

**Regular Meeting of the Madera City Council  
and  
Special Meeting of the Madera City Council as the  
Groundwater Sustainability Agency  
205 W. 4<sup>th</sup> Street, Madera, California 93637**

**JOINT MEETING NOTICE AND AGENDA**

**Wednesday, October 3, 2018  
6:00 p.m.**

**Council Chambers  
City Hall**

**CALL TO ORDER**

**ROLL CALL: Mayor Andrew J. Medellin  
Mayor Pro Tem Jose Rodriguez, District 2  
Council Member Cece Gallegos, District 1  
Council Member William Oliver, District 3  
Council Member Derek O. Robinson Sr., District 4  
Council Member Charles F. Rigby, District 5  
Council Member Donald E. Holley, District 6**

**INVOCATION: Pastor David Dougherty, Harvest Community Church**

**PLEDGE OF ALLEGIANCE:**

**PUBLIC COMMENT:**

The first fifteen minutes of the meeting are reserved for members of the public to address the Council on items which are within the subject matter jurisdiction of the Council. Speakers shall be limited to three minutes. Speakers will be asked to identify themselves and state the subject of their comment. If the subject is an item on the Agenda, the Mayor has the option of asking the speaker to hold the comment until that item is called. Comments on items listed as a Public Hearing on the Agenda should be held until the hearing is opened. The Council is prohibited by law from taking any action on matters discussed that are not on the Agenda, and no adverse conclusions should be drawn if the Council does not respond to public comment at this time.

**PRESENTATIONS None.**

**INTRODUCTIONS None.**

**A. WORKSHOP**

- A-1 Discussion and Direction Regarding the Initiation of a Proactive Annexation North of the Current City Limits (Presentation by David Merchen and Chris Boyle)

**B. CONSENT CALENDAR**

- B-1 Minutes – 9/20/17, 9/05/18
- B-2 Warrant Disbursement Report 9/11/18 – 9/24/18 (Report by Tim Przybyla)
- B-3 Informational Report on Personnel Activity (Report by Wendy Silva)
- B-4 Consideration of a Resolution Amending the City of Madera FY 18/19 Budget for the Rental of a Street Sweeper (Report by John Scarborough)
- B-5 Consideration of a Resolution Approving Agreement for Outside of City Water and Sewer Service with the Madera Unified School District (MUSD) for the Matilda Torres High School Located at 16645 Road 26 (Country Club Drive), Approving Covenant to Annex, Authorizing the Mayor to Execute the Agreement and Covenant on Behalf of the City and Directing Staff to Record the Agreement and Covenant (Report by Keith Helmuth)
- B-6 Consideration of a Resolution Accepting an Irrevocable Offer of Dedication Deed from the Property Owner for the Olive Avenue Widening and Reconstruction Project Between Gateway Drive and Knox Street (Report by Keith Helmuth)
- B-7 Consideration of Resolution Approving Agreement and Engagement Letter for Audit Services with Price, Paige & Company, Authorizing the Mayor to Execute the Agreement, Authorizing the Mayor and the City Administrator to Execute the Engagement Letter and Amending the City of Madera 2018/2019 Budget (Report by Tim Przybyla)
- B-8 Consideration of a Resolution Accepting Public Utility and Pedestrian Easement Deed, Offered by Tommy Lee Jarrell, in Conjunction with a New Residential Complex Being Constructed at 733 Linden Street, and Authorizing the City Clerk to Execute and Cause to be Recorded, a Certificate of Acceptance (Report by Keith Helmuth)
- B-9 Consideration of a Resolution Accepting Public Utility Easement Deed, Offered by Arturo Mejia and Micaela A. Mejia, in Conjunction with a Used Automotive Sales Business Located on the Northwest Corner of Yosemite Avenue and High Street, and Authorizing the City Clerk to Execute and Cause to be Recorded, a Certificate of Acceptance (Report by Keith Helmuth)
- B-10 Consideration of a Resolution Approving the Award of Contract for Fire Station No. 58 Fire Station Construction Northwest City Project No. FD-00002 in the Amount of \$6,568,364.60 to Davis Moreno Construction, Inc., Authorizing Construction Contingencies of Up to 10% and Construction Inspection and Management of Up to 5%, and Authorizing the Mayor to Execute the Contract on Behalf of the City; and
- Consideration of a Resolution Approving a Contract with Moore Twining Associates, Inc., for On-Demand Testing Services not to Exceed \$35,000 for Fire Station No. 58 Fire Station Construction Northwest City Project No. FD-00002, and Authorizing the Mayor to Execute the Contract on Behalf of the City (Report by Keith Helmuth)

- B-11 Consideration of a Resolution Approving Three Agreements for Purchase and Sale of Real Property with the Property Owners and the Acceptance of Three Easement Deeds for the Olive Avenue Widening and Reconstruction Project Between Gateway Drive and Knox Street, Authorizing the Mayor to Execute the Agreements, Authorizing the City Clerk to Execute the Certificate of Acceptance for the Easement Deeds, Authorizing the City Engineer to Open Escrow Services and Authorizing the City Administrator to Execute all Documents Necessary to Effectuate the Purchase (Report by Keith Helmuth)
- B-12 Consideration of a Resolution by the City Council, of the City of Madera, California, Declaring a Shelter Crisis Pursuant to Senate Bill 850 (Chapter 48, Statutes of 2018 and Government Code Section 8698.2) (Report by Ivette Iraheta)
- B-13 Consideration of a Resolution Approving California State Department of Health and Human Services Vendor Application for Transportation Services to Central Valley Regional Center and Authorizing the Mayor to Execute the Application and All Related Documents on Behalf of the City (Report by Ivette Iraheta)

**C. HEARINGS, PETITIONS, BIDS, RESOLUTIONS, ORDINANCES, AND AGREEMENTS**

- C-1 Second Reading and Consideration of Adoption of an Ordinance Rezoning Four Parcels Located in Proximity to the Intersection of North C Street and East 5th Street (121, 125, 200 and 204 North C Street) from the PF (Public Facilities) and the C1 (Light Commercial) Zone Districts to the PD-1500 (Planned Development) Zone District (Report by Chris Boyle)
- C-2 Consideration of a Resolution Approving Employment Agreements with the Grant Administrator, Director of Community Development, City Engineer, Director of Parks & Community Services, Chief of Police, Chief Building Official, Information Services Manager, Director of Financial Services, and Director of Human Resources (Report by Wendy Silva)

**D. WRITTEN COMMUNICATIONS**

- D-1 Request by David Delawder to Discuss 2016 CUP Granted to 2037 W. Cleveland Avenue

**E. ADMINISTRATIVE REPORTS**

- E-1 Informational Report Regarding Current City Water Regulations and Request for Direction to Staff Regarding Modifications (Report by John Scarborough)
- E-2 Discussion and Action by Council as to the Use of City Facilities for Candidate or Political Forums (Report by Brent Richardson)

**F. COUNCIL REPORTS**

**G. CLOSED SESSION**

- G-1 Closed Session Announcement – City Attorney
- G-2 Conference with Legal Counsel – Anticipated Litigation. Significant exposure to litigation pursuant to Government Code §54956.9(d)(2) - 2 cases

*continued on next page*

G-3 Conference with Labor Negotiators Pursuant to Government Code §54957.6

Agency Designated Representatives: Steve Frazier, Wendy Silva

Employee Organization: Madera Police Officers' Association

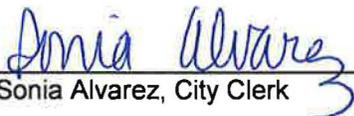
Unrepresented Positions: City Manager, City Attorney and City Clerk

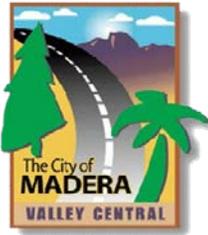
G-4 Closed Session Report – City Attorney

**ADJOURNMENT** – Next regular meeting October 17, 2018

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- Please silence or turn off cell phones and electronic devices while the meeting is in session.
  - Regular meetings of the Madera City Council are held the 1<sup>st</sup> and 3<sup>rd</sup> Wednesday of each month at 6:00 p.m. in the Council Chambers at City Hall.
  - Any writing related to an agenda item for the open session of this meeting distributed to the City Council less than 72 hours before this meeting is available for inspection at the City of Madera Office of the City Clerk, 205 W. 4<sup>th</sup> Street, Madera, California 93637 during normal business hours.
  - The meeting room is accessible to the physically disabled, and the services of a translator can be made available. Request for additional accommodations for the disabled, signers, assistive listening devices, or translators needed to assist participation in this public meeting should be made at least seventy-two (72) hours prior to the meeting. Please call the Human Resources Office at (559) 661-5401. Those who are hearing impaired may call 711 or 1-800-735-2929 for TTY Relay Service.
  - Questions regarding the meeting agenda or conduct of the meeting, please contact the City Clerk's office at (559) 661-5405.
  - Para asistencia en Español sobre este aviso, por favor llame al (559) 661-5405.
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I, Sonia Alvarez, City Clerk for the City of Madera, declare under penalty of perjury that I posted the above joint meeting notice and agenda for the Regular Meeting of the Madera City Council and the Special Meeting of the Madera City Council as the Groundwater Sustainability Agency for October 3, 2018, near the front entrances of City Hall at 4:30 p.m. on September 27, 2018.

  
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Sonia Alvarez, City Clerk

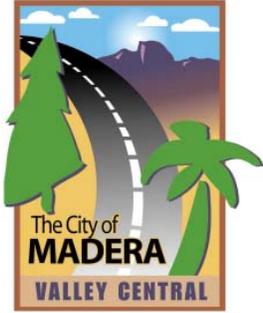


**Madera City Council Agenda 10/03/18  
Agenda Item A-1**

Discussion and Direction Regarding the  
Initiation of a Proactive Annexation North of the Current City Limits

**Presentation only.  
There is no written report for this item.**

Item:	B-1
Minutes for:	09/20/17
Adopted:	10/03/18



**MINUTES OF A  
REGULAR MEETING AND SPECIAL MEETING  
OF THE MADERA CITY COUNCIL  
CITY OF MADERA, CALIFORNIA**

**September 20, 2017  
6:00 p.m.**

**Council Chambers  
City Hall**

**CALL TO ORDER** - The regular and special meetings were called to order at 6:00 p.m.

**ROLL CALL:**

**Present:**  
**Mayor Andrew J. Medellin**  
**Mayor Pro Tem Cece Foley Gallegos, District 1**  
**Council Member Jose Rodriguez, District 2**  
**Council Member Donald E. Holley, District 6**  
**Council Member Derek O. Robinson Sr., District 4**  
**Council Member William Oliver, District 3**  
**Council Member Charles F. Rigby, District 5**

Others present were City Administrator David Tooley, City Attorney Brent Richardson, City Clerk Sonia Alvarez, Director of Community Development David Merchen, Director of Financial Services Tim Przybyla, City Engineer Keith Helmuth, Public Works Operations Director David Randall, Chief of Police Steve Frazier, Director of Human Resources Wendy Silva, Director of Parks and Community Services Mary Anne Seay, Grant Administrator Ivette Iraheta, Chief Building Official Steve Woodworth, Information Services Manager Mark Souders, Planning Manager Chris Boyle, Lieutenant Gino Chiamonte, Recreation and Community Programs Coordinator Corinne Long-Folk, Parks Business Manager Mark Etheridge, Neighborhood Preservation Specialist Nick Salinas, Division Fire Chief David Allen, and Battalion Chief Jim Forga.

