitted and completed in a workmanlike manner according to standard practices for sum of **fifty nine thousand two hundred** (\$59,200.00) with payments to be made as follows: \$1000.00 w/signed contract, \$15,000.00 MOB to site, \$14,000.00 Helical material onsite, \$15,000.00 Helical material installed, \$13,000.00 Tiebacks post tensioned, \$1200.00 day complete MOB

Any Alteration or Deviation from the above specifications involving extra costs will be made only upon written agreement, and will become an extra charge over and above the estimate. All agreements are contingent upon strikes, accidents or delays beyond our control. You are to carry fire, tornado and other necessary insurance upon the above work. Our workers are fully covered by Workmen's Compensation and Public Liability Insurance. Overdue accounts will be charged interest at the rate of **12.5** % per month. In the event it becomes necessary to enforce this agreement by litigation, the prevailing party shall be entitled to court costs, attorney and collection fees. It is understood and agreed that this is work not provided for in any other agreement. No contractual rights arise until this proposal is accepted in writing. This proposal may be withdrawn by us at any time before acceptance.

Authorized signature **C.R. BAUMSTEIGER**

You as owner or tenant have the right to require the contractor to have a performance and payment bond or funding control.

ACCEPTANCE OF PROPOSAL: The above prices, specifications and conditions are satisfactory and are hereby accepted. You are authorized to do the work as specified. Payment will be made as outlined above. It is understood and agreed that this is work not provided for in any other agreement and no contractual rights arise until this proposal is accepted in writing.

Accepted

Date

Signature

Signature

"You, the buyer, may cancel this transaction at any time prior to midnight of the third business day after the date of this transaction. See the attached notice of cancellation form for an explanation of this right."

ORIGINAL

C. R. BAUMSTEIGER CONSTRUCTION INC.

PO Box 348
Woodacre, CA
94973

②

See all notes below:
Note #1

This estimate was prepared based on the minimum price for which C.R. Baumsteiger Construction would complete the project as per plans and specifications. If bid length/size for the proposed Helix Pier or Helix Tie-Back installation is insufficient due to installation criteria requiring a greater depth or torque over and above the bid length/size. Additional Helix Pier or Helix Tie-Back charges will be computed on a complete installed per ft. basis at the current rate in this estimate plus 20% profit and overhead.

Note #1A:

The Helix Pier and Tie-Back foundation will fix the area of repair, but the balance of the structure may or may not continue to move. If further movement is evidenced, Helix Pier and/or Tie-Back foundation, or applicable engineered repair, should be applied complete or to the area of concern.

Note #2:

Excluded from this estimate or to be done by others are the following:

- 1) Soils/Structural Engineering, or inspections or special inspections.
- 2) Locating of all underground utilities, pipes or conduits, etc. and either their removal or protection.
- 3) Access provisions for ingress and egress to construction areas.
- 4) Plans, Permits, Specifications, Layout, Elevation.
- 5) Cosmetic repair to primary structures or any appurtenant areas.
- 6) Landscape or landscape irrigation repair or replacement of any kind.
- 7) Construction supply or material of any kind not listed in this estimate.
- 8) Driveway repair or replacement.

(1)

(3)

**C. R. BAUMSTEIGER CONSTRUCTION
INC.**

PO Box 348
Woodacre, CA
94973

Note #2 (cont'd)

- 9) Code upgrades, County Ordinance Requirements and asbestos abatement.
- 10) Repair or replacement of all onsite slabs.
- 11) Repair or replacement of onsite or underfloor/underground utilities.
- 12) Pool maintenance or repair to previously removed swimming pool components.
- 13) Repair or construction of any kind not listed in this proposal.

Note #3

- 1) All extra work is based at \$50.00 per hour per man plus 20% profit and overhead.
- 2) Extra work is any work not listed in this contract.
- 3) Helical Pier bid at \$ 110. per ft., Helical Tieback bid at \$ 117. per ft., in this contract, plus 20% profit and overhead.
- 4) Removal* Removal charges are based at 50% of the installation charge, per pier/tieback of Helical type, per this contract.
- 5) Re-installation* Re-installation charges are based at 50% of the original installation charge, per pier/tieback of the Helical type, per this contract.
- 6) Removal/Re-installation as per Geo-Engr. & Struct-Engr. only.
- 7) Time is of the essence. A Helical installation sequence has been determined to achieve this contract price. If installation sequence is changed an additional \$150.00 ea. set up fee will be charged per pier/tieback, Helical type.
- 8) IBO Rock Anchor* If it is determined due to unforeseen in stallation obstructions, that IBO Rock Anchor is necessary to be installed, IBO Rock Anchor bid at \$ 150 - per ft., plus one time \$1000.00 mobilization fee, and \$250.00 ea. Rock Anchor set up.
- 9) If payment schedule is not adhered to, Helical Piers will be promptly removed.
- 10) This a NO RETENTION contract.