**INVOCATION:** Pastor Mike Unger, Madera Rescue Mission

**PLEDGE OF ALLEGIANCE:** Mayor Medellin led in the Pledge of Allegiance.

**PUBLIC COMMENT:**

The first fifteen minutes of the meeting are reserved for members of the public to address the Council on items which are within the subject matter jurisdiction of the Council. Speakers shall be limited to three minutes. Speakers will be asked to identify themselves and state the subject of their comment. If the subject is an item on the Agenda, the Mayor has the option of asking the speaker to hold the comment until that item is called. Comments on items listed as a Public Hearing on the Agenda should be held until the hearing is opened. The Council is prohibited by law from taking any action on matters discussed that are not on the Agenda, and no adverse conclusions should be drawn if the Council does not respond to public comment at this time.

Kay Rhoads, residing in Madera, California and representing the Friends of the Madera Animal Shelter advised that FMAS will no longer offer vouchers to City residents. They will direct residents to the Hope Foundation in Fresno.

Bill Hoffrage stated last May they had a Warbirds reunion at the airport and they would like to do it again the second weekend in May as a fly-in but will expand it if they are able to.

Dustin Pipes, residing in Madera, California, announced that MUSD will be having their Third Annual Dinner Dance on October 7<sup>th</sup> with proceeds going to the school athletes and students. He distributed flyers.

Mayor Medellin closed public comment.

**PRESENTATIONS** Proclamation Recognizing Hispanic Heritage Month

Mayor Medellin presented to Lourdes Herrera the proclamation proclaiming September 15<sup>th</sup> through October 15<sup>th</sup> as Hispanic Heritage month. Ms. Herrera thanked the Council for their support.

**INTRODUCTIONS** Alberto Holguin, Water and Sewer Operations Manager

Public Works Operations Director David Randall introduced Al Holguin. Mr. Holguin thanked everyone for the opportunity to return to the City.

**LATE DISTRIBUTION** – The City Clerk made a late distribution announcement regarding items B-13 and C-1.

**A. WORKSHOP**

**A-1 The Third of a Three Workshop Series on Cannabis and California Cities**  
(Presentation by Gino Chiaramonte and Chris Boyle)

The workshop, presented by Gino Chiaramonte and Chris Boyle, included discussion on the Colorado experience and the effects on communities, an overview of the City’s current ordinance and potential impacts of amendments to ordinance.

Bill Jones, residing in Madera, California, spoke against allowance of cannabis related business.

Steve Salter, residing in Madera, California, stated he agrees with the Mayor’s opinion.

Council consensus was not to take steps for allowance of cannabis related business at this time.

Recess: 7:31 p.m. – 7:41 p.m.

\* \* \* \* \*

Mayor Medellin moved to the consent calendar for the special meeting agenda.

**B. CONSENT CALENDAR – SPECIAL MEETING**

*Items on the consent calendar are adopted with a single motion and vote of the council. Items pulled from the consent calendar for further discussion are adopted under separate action.*

No items were pulled from the consent calendar.

**ON MOTION BY COUNCIL MEMBER OLIVER, AND SECONDED BY COUNCIL MEMBER ROBINSON, THE CONSENT CALENDAR, WAS ADOPTED UNANIMOUSLY BY A VOTE OF 7-0.**

- B-1 Consideration of a Resolution Approving an Agreement for Purchase and Sale of Real Property and Escrow Instructions for a Future Fire Station Site, Authorizing the Mayor to Execute the Agreement on Behalf of the City, Authorizing the City Administrator to Take All Actions Necessary to Allow the Transfer of Title Pursuant to the Escrow Instructions, and Authorizing the City Clerk to Prepare the Certificate of Acceptance of the Grant Deeds (Report by David Merchen)

**RES. NO. 17-135      A RESOLUTION OF THE COUNCIL OF THE CITY OF MADERA, CALIFORNIA,  
APPROVING AN AGREEMENT FOR PURCHASE AND SALE OF REAL  
PROPERTY AND ESCROW INSTRUCTIONS FOR A FUTURE FIRE STATION  
SITE**

There were no items for sections A, C, D, E, and G of the special meeting agenda.

**F.      COUNCIL REPORTS**

No reports were given.

**ADJOURNMENT SPECIAL MEETING**– The special meeting was adjourned at 7:43 p.m.

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Mayor Medellin returned to the regular meeting agenda.

**B.      CONSENT CALENDAR – REGULAR MEETING**

*Items on the consent calendar are adopted with a single motion and vote of the council. Items pulled from the consent calendar for further discussion are adopted under separate action.*

City Administrator David Tooley declared a conflict of interest on item B-5. Item was pulled from the consent calendar for separate action.

Council Member Foley Gallegos requested item B-15 pulled for discussion.

**ON MOTION BY COUNCIL MEMBER RIGBY, AND SECONDED BY COUNCIL MEMBER OLIVER, THE  
CONSENT CALENDAR, WITH THE EXCEPTION OF ITEMS B-5 AND B-15, WAS ADOPTED  
UNANIMOUSLY BY A VOTE OF 7-0.**

- B-1      Minutes – There are no minutes for consideration.
- B-2      Information Only – Warrant Disbursement Report
- B-3      Bi-Weekly Water Conservation Report for 8/28/17 – 9/10/17 (Report by Dave Randall)
- B-4      Consideration of a Minute Order Rejecting a Claim filed by Juana Montes De Oca (Report by Wendy Silva)
- B-5      Consideration of Resolutions Adopting 2017/2018 Community Development Block Grant Agreements for Services as follows: (Report by Ivette Iraheta)  
*[Item pulled due to conflict declared by City Administrator.]*
  - A. The Community Action Partnership of Madera County to Coordinate with the Fresno/Madera Continuum of Care
  - B. The Madera County Workforce Investment Corporation for the Vocational Training/Certification Program
  - C. The Madera Coalition for Community Justice to Coordinate the Zocalo Madera Program
  - D. The City of Madera Parks and Community Services Department to Provide Nutrition, Fitness, Recreation and Education Services to Seniors

- E. The Housing Authority of the City of Madera for the Pomona Ranch Housing for the Homeless Project
- F. The City of Madera Engineering Department for the East Yosemite Avenue and Elm Street Traffic Signal Project
- G. The City of Madera Engineering Department for the George Washington Elementary School Sidewalk Project

B-6 Consideration of a Resolution Authorizing Participation in the State Interagency Intercept Collections Program and Authorizing the Mayor to Execute the Intent to Participate and Any and All Documents Necessary to Facilitate Participation in the Program (Report by Brent Richardson)

**RES. NO. 17-143      RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MADERA AUTHORIZING PARTICIPATION IN THE STATE INTERAGENCY INTERCEPT COLLECTIONS PROGRAM AND AUTHORIZING THE MAYOR TO EXECUTE THE INTENT TO PARTICIPATE AND ANY AND ALL DOCUMENTS NECESSARY TO FACILITATE PARTICIPATION IN THE PROGRAM**

B-7 Consideration of Resolution Approving Amendment No. 4 to the Agreement with Lars Andersen & Associates, Inc. for Engineering Services Relating to the Construction of the Fresno River Trail Undercrossings at Gateway Drive and Union Pacific Railroad (Report by Keith Helmuth)

**RES. NO. 17-144      A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MADERA, CALIFORNIA, APPROVING AMENDMENT NO. 4 TO THE AGREEMENT WITH LARS ANDERSEN & ASSOCIATES, INC. FOR ENGINEERING SERVICES RELATING TO THE CONSTRUCTION OF THE FRESNO RIVER TRAIL UNDERCROSSINGS AT GATEWAY DRIVE AND UNION PACIFIC RAILROAD**

B-8 Consideration of a Resolution Approving Funding Amendments to the City of Madera Fiscal Year 2017/18 Capital Projects Budget for the Installation of Water Main at Various Locations, City Project No. W 16-03 (Report by Keith Helmuth)

**RES. NO. 17-145      A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MADERA APPROVING FUNDING AMENDMENTS TO THE CITY OF MADERA FISCAL YEAR 2017/18 CAPITAL PROJECTS BUDGET FOR THE INSTALLATION OF WATER MAINS AT VARIOUS LOCATIONS PROJECT, CITY PROJECT NO. W 16-03**

B-9 Consideration of a Resolution Approving the Compensation Range for Part Time Public Works Maintenance Aids (Report by Wendy Silva)

**RES. NO. 17-146      A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MADERA APPROVING THE COMPENSATION RANGE FOR PART TIME PUBLIC WORKS MAINTENANCE AIDS OF THE CITY OF MADERA**

B-10 Consideration of a Resolution Approving Annexation of Adjusted Parcel C of Lot Line Adjustment No. 2016-01 into Zone of Benefit 1; Confirming the Diagram and Assessment for Adjusted Parcel C of Lot Line Adjustment No. 2016-01 for City Wide Landscape and Lighting Assessment District Zone of Benefit 1 for Fiscal Year 2017/2018; and Authorizing the City Clerk to File the Diagram and Assessment with the Madera County Auditor (Report by Keith Helmuth)

**RES. NO. 17-147**      **A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MADERA, CALIFORNIA APPROVING ANNEXATION OF ADJUSTED PARCEL C OF LOT LINE ADJUSTMENT NO. 2016-01 INTO ZONE OF BENEFIT 1; CONFIRMING THE DIAGRAM AND ASSESSMENT FOR ADJUSTED PARCEL C OF LOT LINE ADJUSTMENT NO. 2016-01 FOR CITY WIDE LANDSCAPE AND LIGHTING ASSESSMENT DISTRICT ZONE OF BENEFIT 1 FOR FISCAL YEAR 2017/2018; AND AUTHORIZING THE CITY CLERK TO FILE THE DIAGRAM AND ASSESSMENT WITH THE MADERA COUNTY AUDITOR**

B-11      Consideration of a Resolution Ratifying and Approving a Memorandum of Agreement between Mariposa County Sheriff's Office and the Madera Police Department Pertaining to Assistance under the Law Enforcement Mutual Aid and Authorizing the City Administrator to Sign on Behalf of the City (Report by Steve Frazier)

**RES. NO. 17-148**      **A RESOLUTION RATIFYING AND APPROVING A MEMORANDUM OF AGREEMENT BETWEEN MARIPOSA COUNTY SHERIFF'S OFFICE AND THE MADERA POLICE DEPARTMENT PERTAINING TO ASSISTANCE UNDER THE LAW ENFORCEMENT MUTUAL AID AND AUTHORIZING THE CITY ADMINISTRATOR TO SIGN ON BEHALF OF THE CITY**

B-12      Consideration of a Minute Order Approving and Accepting the City of Madera Investment Report for the Quarter Ending June 30, 2017 (Report by Tim Przybyla)

B-13      Consideration of a Resolution Approving a Professional Services Agreement with RRM Design Group for Professional Engineering Design Services for the Construction of a Fire Station and Authorizing the Mayor to Execute the Agreement on Behalf of the City (Report by Dave Merchen)

**RES. NO. 17-149**      **RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MADERA, CALIFORNIA, APPROVING A PROFESSIONAL SERVICES AGREEMENT WITH RRM DESIGN GROUP FOR PROFESSIONAL ENGINEERING DESIGN SERVICES FOR THE CONSTRUCTION OF A FIRE STATION AND AUTHORIZING THE MAYOR TO EXECUTE THE AGREEMENT ON BEHALF OF THE CITY**

B-14      Consideration of a Minute Order Approving a Letter to Madera County Requesting an Easement Deed for Use by the City in Constructing a Portion of the Gateway/UPRR Trail Undercrossing and Authorizing the Mayor to Sign the Letter (Report by Mary Anne Seay)

B-15      Consideration of a Resolution Adopting the City's Master Fee Schedule and the Master Penalty Schedule for FY 2017/2018 (Report by Tim Przybyla) *[Item pulled for discussion.]*

**RES. NO. 17-150**      **A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MADERA, CALIFORNIA, ADOPTING THE MASTER FEE SCHEDULE AND THE MASTER PENALTY SCHEDULE FOR FY 2017/2018**

CONSENT CALENDAR ITEMS PULLED FOR DISCUSSION

B-5      *Consideration of Resolutions Adopting 2017/2018 Community Development Block Grant Agreements for Services as follows:* (Report by Ivette Iraheta)

City Administrator David Tooley exited the Council Chambers and returned after the action had concluded.

**ON MOTION BY COUNCIL MEMBER RIGBY, AND SECONDED BY COUNCIL MEMBER OLIVER, ITEM B-5, RES. NOS. 17-136 THROUGH 17-142, WERE ADOPTED UNANIMOUSLY BY A VOTE OF 7-0.**

- A. The Community Action Partnership of Madera County to Coordinate with the Fresno/Madera Continuum of Care

**RES. NO. 17-136**      **A RESOLUTION OF THE CITY COUNCIL, OF THE CITY OF MADERA, CALIFORNIA, APPROVING A 2017 /2018 COMMUNITY DEVELOPMENT BLOCK GRANT AGREEMENT FOR SERVICES WITH THE COMMUNITY ACTION PARTNERSHIP OF MADERA COUNTY**

- B. The Madera County Workforce Investment Corporation for the Vocational Training/Certification Program

**RES. NO. 17-137**      **A RESOLUTION OF THE CITY COUNCIL, OF THE CITY OF MADERA, CALIFORNIA, APPROVING A 2017/2018 COMMUNITY DEVELOPMENT BLOCK GRANT AGREEMENT FOR SERVICES WITH THE MADERA COUNTY WORKFORCE INVESTMENT CORPORATION**

- C. The Madera Coalition for Community Justice to Coordinate the Zocalo Madera Program

**RES. NO. 17-138**      **A RESOLUTION OF THE CITY COUNCIL, OF THE CITY OF MADERA, CALIFORNIA, APPROVING A 2017/2018 COMMUNITY DEVELOPMENT BLOCK GRANT AGREEMENT FOR SERVICES WITH THE MADERA COALITION FOR COMMUNITY JUSTICE**

- D. The City of Madera Parks and Community Services Department to Provide Nutrition, Fitness, Recreation and Education Services to Seniors

**RES. NO. 17-139**      **A RESOLUTION OF THE CITY COUNCIL, OF THE CITY OF MADERA, CALIFORNIA, APPROVING A 2017/2018 COMMUNITY DEVELOPMENT BLOCK GRANT AGREEMENT FOR SERVICES WITH THE CITY OF MADERA PARKS AND COMMUNITY SERVICES DEPARTMENT**

- E. The Housing Authority of the City of Madera for the Pomona Ranch Housing for the Homeless Project

**RES. NO. 17-140**      **A RESOLUTION OF THE CITY COUNCIL, OF THE CITY OF MADERA, CALIFORNIA, APPROVING A 2017/2018 COMMUNITY DEVELOPMENT BLOCK GRANT AGREEMENT FOR SERVICES WITH THE HOUSING AUTHORITY OF THE CITY OF MADERA**

- F. The City of Madera Engineering Department for the East Yosemite Avenue and Elm Street Traffic Signal Project

**RES. NO. 17-141**      **A RESOLUTION OF THE CITY COUNCIL, OF THE CITY OF MADERA, CALIFORNIA, APPROVING A 2017/2018 COMMUNITY DEVELOPMENT BLOCK GRANT AGREEMENT FOR SERVICES WITH THE CITY OF MADERA ENGINEERING DEPARTMENT**

- G. The City of Madera Engineering Department for the George Washington Elementary School Sidewalk Project

**RES. NO. 17-142**      **A RESOLUTION OF THE CITY COUNCIL, OF THE CITY OF MADERA, CALIFORNIA, APPROVING A 2017/2018 COMMUNITY DEVELOPMENT**

**BLOCK GRANT AGREEMENT FOR SERVICES WITH THE CITY OF MADERA  
ENGINEERING DEPARTMENT**

*B-15 Consideration of a Resolution Adopting the City's Master Fee Schedule and the Master Penalty Schedule for FY 2017/2018 (Report by Tim Przybyla)*

Director of Parks and Community Services Mary Anne Seay addressed the questions/comments from Mayor Pro Tem Foley Gallegos and other members of the Council.

**ON MOTION BY COUNCIL MEMBER OLIVER, AND SECONDED BY MAYOR PRO TEM FOLEY GALLEGOS, ITEM C-1, RES. NO. 17-150, WITH A REVISED EXHIBIT A TO REMOVE THE FEE ADJUSTMENT NUMBER ONE FOR THE BERGON CENTER, WAS ADOPTED UNANIMOUSLY BY A VOTE OF 7-0.**

**RES. NO. 17-150 A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MADERA, CALIFORNIA, ADOPTING THE MASTER FEE SCHEDULE AND THE MASTER PENALTY SCHEDULE FOR FY 2017/2018**

**C. HEARINGS, PETITIONS, BIDS, RESOLUTIONS, ORDINANCES, AND AGREEMENTS**

**C-1 Public Hearing and Consideration of a Resolution Approving the 2016/2017 Community Development Block Grant Consolidated Annual Performance and Evaluation Report and Financial Summary (Report by Ivette Iraheta)**

Grant Administrator Ivette Iraheta offered translation services in Spanish then proceeded to present the report.

Mayor Medellin opened the public hearing and there being no speakers, closed the public hearing.

**ON MOTION BY COUNCIL MEMBER RIGBY, AND SECONDED BY COUNCIL MEMBER HOLLEY, ITEM C-1, RES. NO. 17-151, WAS ADOPTED UNANIMOUSLY BY A VOTE OF 7-0.**

**RES. NO. 17-151 A RESOLUTION APPROVING THE 2016/2017 COMMUNITY DEVELOPMENT BLOCK GRANT CONSOLIDATED ANNUAL PERFORMANCE AND EVALUATION REPORT AND FINANCIAL SUMMARY REPORT**

Items D-2 and D-3 were moved up on the agenda for discussion.

*D-2 Consideration of a Written Request by the Madera South High School Seeking Council Approval to Waive Permit Fees and Cover the Cost of Police and Public Works Efforts in Association with their Homecoming Parade and Request for the City to Pay \$1,200 Towards the Rental of Barricades (Report by Steve Frazier)*

Chief of Police Steve Frazier presented the report.

**ON MOTION BY COUNCIL MEMBER RIGBY, AND SECONDED BY COUNCIL MEMBER OLIVER, ITEM D-2, THE WRITTEN REQUEST BY THE MADERA SOUTH HIGH SCHOOL SEEKING COUNCIL APPROVAL TO WAIVE PERMIT FEES AND COVER THE COST OF POLICE AND PUBLIC WORKS EFFORTS IN ASSOCIATION WITH THEIR HOMECOMING PARADE AND REQUEST FOR THE CITY TO PAY \$1,200 TOWARDS THE RENTAL OF BARRICADES, WAS ADOPTED UNANIMOUSLY BY A VOTE OF 7-0.**

D-3 *Consideration of a Written Request by the Madera High School Seeking Council Approval to Cover the Cost of Police and Public Works Efforts in Association with Their Homecoming Parade (Report by Steve Frazier)*

Chief of Police Steve Frazier presented the report.

Isaac Lopez, Activities Director for Madera High School, provided comment on their request.

**ON MOTION BY COUNCIL MEMBER RIGBY, AND SECONDED BY MAYOR PRO TEM FOLEY GALLEGOS, ITEM D-3, THE WRITTEN REQUEST BY THE MADERA HIGH SCHOOL SEEKING COUNCIL APPROVAL TO COVER THE COST OF POLICE AND PUBLIC WORKS EFFORTS IN ASSOCIATION WITH THEIR HOMECOMING PARADE, WAS ADOPTED UNANIMOUSLY BY A VOTE OF 7-0.**

**D. WRITTEN COMMUNICATIONS**

**D-1 Written Communication from Valley West Christian Center and Consideration of a Request for a Reduction in Fees for a Proposed 5,250 Square Foot Multi-Purpose Building (Pastor Roger Leach and Report by David Merchen)**

Council Member Rigby declared a conflict of interest on item D-1 and exited the Council Chambers.

Pastor Roger Leach, representing Valley West Christian Center, presented his request. Community Development Director David Merchen and other staff members addressed questions/comments from the Council.

Council direction was given for staff to craft language to address impact fees for schools that provide a community benefit, are part of a school district and recognized as an accredited school.

Council Member Rigby returned to the Council Chambers.

**D-2 Consideration of a Written Request by the Madera South High School Seeking Council Approval to Waive Permit Fees and Cover the Cost of Police and Public Works Efforts in Association with their Homecoming Parade and Request for the City to Pay \$1,200 Towards the Rental of Barricades (Report by Steve Frazier)**

Items D-2 and D-3 were heard earlier in the meeting immediately following item C-1.

**D-3 Consideration of a Written Request by the Madera High School Seeking Council Approval to Cover the Cost of Police and Public Works Efforts in Association with Their Homecoming Parade (Report by Steve Frazier)**

Items D-2 and D-3 were heard earlier in the meeting immediately following item C-1.

**E. ADMINISTRATIVE REPORTS**

**E-1 Report and Request for Direction Regarding Agenda Distribution Timeline (Report by Sonia Alvarez)**

City Clerk Sonia Alvarez presented the report. Two motions were presented on this item with the first motion failing.

FIRST MOTION FOR ITEM E-1 FAILED

**COUNCIL MEMBER HOLLEY MADE A MOTION NOT TO CHANGE THE DISTRIBUTION DATE. THE MOTION WAS SECONDED BY COUNCIL MEMBER ROBINSON AND THE MOTION FAILED BY A**

**ROLL CALL VOTE OF 5-2. AYES: COUNCIL MEMBERS HOLLEY, ROBINSON. NOES: COUNCIL MEMBERS MEDELLIN, FOLEY GALLEGOS, RODRIGUEZ, OLIVER, RIGBY.**

SECOND MOTION FOR ITEM E-1 PASSED

**COUNCIL MEMBER RIGBY MADE A MOTION TO CHANGE THE DISTRIBUTION DATE TO SIX DAYS PRIOR TO THE CITY COUNCIL MEETINGS. THE MOTION WAS SECONDED BY MAYOR PRO TEM FOLEY GALLEGOS AND THE MOTION WAS ADOPTED BY A ROLL CALL VOTE OF 5-2. AYES: COUNCIL MEMBERS MEDELLIN, FOLEY GALLEGOS, RODRIGUEZ, OLIVER, RIGBY. NOES: COUNCIL MEMBERS HOLLEY, ROBINSON.**

- E-2 Update and Request for Direction Regarding a Proposal by Sohan Samran for Extra-Territorial Sewer and Water Connections in Conjunction with the Expansion of the BAPU Almond Facility at 24341 Avenue 14 (Report by David Merchen)**

Community Development Director David Merchen presented the report. Ubaldo Garcia, representing BAPU Almonds, provided comment on their request.

**ON MOTION BY COUNCIL MEMBER OLIVER, AND SECONDED BY COUNCIL MEMBER RODRIGUEZ, THE REQUEST TO ALLOW THE INSTALLATION OF A FIRE HYDRANT ALONG THE FRONTAGE TO PROVIDE FOR FIRE FLOW TO THE SITE ALONG WITH THE CONDITIONS AS PRESENTED AND AGREED UPON BY PROPONENT WAS ADOPTED UNANIMOUSLY BY A VOTE OF 7-0.**

- E-3 Report Seeking Direction from Council on Absorbing Rental Fees to Accommodate the Mexican Consulate at the Pan-American Community Center (Report by Mary Anne Seay)**

Director of Parks and Community Services Mary Anne Seay presented the report. Council Member Rigby and Mayor Medellin provided background on their communications with the Mexican Consulate for use of the Pan Am Center as a community wide benefit.