Client

Chris Baumsteiger, Pres.

X

X

(2)

Tel (415) 488-4598

Lic #s 528 743 694 864

We Don't Create Problems, We Solve Them.

4

NOTICE TO OWNER

CALIFORNIA ADMINISTRATIVE CODE SECTION 862

Effective July 1, 1984, the "Notice to Owner" form required by Section 7018.5 of the Business and Professions Code shall be that set forth below.

NOTICE TO OWNER

Under the California Mechanics Lien Law any contractor, subcontractor, laborer, supplier or other person who helps to improve your property, but is not paid for his/her work or supplies, has a right to enforce a claim against your property. This means that after a court hearing, your property could be sold by a court officer and the proceeds of the sale used to satisfy the indebtedness. This can happen even if you have paid your contractor in full if the subcontractors, laborers or suppliers remain unpaid.

To preserve their right to file a claim or lien against your property, certain claimants such as subcontractors or material suppliers are required to provide you with a document entitled "Preliminary Notice". Original (or prime) contractors and laborers for wages do not have to provide this notice. A Preliminary Notice is not a lien against your property. Its purpose is to notify you of persons who may have a right to file a lien against your property if they are not paid. (Generally, the maximum time allowed for filing a claim or lien against your property is ninety (90) days after completion of your project.)

TO INSURE EXTRA PROTECTION FOR YOURSELF AND YOUR PROPERTY, YOU MAY WISH TO TAKE ONE OR MORE OF THE FOLLOWING STEPS:

- (1) Require that your contractor supply you with a payment and performance bond (not a license bond) which provides that the bonding company will either complete the project or pay damages up to the amount of the bond. This payment and performance bond as well as a copy of the construction contract should be filed with the county recorder for your further protection.
- (2) Require that payments be made directly to subcontractors and material suppliers through a joint control. Any joint control agreement should include the addendum approved by the Registrar of Contractors.
- (3) Issue joint checks for payment, made out to both your contractor and subcontractors or material suppliers involved in the project. This will help to insure that all persons due payment are actually paid.
- (4) After making payment on any completed phase of the project, and before making any further payments, require your contractor to provide you with unconditional lien right releases signed by each material supplier, subcontractor and laborer involved in that portion of the work for which payment was made. On projects involving improvements to a single family residence or a duplex owned by individuals, the persons signing these releases lose the right to file a claim against your property. In other types of construction this protection may still be important, but may not be as complete. **TO PROTECT YOURSELF UNDER THIS OPTION YOU MUST BE CERTAIN THAT ALL MATERIAL SUPPLIERS, SUBCONTRACTORS AND LABORERS HAVE SIGNED.**

READ AND ACKNOWLEDGE

Date _____

State of _____

(detach here, date and sign below if you wish to cancel this transaction)

Notice of Cancellation

Date of Transaction _____

You may cancel this transaction, without any penalty or obligation, within three (3) business days from the above date.

If you cancel, any property traded in, any payments made by you under the contract or sale, and any negotiable instrument executed by you will be returned within ten (10) days following receipt by the seller of your cancellation notice, and any security interest arising out of the transaction will be cancelled.

If you cancel, you must make available to the seller at your residence, in substantially as good condition as when received, any goods delivered to you under this contract or sale, or you may, if you wish to comply with the instructions of the seller regarding the return shipment of the goods at the seller's expense and risk.

If you do make the goods available to the seller and the seller does not pick them up within twenty (20) days of the date of your notice of cancellation, you may retain or dispose of the goods without any further obligation. If you fail to make the goods available to the seller, or if you agree to return the goods to the seller and fail to do so, then you remain liable for performance of all obligations under the contract.

To cancel this transaction, mail or deliver a signed and dated copy of this cancellation notice, or any other written notice, or send a telegram to _____

(NAME OF SELLER)

(address of seller's place of business)

not later than midnight of _____

(date)

I hereby cancel this transaction _____

(date)

(seller's signature)