**ON MOTION BY COUNCIL MEMBER RIGBY, AND SECONDED BY COUNCIL MEMBER OLIVER, THE MOTION TO ABSORB THE RENTAL FEES FOR THE MEXICAN CONSULATE USE OF THE PAN AM CENTER FROM DECEMBER 11-15, 2017 WAS ADOPTED UNANIMOUSLY BY A VOTE OF 7-0.**

- E-4 Request for Direction on the Elimination of the Adult Day Care Program (Report by Mary Anne Seay)**

Director of Parks and Community Services Mary Anne Seay presented the report.

**ON MOTION BY COUNCIL MEMBER RIGBY, AND SECONDED BY COUNCIL MEMBER RODRIGUEZ, THE MOTION TO ELIMINATE THE ADULT DAY CARE PROGRAM EFFECTIVE JANUARY 1, 2018 WAS ADOPTED BY A ROLL CALL VOTE OF 5-1-1. AYES: COUNCIL MEMBERS MEDELLIN, RODRIGUEZ, HOLLEY, OLIVER, RIGBY. NOES: COUNCIL MEMBER ROBINSON. ABSTENTION: COUNCIL MEMBER FOLEY GALLEGOS. [Council Member Foley Gallegos had stepped out of the council chambers when the vote took place.]**

- E-5 Review of Permit and Processing Costs for the Development Services Departments, Review of Potential Fee Adjustment Programs, and Direction to Staff Regarding Placing These Items on the October 4, 2017 Agenda for Consideration (Report by Dave Merchen)**

Community Development Director David Merchen presented the report.

Council Members Rigby, Oliver and Rodriguez were appointed to serve on an ad hoc community to meet with city partners such as the Ministerial Association, service clubs and similar organizations to review fee reduction programs.

Council consensus was reached to bring back at the October 4, 2017 meeting the Fee Adjustment Program, Option B for consideration. Staff was also directed to review the percentage increase for special event permit and appeal fees at a lower percentage.

## **F. COUNCIL REPORTS**

Council Member Robinson reported on his attendance at the League of California Cities conference.

Mayor Pro Tem Foley Gallegos report on her attendance at the Wine Month Celebration at Birdstone Winery.

Council Member Rigby stated his appreciation to the Parks and Community Services Director Mary Anne Seay for her work and the tough decisions they have to make such as tonight.

Council Member Rodriguez gave a shout out to people representing the Stallions here tonight.

Mayor Medellin reported on his attendance at the Neighborhood Watch in the Parkwood area. He recognized the audience member from that neighborhood present this evening.

Mayor Medellin reported on his Valley Voice trip to Washington D.C. where they represented eight Central Valley counties.

Mayor Medellin commented on the many things going on in the nation such as hurricanes and how people came together.

Mayor Medellin announced that this Sunday, along with the Madera Ministerial Association, they will pray for their schools, teachers, staff, and bus drivers.

## **G. CLOSED SESSION**

### **G-1 Closed Session Announcement – City Attorney**

The City Attorney announced that staff has requested item G-4 pulled from closed session noting that it has been rendered moot by the purchase agreement approved earlier in the meeting.

The Council adjourned to closed session at 10:58 p.m. to discuss items G-2 and G-3 as listed on the agenda.

### **G-2 CONFERENCE WITH LABOR NEGOTIATORS - Pursuant to California Government Code Section 54957.6**

Agency Designated Representatives: David Tooley and Wendy Silva

Employee Organizations: Operating Engineers Local Union No. 3  
Madera Police Officers' Association  
Mid-Management Employee Group  
Law Enforcement Mid-Management Group

### **G-3 Conference with Legal Counsel – Anticipated Litigation. Significant exposure to litigation pursuant to Government Code §54956.9(d)(2): 1 case**

**G-4 Conference with Real Property Negotiators - Pursuant to Government Code Section 54956.8 [Item pulled]**

**Property 1:** 4 Parcels

LEWIS HELEN F TR ETAL APN: 013-050-007, 013-050-008, 013-050-009,  
013-050-010

Agency Negotiators: David Tooley, David Merchen  
Negotiating Parties: Sheila Urbanek & Joel Mazmanian Representing Lewis Helen F  
Tr. Etal  
Under Negotiations: Price and Terms

**Property 2:** 2 Parcels

MCINTYRE EDWARD J & GAIL ETAL APN: 013-200-012, 013-200-013

Agency Negotiators: David Tooley, David Merchen  
Negotiating Parties: Edward and Gail McIntyre  
Under Negotiations: Price and Terms

**Property 3:** 2 Parcels

SCHULTZ, WILLIAM & GLORIA APN: 013-270-016, 013-270-017

Agency Negotiators: David Tooley, David Merchen  
Negotiating Parties: Buk Wagner Representing William & Gloria Schultz  
Under Negotiations: Price and Terms

**G-5 Closed Session Report – City Attorney**

The Council returned from closed session at 12:32 p.m. with all members present.

There was no reportable action for items G-2 and G-3.

**ADJOURNMENT** - The meeting was adjourned at 12:33 p.m. Next regular meeting 10/04/17.

**CONSISTENCY WITH THE VISION MADERA 2025 PLAN**

Approval of the minutes is not addressed in the vision or action plans; the requested action is also not in conflict with any of the actions or goals contained in that plan.

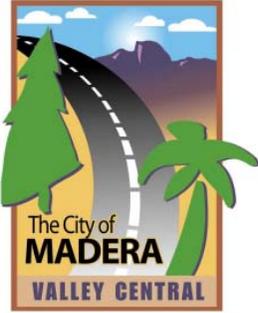
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SONIA ALVAREZ, City Clerk

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ANDREW J. MEDELLIN, Mayor

## Return to Agenda



### Minutes of A Regular Meeting of the Madera City Council and Special Meeting of the Madera City Council as the Groundwater Sustainability Agency City of Madera, California

Item:	B-1
Minutes for:	09/05/18
Adopted:	10/03/18

September 5, 2018  
6:00 p.m.

Council Chambers  
City Hall

**CALL TO ORDER** – The meeting was called to order at 6:00 p.m.

#### **ROLL CALL:**

**Present:** Mayor Andrew J. Medellin  
Mayor Pro Tem Jose Rodriguez, District 2  
Council Member Cece Foley Gallegos, District 1  
Council Member William Oliver, District 3  
Council Member Derek O. Robinson Sr., District 4  
Council Member Charles F. Rigby, District 5  
Council Member Donald E. Holley, District 6

Others present were City Attorney Brent Richardson, City Clerk Sonia Alvarez, Director of Community Development David Merchen, Director of Financial Services Tim Przybyla, City Engineer Keith Helmuth, Public Works Operations Director John Scarborough, Director of Human Resources Wendy Silva, Director of Parks and Community Services Mary Anne Seay, Grant Administrator Ivette Iraheta, Chief Building Official Steve Woodworth, Information Services Manager Mark Souders, Planning Manager Chris Boyle, Lieutenant Brian Esteves, Project Development Coordinator Ellen Bitter, Engineering Administrative Analyst Jimmy Monreal, Public Works Administrative Analyst Mary Church, Fire Chief Nancy Koerperich, and Division Fire Chief Matt Watson.

**INVOCATION:** Pastor Tim McGraw, Yosemite Christian Center

The invocation was given by Council Member Holley due to the absence of Pastor McGraw.

**PLEDGE OF ALLEGIANCE:** Mayor Medellin led in the Pledge of Allegiance.

#### **PUBLIC COMMENT:**

The first fifteen minutes of the meeting are reserved for members of the public to address the Council on items which are within the subject matter jurisdiction of the Council. Speakers shall be limited to three minutes. Speakers will be asked to identify themselves and state the subject of their comment. If the subject is an item on the Agenda, the Mayor has the option of asking the speaker to hold the comment until that item is called. Comments on items listed as a Public Hearing on the Agenda should be held until the hearing is opened. The Council is prohibited by law from taking any action on matters discussed that are not on the Agenda, and no adverse conclusions should be drawn if the Council does not respond to public comment at this time.

Rebecca Martinez, Madera County Recorder and Registrar of Voters, spoke regarding the Voters Choice Act, provided an update on the last election and stated her appreciation for use of the John Wells Youth Center. Ms. Martinez distributed commemorative pins to the Council.

Ron Montoya, residing in Madera, California, thanked Officer Smith for helping with a stray dog. He thanked the Mayor for leading the charge on the tree issue at Olive and Knox. He also spoke regarding other

concerns including speed limit signs and that his neighborhood is becoming more active because they are tired of other issues in the City.

Khalid Chaudhry, business owner in Madera, California, spoke regarding violations of the Brown Act when he tried to speak at the last meeting. He also spoke regarding senior salaries, taxpayer money, and that the Council is responsible for what has happened here.

David (last name not given), residing in Madera, California, spoke regarding water conservation, what they can do as individuals and provided some data on amount of water used for meat and dairy products.

Steve Copland, residing in Madera, California, commended the Council for doing an outstanding job with the cards they are dealt with.

Mayor Medellin closed public comment.

**PRESENTATIONS** Proclamation Recognizing Fastway Chicken's 40<sup>th</sup> Anniversary

Mayor Medellin presented the proclamation to Wally and Kathy Nishimoto celebrating the 40<sup>th</sup> Anniversary of Fastway Chicken. Other members of the family were also present including Dorothy Nishimoto and their store manager Maria.

Wally and Kathy Nishimoto spoke on behalf of the family and thanked the Council for the recognition.

**INTRODUCTIONS** None.

**A. WORKSHOP**

There are no items for this section.

**B. CONSENT CALENDAR**

*Items on the consent calendar are adopted with a single motion and vote of the council. Items pulled from the consent calendar for further discussion are adopted under separate action.*

Mayor Pro Tem Rodriguez pulled item B-17 for discussion.

**ON MOTION BY COUNCIL MEMBER HOLLEY, AND SECONDED BY COUNCIL MEMBER OLIVER, THE CONSENT CALENDAR, WITH THE EXCEPTION OF ITEM B-17, WAS ADOPTED UNANIMOUSLY BY A VOTE OF 7-0.**

- B-1 Minutes – 9/13/17, 8/08/18, 8/15/18, 8/18/18
- B-2 Warrant Disbursement Report 8/8/18 – 8/28/18 (Report by Tim Przybyla)
- B-3 Water Conservation Report for July 23<sup>rd</sup> through August 19<sup>th</sup> (Report by John Scarborough)
- B-4 Informational Report on Personnel Activity (Report by Wendy Silva)
- B-5 Consideration of a Resolution Approving Four Agreements for Purchase and Sale of Real Property with the Property Owners, Acceptance of Four Easement Deeds for the Olive Avenue Widening and Reconstruction Project Between Gateway Drive and Knox Street, Authorizing the Mayor to Execute the Agreements and Authorizing the City Administrator to Execute All Documents Necessary to Effectuate the Purchase (Report by Keith Helmuth)

**RES. NO. 18-163      A RESOLUTION OF THE COUNCIL OF THE CITY OF MADERA, CALIFORNIA, APPROVING FOUR AGREEMENTS FOR PURCHASE AND SALE OF REAL PROPERTY WITH THE PROPERTY OWNERS AND ACCEPTANCE OF FOUR EASEMENT DEEDS FOR THE OLIVE AVENUE WIDENING AND RECONSTRUCTION PROJECT**

B-6      Consideration of a Resolution Approving the 2018 Transit Asset Management Plan (Report by Ivette Iraheta)

**RES. NO. 18-164      A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MADERA, CALIFORNIA APPROVING THE 2018 TRANSIT ASSET MANAGEMENT PLAN**

B-7      Consideration of a Minute Order Rejecting a Claim filed by Gene Turner (Report by Wendy Silva)

B-8      Consideration of a Resolution Approving a Lease Agreement with County of Madera for a Hangar Lease Located at the Madera Municipal Airport, and Authorizing the Mayor to Execute the Agreement on Behalf of the City (Report by John Scarborough)

**RES. NO. 18-165      A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MADERA, CALIFORNIA, APPROVING A LEASE AGREEMENT WITH COUNTY OF MADERA FOR A HANGAR LEASE LOCATED AT THE MADERA MUNICIPAL AIRPORT, AND AUTHORIZING THE MAYOR TO EXECUTE THE AGREEMENT ON BEHALF OF THE CITY**

B-9      Consideration of a Minute Order Authorizing Submittal of the Parade Entry Form and Authorizing the Mayor to Sign the Hold Harmless Agreement for Council Participation in the Old Timers Day Parade (Report by Sonia Alvarez)

B-10      Consideration of a Written Request by the Original Madera Kiwanis Club Seeking Council Approval to Cover the Cost of Police and Public Works Fees in Conjunction with the Old Timers Day Parade (Report by Brian Esteves)

B-11      Consideration of a Resolution Authorizing the City to Make an Application for Award to the Edward Byrne Memorial Justice Assistance Grant Program FY 2018 Local Solicitation (Report by Ivette Iraheta)

**RES. NO. 18-166      A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MADERA, CALIFORNIA, AUTHORIZING THE CITY TO MAKE AN APPLICATION FOR AWARD TO THE 2018 EDWARD BYRNE MEMORIAL JUSTICE ASSISTANCE GRANT PROGRAM**

B-12      Consideration of a Resolution Approving a Memorandum of Understanding Between the City of Madera and the Madera Affiliated City Employees' Association and Authorizing the City Administrator to Sign the Memorandum (Report by Wendy Silva)

**RES. NO. 18-167      A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MADERA APPROVING A MEMORANDUM OF UNDERSTANDING BETWEEN THE CITY OF MADERA AND MADERA AFFILIATED CITY EMPLOYEES' ASSOCIATION REPRESENTING THE GENERAL BARGAINING UNIT AND AUTHORIZING THE CITY ADMINISTRATOR TO SIGN THE MEMORANDUM**

- B-13 Consideration of a Resolution Approving a Memorandum of Understanding Between the City of Madera and the Mid-Management Employee Group and Authorizing the City Administrator to Sign the Memorandum (Report by Wendy Silva)

**RES. NO. 18-168 A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MADERA APPROVING A MEMORANDUM OF UNDERSTANDING BETWEEN THE CITY OF MADERA AND THE MID-MANAGEMENT EMPLOYEE GROUP AND AUTHORIZING THE CITY ADMINISTRATOR TO SIGN THE MEMORANDUM**

- B-14 Consideration of a Resolution Approving Agreement for Outside of City Water Service for Property Located at 16440 N Lake St., Approving Covenant to Annex, Authorizing the Mayor to Execute the Agreement and Covenant on Behalf of the City and Directing Staff to Record the Agreement and Covenant (Report by Keith Helmuth)

**RES. NO. 18-169 A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MADERA, CALIFORNIA, APPROVING THE AGREEMENT WITH JAMES AND DONNA NIELL FOR OUTSIDE OF CITY WATER SERVICE FOR 16440 N LAKE ST, APPROVING THE COVENANT TO ANNEX, AUTHORIZING THE MAYOR TO EXECUTE THE AGREEMENT AND COVENANT ON BEHALF OF THE CITY AND DIRECTING STAFF TO RECORD THE AGREEMENT AND COVENANT**

- B-15 Consideration of a Resolution Approving a Memorandum of Understanding between the City of Madera and the Law Enforcement Mid Management Group and Authorizing the City Administrator to Sign the Memorandum (Report by Wendy Silva)

**RES. NO. 18-170 A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MADERA APPROVING A MEMORANDUM OF UNDERSTANDING BETWEEN THE CITY OF MADERA AND THE LAW ENFORCEMENT MID MANAGEMENT GROUP AND AUTHORIZING THE CITY ADMINISTRATOR TO SIGN THE MEMORANDUM**

- B-16 Consideration of a Resolution Approving an Improvement Deferral Agreement and Authorization of Lien for Site Plan Review SPR 2018-15 Improvements and Authorizing the Mayor to Sign the Agreement on Behalf of the City (Report by Chris Boyle)

**RES. NO. 18-171 A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MADERA, CALIFORNIA APPROVING AN IMPROVEMENT DEFERRAL AGREEMENT AND AUTHORIZATION OF LIEN FOR SITE PLAN REVIEW SPR 2018-15 IMPROVEMENTS AND AUTHORIZING THE MAYOR TO SIGN AGREEMENT ON BEHALF OF THE CITY**

- B-17 Consideration of a Minute Order Approving and Accepting the City of Madera Investment Report for the Quarter Ending June 30, 2018 (Report by Tim Przybyla) *[Item pulled for discussion.]*

**CONSENT CALENDAR ITEMS PULLED FOR DISCUSSION**

- B-17 Consideration of a Minute Order Approving and Accepting the City of Madera Investment Report for the Quarter Ending June 30, 2018 (Report by Tim Przybyla)*

Mayor Pro Tem Rodriguez asked that a more detailed workshop on the investment report be scheduled at a future meeting. Council agreed.

**ON MOTION BY MAYOR PRO TEM RODRIGUEZ, AND SECONDED BY COUNCIL MEMBER ROBINSON, ITEM B-17, THE MINUTE ORDER APPROVING AND ACCEPTING THE CITY OF MADERA**

**INVESTMENT REPORT FOR THE QUARTER ENDING JUNE 30, 2018, WAS ADOPTED UNANIMOUSLY BY A VOTE OF 7-0.**

**C. HEARINGS, PETITIONS, BIDS, RESOLUTIONS, ORDINANCES, AND AGREEMENTS**

- C-1 Consideration of Resolution Approving Agreement with Carollo Engineers, Inc. for Professional Engineering Design Services for a Water Storage Tank, Pump Station, and Transmission Main for the City of Madera (Report by Keith Helmuth)**

The report was presented by Project Development Coordinator Ellen Bitter.

**ON MOTION BY COUNCIL MEMBER HOLLEY, AND SECONDED BY COUNCIL MEMBER GALLEGOS, ITEM C-1, RES. NO. 18-172, WAS ADOPTED UNANIMOUSLY BY A VOTE OF 7-0.**

**RES. NO. 18-172 A RESOLUTION OF THE COUNCIL OF THE CITY OF MADERA, CALIFORNIA, APPROVING AN AGREEMENT WITH CAROLLO ENGINEERS, INC. FOR PROFESSIONAL ENGINEERING DESIGN SERVICES FOR A WATER STORAGE TANK, PUMP STATION, AND TRANSMISSION MAIN FOR THE CITY OF MADERA**

- C-2 Second Reading and Consideration of Adoption of an Ordinance Pertaining to the Formulation of a City-Wide Youth Commission (Report by Mary Anne Seay)**

The report was presented by the Director of Parks and Community Services Mary Anne Seay.

The ordinance was read by title by the City Clerk.

**ON MOTION BY COUNCIL MEMBER RIGBY, AND SECONDED BY COUNCIL MEMBER HOLLEY, FURTHER READING WAS WAIVED AND ITEM C-2, ORD. NO. 954 C.S., WAS ADOPTED UNANIMOUSLY BY A VOTE OF 7-0.**

**ORD. NO. 954 C.S. AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MADERA, CALIFORNIA, ADDING SECTION 2-3.201 TO CHAPTER 3 OF TITLE II OF THE MADERA MUNICIPAL CODE PERTAINING TO THE CITY-WIDE MADERA YOUTH COMMISSION**

**D. WRITTEN COMMUNICATIONS**

There are no items for this section.

**E. ADMINISTRATIVE REPORTS**

- E-1 Informational Report on the Sustainable Communities Grant Program-State Route (SR) 145 (Yosemite Avenue) as Downtown Main Street (Report by Jimmy Monreal)**

The report was presented by Administrative Analyst Jimmy Monreal. Mr. Monreal provided an update on the Sustainable Communities Grant that will allow them to hire a consultant to create a plan for downtown. They are in the process of creating the RFP and have also reached out to local business owners and groups to create a steering committee. Council suggested including other groups/agencies such as the EDC, the Beautification Committee and Mr. Sigala who worked on affordable housing with the Housing Authority.

- E-2 Direction to Staff Regarding Setting a Date for Discussion of Items Related to the Water Enterprise Fund (Report by David Merchen)**

The report was presented by the Community Development Director David Merchen.

Council consensus was reached to schedule a special meeting on Tuesday, October 23, 2018 at 6:00 p.m. to discuss updated financial plan and water conservation revenues.

**F. COUNCIL REPORTS**

Council Member Robinson reported on his attendance at the Carpenters Union Local 701 meeting which included discussion on a progressive water platform for the San Joaquin Valley.

Council Member Robinson reported on his attendance at the Labor Day Celebration held at the Fresno Fairgrounds.

Council Member Robinson reported on his attendance at the Fresno State Reception for the new athletic director.

Council Member Gallegos announced that as a member of the Madera Evening Lions, she will give "Happy Bucks" in honor of Fastway Chicken.

Council Member Rigby commended the Police Department on their lip sync video.

Council Member Rigby encouraged all to attend the Madera Fair. He will be competing in the rib contest.

Council Member Holley announced that he will judge cakes at the fair.

Council Member Holley announced that this Sunday the Second Missionary Baptist Church is having their 2<sup>nd</sup> Annual Day for their door greeters.

Council Member Holley reported on his trip to Denver and their downtown revitalization.

Council Member Holley announced the passing of one of his cousins and asked for prayers.

Council Member Holley asked for prayers for the families on Pear Street.

Council Member Holley congratulated the Nishimoto family for all they do.

Council Member Oliver congratulated the Nishimoto family and thanked them for all they do.

Council Member Oliver welcomed new business Sugar Pine Smokehouse Restaurant scheduled to open later this year at the former Cool Hand Luke's location.

Mayor Medellin thanked Mrs. Dorothy Nishimoto for their wonderful family and all they do for this community.

Mayor Medellin expressed condolences to previous Mayor Robert Poythress on the loss of his brother.

**G. CLOSED SESSION**

**G-1 Closed Session Announcement – City Attorney**

The City Attorney announced the closed session items.

Recess 7:30 p.m. – 7:35 p.m.

The Council adjourned to closed session at 7:35 p.m. to discuss items G-2 and G-3 as listed on the agenda.

**G-2 Conference with Legal Counsel** – Anticipated Litigation. Significant exposure to litigation pursuant to Government Code §54956.9(d)(2) – 3 cases

**G-3 Conference with Labor Negotiators Pursuant to Government Code §54957.6**

Agency Designated Representatives: Steve Frazier, Wendy Silva

Unrepresented Positions:

City Clerk, City Administrator/City Manager, City Attorney, Planning Manager, Director of Community Development, Police Chief, Grant Administrator, City Engineer, Information Services Manager, Director of Parks & Community Services, Chief Building Official, Director of Financial Services, Public Works Operations Director and Director of Human Resources

**G-4 Closed Session Report** – City Attorney

The Council returned from closed session at 9:45 p.m. with all members present.

There was no reportable action for item G-2.

For item G-3, the City Attorney announced that an ad hoc committee consisting of Mayor Medellin and Council Members Rodriguez and Holley was appointed for contract negotiations with direct reports City Manager, City Attorney and City Clerk.

**ADJOURNMENT** - The meeting was adjourned at 9:47 p.m. Next regular meeting 9/19/18.

**CONSISTENCY WITH THE VISION MADERA 2025 PLAN**

Approval of the minutes is not addressed in the vision or action plans; the requested action is also not in conflict with any of the actions or goals contained in that plan.

\_\_\_\_\_  
SONIA ALVAREZ, City Clerk

\_\_\_\_\_  
ANDREW J. MEDELLIN, Mayor

City of Madera

Council Meeting Of October 03, 2018  
Agenda Item No. B-2

Memorandum To: The Honorable Mayor,  
City Council and City Administrator

From: Office of the Director of Finance

Subject: Listing of Warrants Issued

Date: 10/03/2018

Attached, for your information, is the register of the warrants for the City of Madera covering obligations paid during the period of:

September 11th, 2018 to September 24th, 2018

Each demand has been audited and I hereby certify to their accuracy and that there were sufficient funds for their payment.

General Warrant:	19226 - 19390	\$	1,269,378.54
Wire Transfer	Union Bank Payroll and Taxes	\$	633,562.75
Wire Transfer	SDI	\$	2,257.11
Wire Transfer	Cal Pers	\$	123,256.31

Respectfully submitted,



Tim Przybyla  
Financial Services Director

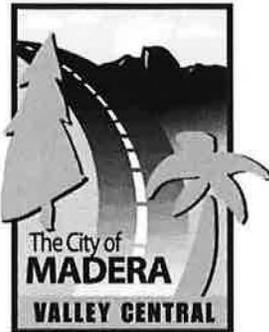
**CITY OF MADERA**  
**REGISTER OF AUDITED DEMANDS FOR BANK #1-UNION BANK GENERAL ACCOUNT**  
**October 3rd, 2018**

CHECK	PAY DATE	ISSUED TO	DESCRIPTION	AMOUNT
19226	09/14/2018	ALLIED STORAGE CONTAINERS	Metal Storage Container (Sea Van) for Parks Equip	3,512.71
19227	09/14/2018	AMERICAN BUSINESS MACHINES	COPIER LEASE AGREEMENT JUL - SEP 2018	3,270.48
19228	09/14/2018	AMERITAS LIFE INSURANCE CORP.	OCTOBER 2018 DENTAL INSURANCE	15,448.76
19229	09/14/2018	AT&T	08/18 CALNET 3 SERVICES	1,996.22
19230	09/14/2018	AT&T	08/18 CALNET 3 SERVICES	1,161.45
19231	09/14/2018	BSK ASSOCIATES	WATER SAMPLES	456.00
19232	09/14/2018	BUSH ENGINEERING, INC.	E. YOSEMITE AVE (SR 145) & ELM AVE PMT 1 08/18	50,768.00
19233	09/14/2018	CALIFORNIA DEPARTMENT OF JUSTICE	DOJ PRE EMPLOYMENT FINGERPRINTS AUG 2018	32.00
19234	09/14/2018	CALIFORNIA DISTRICT ATTORNEY'S ASSOC	STATE GENERAL FUND 97010 ACCT 206144	105.74
19235	09/14/2018	CHICAGO TITLE COMPANY	PURCHASE OF REAL PROPERTY FOR PD #FWFM5001600151	15,434.40
19236	09/14/2018	CONCENTRA MEDICAL CENTERS	PRE EMPLOYMENT EXAM/DOT RECERT EXAM	236.00
19237	09/14/2018	CS & FD MEDICAL WASTE DISPOSAL	MEDICAL WASTE 44 GAL PICKUP 8/23/18	139.00
19238	09/14/2018	CUSHMAN CONTRACTING CORPORATION	WWTP REHAB PROJECT 18-02 PMT #2 AUG 2018	77,852.50
19239	09/14/2018	DIAMOND COMMUNICATIONS	ALARM MONITORING YOUTH/PAN AM CNTR & UPDATE WWTP	773.17
19240	09/14/2018	FORENSIC NURSE SPECIALISTS, INC.	FRESNO SART #18M-07049	1,000.00
19241	09/14/2018	GCS ENVIRONMENTAL EQUIPMENT SERVICES	#329 REPLACEMENT REAR ENGINE	33,983.91
19242	09/14/2018	HAAKER EQUIPMENT CO.	SEWER NOZZLE	3,392.11
19243	09/14/2018	HERITAGE-CRYSTAL CLEAN, INC.	MAINTENANCE PARTS CLEANER	218.67
19244	09/14/2018	LEGACY K9 INC.	BI-MONTHLY MAINT TRAINING 3 CANINE-JUN TO AUG 2018	2,599.98
19245	09/14/2018	MADERA COUNTY	STATE GENERAL FUND 97010 ACCT 206144	2,537.67
19246	09/14/2018	MADERA COUNTY DISTRICT ATTORNEY	ORG KEY 03510 ACCT 673903	959.03
19247	09/14/2018	MADERA COUNTY DISTRICT ATTORNEY	ORG KEY 57760 ACCT 601000	1,057.38
19248	09/14/2018	MADERA COUNTY TRANSPORTATION COMMISSION	FY 2017-18 MEMBER ASSESSMENT FEE	8,430.00
19249	09/14/2018	MADERA DOWNTOWN ASSOC.	CITY COUNCIL PARADE ENTRY-OLD TIMERS DAY 09/29/18	75.00
19250	09/14/2018	MADERA POLICE DEPARTMENT	ASSET FORFEITURE DISTRIBUTION	1,586.04
19251	09/14/2018	MADERA POLICE DEPARTMENT	ASSET FORFEITURE DISTRIBUTION	5,286.83
19252	09/14/2018	MADERA TRIBUNE	SEPT PC NOTICE, #2 AND CC NOTICE FOR PC ITEM	627.25
19253	09/14/2018	MAJORS, BRIAN	PER DIEM - SWAT SCHOOL	367.00
19254	09/14/2018	MARTINEZ, ANTHONY	PER DIEM - SWAT SCHOOL	352.00
19255	09/14/2018	MATHIES, MICHAEL	PER DIEM - TRI STATE SEMINAR	272.00
19256	09/14/2018	MUNISERVICES, LLC	LTC DISCOVERY - AUG 2018	57.28
19257	09/14/2018	PACIFIC GAS & ELECTRIC	08/18 SERVICES	58.78
19258	09/14/2018	PIERCE CONSTRUCTION	REMOVE AND REPLACE DAMAGED ASPHALT	23,834.83
19259	09/14/2018	PRADO FAMILY SHOOTING RANGE	SHOOTING RANGE FEE - B MAJORS	75.00
19260	09/14/2018	PRADO FAMILY SHOOTING RANGE	SHOOTING RANGE FEE - A MARTINEZ	75.00
19261	09/14/2018	PRAXAIR DISTRIBUTION, INC.	CYLINDER DEMURRAGE	18.96
19262	09/14/2018	PROFORCE	ALS HLST LOW W/LIGHT BLK	750.83
19263	09/14/2018	PROGRAM WORKS, INC	PART TIME STAFF SCHEDULING SOFTWARE	522.00
19264	09/14/2018	ROJAS, JORGE	TRAVEL EXPENSE - CDBG ENV. REVIEW TRAINING	92.16
19265	09/14/2018	ROMERO, ARTURO	PER DIEM - TRI STATE SEMINAR	272.00
19266	09/14/2018	SERVICEMASTER BY J&C BROWN	JANITORIAL SVS - PD 08/23/18	370.00
19267	09/14/2018	SJVAPCD	18/19 PORTABLE EQUIPMENT REGISTRATIONS	738.00
19268	09/14/2018	TERRAFORM POWER, LLC.	AUG 2018 ELECTRIC UTILITIES - WWTP	21,869.48
19269	09/14/2018	TESEI PETROLEUM, INC.	FUEL 08/01-08/31	47,134.12
19270	09/14/2018	TRANSUNION RISK & ALTERNATIVE DATA SOL.	DATABASE ACCESS AUGUST 2018	165.18
19271	09/14/2018	AUSTIN THOMAS H AND ROSE MARIE	Utility Billing Credit Refund	120.23
19272	09/14/2018	CAMPAS GUADALUPE	Utility Billing Credit Refund	141.67
19273	09/14/2018	CARILLO ANAYS	Utility Billing Credit Refund	120.09
19274	09/14/2018	CITY OF MADERA	UTILITY BILLING DEPOSIT REFUND POST TO 9923117	63.40
19275	09/14/2018	ESPITIA CASANDRA	Utility Billing Credit Refund	115.86
19276	09/14/2018	GARCIA ZURITA ANTELMO	Utility Billing Credit Refund	57.08
19277	09/14/2018	GOMEZ JOSE JR OR CITY OF MADERA	Utility Billing Credit Refund	151.22
19278	09/14/2018	GONZALES JESSICA	Utility Billing Credit Refund	148.30
19279	09/14/2018	GROSSMAN KENT	Utility Billing Credit Refund	93.50
19280	09/14/2018	HERNANDEZ ISMAEL AND RITA RODRIGUEZ	Utility Billing Credit Refund	169.53
19281	09/14/2018	IBANEZ CRISTINA F	Utility Billing Credit Refund	133.87
19282	09/14/2018	KLAIR JASPAL	Utility Billing Deposit Refund	40.42
19283	09/14/2018	LOPEZ PEDRO A	Utility Billing Credit Refund	78.28
19284	09/14/2018	MIRANDA KAREN M	Utility Billing Credit Refund	115.69
19285	09/14/2018	NELSON RICHEL	Utility Billing Deposit Refund	15.84
19286	09/14/2018	NIEVES ANTONIO	Utility Billing Credit Refund	48.47
19287	09/14/2018	OBEROI MANPREET	Utility Billing Credit Refund	149.51
19288	09/14/2018	OBREGON JENNIFER	Utility Billing Credit Refund	13.52
19289	09/14/2018	OCHOA BENJAMIN	Utility Billing Deposit Refund	3.86
19290	09/14/2018	ROBLEDO LUPE AND SANTOS	Utility Billing Deposit Refund	78.74
19291	09/14/2018	SILVA JOAQUIN	Utility Billing Credit Refund	106.44
19292	09/14/2018	SINGH MALKIT	Utility Billing Credit Refund	221.05
19293	09/14/2018	THOMAS GREGORY	Utility Billing Credit Refund	120.72
19294	09/14/2018	TORRES MAYRA AND SINGH JASWINDER	Utility Billing Credit Refund	146.65
19295	09/14/2018	VASQUEZ MARICELA	Utility Billing Deposit Refund	21.35
19296	09/14/2018	VASQUEZ NICOLAS AND ANGEL MODESTA	Utility Billing Credit Refund	134.32
19297	09/14/2018	VIDALES VERONICA	Utility Billing Credit Refund	130.93

19298	09/14/2018	WHATLEY GENEVA OR CITY OF MADERA	Utility Billing Credit Refund	65.81
19299	09/14/2018	HARRY D. WILSON INC.	REPAIR & SAFETY INSPECTION TO 2014 HONDA #6604	1,913.35
19300	09/21/2018	ACRO SERVICE CORPORATION	TEMPORARY CONST MANAGER-W R BELL & DRAFTER S ROBERSON	6,420.00
19301	09/21/2018	ADMINISTRATIVE SOLUTIONS INC.	MONTHLY ADMIN FEE SEPTEMBER 2018	4,622.50
19302	09/21/2018	ADMINISTRATIVE SOLUTIONS INC.	ADMIN FEES FOR SEPTEMBER 2018	180.00
19303	09/21/2018	ADMINISTRATIVE SOLUTIONS INC.	MEDICAL & CHILD CARE EXPENSE ACCT 09/21/18 PAYROLL	1,274.21
19304	09/21/2018	AMERICAN BUSINESS MACHINES	COPIER SERVICE 09/18 - ENGINEERING DEPT	90.00
19305	09/21/2018	AMERICAN REFUSE, INC.	SERVICE - 201 ALMOND AVE	1,967.00
19306	09/21/2018	ANTHEM BLUE CROSS	CITY PAID RETIREE MEDICAL BILL FOR OCT 2018	1,730.64
19307	09/21/2018	MOEN, PAUL	HANGAR 89 DEPOSIT REFUND	200.00
19308	09/21/2018	WIENS, JIM	HANGAR 27 DEPOSIT REFUND	150.00
19309	09/21/2018	ARAMARK UNIFORM SERVICES	08/18 UNIFORM INVOICES	4,329.22
19310	09/21/2018	AT&T	08/18 CALNET 3 SERVICES	180.55
19311	09/21/2018	BOTWRIGHT JR., JOHN D.	PER DIEM - TRI STATE SEMINAR	272.00
19312	09/21/2018	BSK ASSOCIATES	WATER SAMPLES	456.00
19313	09/21/2018	CA DEPARTMENT OF CHILD SUPPORT	CHILD SUPPORT DEDUCTIONS FOR 09/21/18 PAYROLL	2,319.65
19314	09/21/2018	CANON FINANCIAL SERVICES	09/18 CONTRACT CHARGES 3091/7-15-70-23	3,816.71
19315	09/21/2018	CITY OF MADERA	09/18 UTILITIES ACCT# 003040421-6	87.46
19316	09/21/2018	CITY OF MADERA	09/18 UTILITIES ACCT# 003040431-8	87.51
19317	09/21/2018	CITY OF MADERA	HANGAR 57 DEPOSIT TRANSFER TO ACCT #58465	150.00
19318	09/21/2018	CITY OF MADERA	09/18 UTILITIES ACCT# 003040441-0	221.34
19319	09/21/2018	COLONIAL LIFE & ACCIDENT INSURANCE CO	#E700482-3 FOR 09/21/2018 PAYROLL	977.49
19320	09/21/2018	CORELOGIC INFORMATION SOLUTIONS INC	METRO SCAN AUGUST 2018	150.00
19321	09/21/2018	CSJVRMA	CSJVRMA 2ND QTR DEPOSIT FY 18/19	544,590.00
19322	09/21/2018	EMMETT'S EXCAVATION, INC.	WELL 27 PIPELINE OUTFALL EXT, JUN 2018 PMT #3	19,857.85
19323	09/21/2018	FIRE SAFETY SOLUTIONS, LLC	FIRE PROTECTION ENG SVS 09/01/18-09/15/18	10,368.75
19324	09/21/2018	FOSS, DAN	PER DIEM - POST MANAGEMENT SCHOOL 9/30-10/5	407.00
19325	09/21/2018	GLOBAL CTI GROUP	PHONE SWITCH LICENSE	2,068.38
19326	09/21/2018	GRUBER TECHNICAL INC.	PD Power System Maint	3,144.00
19327	09/21/2018	GUARDIAN WESTERN SWEEPING INC.	AUGUST 2018 STREET SWEEPING	569.00
19328	09/21/2018	HERC RENTALS	WATER TRUCK RENTAL & PLANER RENTAL	2,072.84
19329	09/21/2018	LSA ASSOCIATES, INC	VILLAGE D-EIR SVS THROUGH MAY 2018	1,471.25
19330	09/21/2018	M A C E A	SEPTEMBER 2018 MONTHLY DUES	2,475.00
19331	09/21/2018	M P O A	SEPTEMBER 2018 MONTHLY DUES	7,510.48
19332	09/21/2018	M.C.E.A.	SEPTEMBER 2018 MONTHLY DUES	370.00
19333	09/21/2018	MADERA CLEANERS AND LAUNDRY INC.	YOUTH CENTER MAY 2018 SERVICE	32.30
19334	09/21/2018	MADERA UNIFIED SCHOOL DISTRICT	AUGUST 2018 CNG FUEL USAGE	2,106.90
19335	09/21/2018	MAJORS, BRIAN	PER DIEM - SWAT SCHOOL 9/30-10/5	367.00
19336	09/21/2018	MARTINEZ, ANTHONY	PER DIEM - SWAT SCHOOL 9/30-10/5	352.00
19337	09/21/2018	MENDOZA, MARTIN	TRAVEL EXPENSE REIMBURSEMENT 9/11-9/13	40.00
19338	09/21/2018	MID-MGMT EMPLOYEE GROUP	SEPTEMBER 2018 MONTHLY DUES	700.00
19339	09/21/2018	MNJ TECHNOLOGIES DIRECT, INC.	Laptops for Water, Streets & PD - SURFACE PRO TABLET	67,806.94
19340	09/21/2018	N.P.C.-ORCHARD TRUST COMPANY	PLAN #340227-02 FOR 09/21/2018 PAYROLL	2,175.04
19341	09/21/2018	N.P.C.-ORCHARD TRUST COMPANY	PLAN #340227-01 FOR 09/21/2018 PAYROLL	9,417.75
19342	09/21/2018	ONTRAC	OVERNIGHT MAIL	7.52
19343	09/21/2018	MEINZER, CRAIG	TURF REPLACEMENT REBATE (18-05)	3,000.00
19344	09/21/2018	PACIFIC GAS & ELECTRIC	08/18 SERVICES	190.45
19345	09/21/2018	ALCARAZ, JUAN	PARKS DEPOSIT REFUND - LTC PAVILION	50.00
19346	09/21/2018	BIG BROTHERS BIG SISTERS	PARKS DEPOSIT REFUND - POOL	100.00
19347	09/21/2018	CAPISTRANO, BLANCA	PARKS DEPOSIT REFUND - EVENT CANCELLED	340.00
19348	09/21/2018	CARMONA, LAURA	PARKS DEPOSIT REFUND - POOL	100.00
19349	09/21/2018	COX, JEFF	PARKS DEPOSIT REFUND - MSR PAVILION	50.00
19350	09/21/2018	FERNANDEZ, VIOLET	PARKS DEPOSIT REFUND - ROTARY	50.00
19351	09/21/2018	FLORES, SARAH	PARKS DEPOSIT REFUND - POOL	100.00
19352	09/21/2018	GALLEGOS, ANTHONY	PARKS DEPOSIT REFUND - POOL	352.50
19353	09/21/2018	GALLEGOS, DARLENE	PARKS DEPOSIT REFUND - MSR PAVILION	50.00
19354	09/21/2018	GARCIA, SELENA	PARKS DEPOSIT REFUND - FRANK BERGON CENTER	100.00
19355	09/21/2018	GONZALEZ, ULYSSES	PARKS DEPOSIT REFUND - ROTARY	50.00
19356	09/21/2018	MACIEL, LAURA	PARKS DEPOSIT REFUND - ROTARY	50.00
19357	09/21/2018	MADERA GLASS PLANT	PARKS DEPOSIT REFUND - ROTARY	50.00
19358	09/21/2018	MOLINA, MIKE	PARKS DEPOSIT REFUND - LTC	50.00
19359	09/21/2018	MONTES, STEVE	PARKS DEPOSIT REFUND - ROTARY	50.00
19360	09/21/2018	MORENO, VALERIE	PARKS DEPOSIT REFUND - POOL	100.00
19361	09/21/2018	MURPHY, MANDEE	PARKS DEPOSIT REFUND - LTC PAVILION	50.00
19362	09/21/2018	NARCOTICS ANONYMOUS	PARKS DEPOSIT REFUND - ROTARY	50.00
19363	09/21/2018	NAVARRO, RUBY	PARKS DEPOSIT REFUND - POOL	100.00
19364	09/21/2018	NEW LIFE ASSEMBLY	PARKS DEPOSIT REFUND - LTC PAVILION	50.00
19365	09/21/2018	PAYNE, DENISE	PARKS DEPOSIT REFUND - ROTARY	50.00
19366	09/21/2018	PEREZ, MAG	PARKS DEPOSIT REFUND - ROTARY	50.00
19367	09/21/2018	PINON, ROBERT	PARKS DEPOSIT REFUND - POOL	100.00
19368	09/21/2018	VASQUEZ, ADRIAN	PARKS DEPOSIT REFUND - MSR PAVILION	50.00
19369	09/21/2018	VASQUEZ, MARTINA	PARKS DEPOSIT REFUND - ROTARY	50.00
19370	09/21/2018	PIERCE CONSTRUCTION	REMOVE AND REPLACE DAMAGE ASPHALT	16,681.85
19371	09/21/2018	PRAXAIR DISTRIBUTION, INC.	CYLINDER DEMURRAGE	518.63
19372	09/21/2018	REGENCE BLUECROSSS BLUESHIELD OF UTAH	CITY PD RETIREE PRESCRIPTION BILL-CHUMLEY OCT 2018	148.50
19373	09/21/2018	REGENCE BLUECROSSS BLUESHIELD OF UTAH	CITY PD RETIREE MEDICAL BILL - CHUMLEY OCT 2018	198.00

19374	09/21/2018 SAMARIN, STEVE	BEE HIVE REMOVAL - 921 S D ST	695.00
19375	09/21/2018 SERVICEMASTER BY J&C BROWN	HARD SURFACE FLOOR STRIPPING - PW	1,467.20
19376	09/21/2018 SHI INTERNATIONAL CORP.	SWITCH & AP FOR PD	1,971.02
19377	09/21/2018 SOUTHERN COMPUTER WAREHOUSE, INC.	DESKTOP PC	907.04
19378	09/21/2018 STANTEC CONSULTING SERVICES INC.	WWTP REHAB PROJECT CONSULTING SERVICES	11,489.54
19379	09/21/2018 STATE OF CALIFORNIA	FRANCHISE TAX DEDUCTIONS FOR 09/21/18 PAYROLL	762.36
19380	09/21/2018 SUPERIOR VISION INC.	OCTOBER 2018 VISION INSURANCE	2,534.73
19381	09/21/2018 TAG/AMS, INC.	DOT RANDOM TESTINGS	172.00
19382	09/21/2018 TAMARACK PEST CONTROL	SEPTEMBER 2018 PEST CONTROL SVS	510.00
19383	09/21/2018 TESEI PETROLEUM, INC.	PROPANE FOR FACILITIES/DIGESTER HEATING & FUEL 9/1-9/10	13,952.81
19384	09/21/2018 THE ARC FRESNO	CITY CAN ORDERS AUGUST 2018	2,714.00
19385	09/21/2018 UNION BANK OF CALIFORNIA	SVS FOR PERIOD MAY 1, 2018 TO JULY 31, 2018	875.00
19386	09/21/2018 US BANK CORPORATE PAYMENT SYSTEMS	08/18 CAL-CARD CHARGES	131,851.47
19387	09/21/2018 VANTAGEPOINT TRANSFER AGENTS-457	PLAN #302351 CONTRIBS FOR 09/21/18 PAYROLL	23,797.97
19388	09/21/2018 VERIZON WIRELESS	PW AIR CARDS & CITY CELL PHONE CHARGES JUL 11 - AUG 10	9,669.91
19389	09/21/2018 WILLDAN FINANCIAL SERVICES	CFD FEES FOR JULY 2018	801.66
		Bank # 1 - Union Bank General Account Total	1,269,378.54

## Report to City Council



**Council Meeting of October 3, 2018**

Agenda Item Number     B-3    

**Approved by:**

*Wendy Sileca*  
\_\_\_\_\_  
Department Director

*Steve Frayler*  
\_\_\_\_\_  
City Administrator

### Informational Report on Personnel Activity

#### REQUESTED ACTION

This report is provided at the request of the City Council and is for informational purposes only.

#### SUMMARY OF PERSONNEL ACTIVITY

The Civil Service Commission did not meet in the month of September.

The following individuals began employment with the City since our last report:

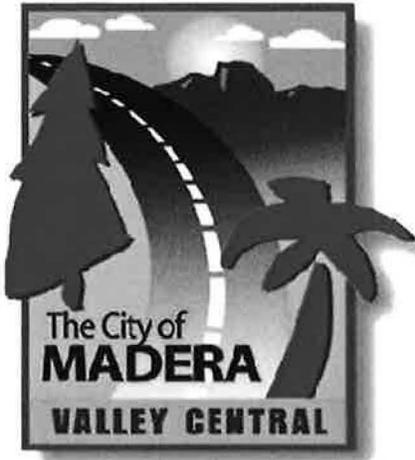
Name	Position	Department	Effective Date
Samantha Maahs	Program Leader I	Parks & Community Services	9/13/18
Monserrat Bello-Trujillo	Program Leader I	Parks & Community Services	9/24/18
Charlene Chambers	Volunteer	Engineering	9/20/18

The following promotions and transfers occurred since our last report:

Name	Old Position	New Position	Effective Date
Richard Marin	WWTP Operator in Training	WWTP Operator I	8/21/18
Anthony Munoz	WWTP Operator in Training	WWTP Operator I	8/21/18
Chris Boyle	Planning Manager	Senior Planner	9/15/18

The following employees separated from employment since our last report.

Name	Position	Department	Effective Date
Lindsey Estes	Program Leader I	Parks & Community Services Department	8/21/18



## REPORT TO CITY COUNCIL

MEETING DATE: October 3, 2018

AGENDA ITEM NUMBER: B-4

Approved By:

A handwritten signature in black ink, appearing to be "J. J. [unclear]".

INTERIM PUBLIC WORKS DIRECTOR

A handwritten signature in black ink, appearing to be "Steve Franjin".

CITY ADMINISTRATOR

### SUBJECT:

Consideration of a Resolution Amending the City of Madera FY 18/19 Budget for the Rental of a Street Sweeper.

### RECOMMENDATION:

It is recommended that Council adopt the attached Resolution and amend the City of Madera FY 18/19 Budget to provide additional funds for the rental of a street sweeper.

### SUMMARY:

The City has been granted federal funding (Congestion Mitigation and Air Quality, or CMAQ) to replace a street sweeper that was retired due to its CNG tanks expiring in May of 2018. Receipt of funding for the purchase of the new sweeper was delayed to the extent that renting a unit has become necessary as the RFP process and manufacture of the new sweeper progresses.

### DISCUSSION:

The City Streets Maintenance Division currently houses three street sweepers. Of the three units, unit #329 has been scheduled for replacement for the last two fiscal years due to its CNG tanks expiring. Staff anticipated this replacement in 2015 and moved to secure CMAQ funding to assist with the purchase of a new street sweeper at that time, as outlined below:

- December 2015 – Council approved submitting a grant application for CMAQ funding for seven projects, including replacing unit #329 with a new PM-10 certified street sweeper.
- January 2016 – The Madera County Transportation Commission (MCTC) approved all seven projects.
- December 2016 – The sweeper replacement project was listed and approved in the 2017 Federal Transportation Improvement Program (FTIP).
- March 2017 – City applied for a Buy America Waiver.
- April 2017 – The Federal Government advises partner agencies that the Buy America Waiver requests were placed on hold pending program review.

- April 2018 – The Buy America Waiver Program was re-instated.
- May 2018 – Unit #329 was retired from the City fleet.
- June 25, 2018 – City staff requested an Authorization to Proceed from Caltrans.
- August 3, 2018 – The Authorization to Proceed was received from Caltrans.
- September 2018 – The City internal procurement process began.

Delays related to securing the Buy America Waiver and processing of the Authorization to Proceed resulted in funding being delayed for nearly 17 months. While awaiting approval from Caltrans, staff were forced to retire unit #329 to remain in compliance with State laws, leaving only two viable sweepers in the Street's Division. In order to maintain current street sweeping workloads within the City, staff was forced to rent a street sweeper at the rate of \$11,000 per month beginning in June 2018.

Due to the cost of the rental of a temporary sweeper, staff in Fleet, Public Works and Finance weighed several options on how to reduce the amount of time the rental would be needed. The Fleet Department worked with Public Works to present a list of repairs that could be made to the retired unit (#329) in order to temporarily bring it back into service until the new street sweeper could be purchased and manufactured, likely December 2019. Repair work to Unit #329 is underway.

Staff anticipates that the repairs to unit #329 will be completed by December 2018. This unit will then resume its role as the third sweeper in the fleet and the rental will be returned, which will save the City on rental costs until the new street sweeper arrives. It is important to note that while the use of #329 will be cost effective in the short term, this unit will not likely be a useful alternative after another year in the fleet. Staff is working to finalize the RFP for the new street sweeper and hopes to have it advertised before the end of October.

#### **FINANCIAL IMPACT:**

In order to continue with the rental of this street sweeper through the end of the calendar year, staff will need an additional \$50,000 for rental fees. The Fleet Department has proposed that the Vehicle Replacement Fund cover the cost of this rental until unit #329 is repaired. The Fleet Replacement Fund annual charges to Street Cleaning for the replacement sweeper have been based on full replacement value. This will be reduced by the CMAQ funding, leaving a fund balance available to assist with the rental costs. The proposed budget amendment will transfer \$50,000 from the Vehicle Replacement Fund into the Street Cleaning Fund and increase that Fund's Contracted Services budget line item.

#### **CONSISTENCY WITH THE VISION MADERA 2025 PLAN:**

Strategy 126 – Clean, attractive streets: Expand or develop programs to create clean, safe and aesthetically pleasing streets.

RESOLUTION NO. \_\_\_\_\_

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF  
MADERA AMENDING THE FY 2018/19 ANNUAL BUDGET  
TO INCREASE EXPENDITURE ALLOCATIONS IN THE  
STREET CLEANING FUND BUDGET TO PROVIDE FOR THE  
RENTAL OF A STREET SWEEPER**

WHEREAS, the City Council previously adopted a City-wide Budget for the 2018/2019 Fiscal Year; and

WHEREAS, the City of Madera (City) has determined that it is necessary to extend the rental term of a street sweeper in order to maintain City sweeping routes; and

WHEREAS, expenditure accounts will need to be increased within the Street Cleaning Fund for contracted service activities; and

WHEREAS, the Fleet Department has an adequate Vehicle Replacement Fund balance available to allow for the increase of appropriations.

NOW, THEREFORE, THE COUNCIL OF THE CITY OF MADERA HEREBY resolves, finds, determines and orders as follows:

1. The above recitals are true and correct.
2. The budget of the Street Cleaning Fund is hereby amended as shown in Exhibit AA to this Resolution to transfer funds from the Fleet Fund into the Street Cleaning Fund and to increase appropriations for the rental of a street sweeper.
3. A signed copy of this resolution shall be placed on file in the Office of the Director of Financial Services who shall prepare the entries necessary to reflect budget changes identified in the City's accounting system.
4. This Resolution is effective immediately upon adoption.

\* \* \* \* \*

**EXHIBIT AA  
CITY OF MADERA**

**Budget Appropriations: Res. 18- 10/03/2018**

**Budget Adjustments for Fiscal Year 2018/19**

FUND	ORG CODE	OBJECT CODE	DESCRIPTION	(+)	(-)
Fleet Vehicle Replacement Fund	30701240	8200	Operating Transfer to Other Funds	\$ 50,000	
Street Cleaning Fund	47603630	4355	Transfer In		\$ 50,000
Street Cleaning Fund	47603630	6440	Contracted Services	\$ 50,000	
				<u>\$ 100,000</u>	<u>\$ 50,000</u>



## REPORT TO CITY COUNCIL

COUNCIL MEETING OF October 3, 2018  
AGENDA ITEM NUMBER B-5

APPROVED BY:

DEPARTMENT DIRECTOR

CITY ADMINISTRATOR

**SUBJECT: CONSIDERATION OF A RESOLUTION APPROVING AGREEMENT FOR OUTSIDE OF CITY WATER AND SEWER SERVICE WITH THE MADERA UNIFIED SCHOOL DISTRICT (MUSD) FOR THE MATILDA TORRES HIGH SCHOOL LOCATED AT 16645 ROAD 26 (COUNTRY CLUB DRIVE), APPROVING COVENANT TO ANNEX, AUTHORIZING THE MAYOR TO EXECUTE THE AGREEMENT AND COVENANT ON BEHALF OF THE CITY AND DIRECTING STAFF TO RECORD THE AGREEMENT AND COVENANT**

### RECOMMENDATION:

That the City Council approves Resolution No. 18-\_\_\_:

1. Approving the request by MUSD for connection to the City's water and sewer system.
2. Authorizing the Mayor to execute the agreement and Covenant on behalf of the City.
3. Directing staff to record the agreement and covenant.

### Engineering

205 W. Fourth Street • Madera, CA 93637 • TEL (559) 661-5418 • FAX (559) 675-6605

[www.cityofmadera.ca.gov](http://www.cityofmadera.ca.gov)

## **BACKGROUND:**

The City has a policy wherein properties which are located outside the City Limits and are adjacent to the City water system, may under certain conditions, apply for and receive City water service.

## **SITUATION:**

The property owner, Madera Unified School District, has begun construction of the Matilda Torres High School project located on the south side of Martin Street, east of Road 26 (Country Club Dr.). The MUSD has requested they be allowed to connect to the City's existing 12" water main located in Road 26 via a new 12" line to be constructed on Road 26 and Martin Streets. The MUSD has requested they be allowed to connect to the existing 24" sewer main located in Ellis Street via a new sewer main (24", 21" and 15") to be constructed on Ellis Street and Road 26 (Country Club Drive).

Prior to water connection, owner agrees to sign the attached "**COVENANT TO ANNEX TO THE CITY OF MADERA AND WAIVE THE RIGHT TO PROTEST THERETO**".

The Local Agency Formation Commission (LAFCO) has approved the connection to City water and sewer service outside the current City limits.

The Matilda Torres High School site is located within an area that the City may be considering annexing in the foreseeable future. Council discussion regarding such an annexation is set to occur separately on the October 3<sup>rd</sup> agenda or as soon thereafter as possible. Regardless of any direction provided by the Council as to future annexation of the high school property or surrounding areas, approval of this request for an extraterritorial sewer and water connection is recommended. This is because the time difference between when physical connection to City services is needed and when an annexation could be finalized may be significant.

The MUSD has indicated a desire to enter into a reimbursement agreement with the City for the oversize cost of the water and sewer infrastructure for which they are installing. However, a formal request for reimbursement has not yet been received. Typically, those who request outside of City services are not provided an opportunity for reimbursement. In this case, staff believes it is reasonable consider such a request given the magnitude of the investment by the MUSD and the likelihood that the investment will enhance development opportunities on surrounding properties in the near-term. It should be noted that all impact fees for water and sewer have been waived in accordance with Resolution Number 18-28 approved on March 7, 2018. Upon receipt of a formal request from MUSD, staff will present a separate staff report and agreement for consideration.

## **FISCAL IMPACT:**

Approving this request for outside of city water and sewer service imposes no additional expense to the City or the General Fund.

## **CONSISTENCY WITH THE VISION MADERA 2025 PLAN:**

The installation of an outside the City Limits water service connection to the site is not specifically addressed in the vision or action plans.

RESOLUTION NO. 18-\_\_\_

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MADERA, CALIFORNIA, APPROVING THE AGREEMENT WITH MADERA UNIFIED SCHOOL DISTRICT, FOR OUTSIDE OF CITY WATER AND SEWER SERVICE FOR 16645 ROAD 26 (COUNTRY CLUB DRIVE), APPROVING THE COVENANT TO ANNEX, AUTHORIZING THE MAYOR TO EXECUTE THE AGREEMENT AND COVENANT ON BEHALF OF THE CITY AND DIRECTING STAFF TO RECORD THE AGREEMENT AND COVENANT**

**WHEREAS**, the Madera Unified School District desires to connect the property located at 16645 Road 26 to the City water and sewer systems; and

**WHEREAS**, the property is located in the unincorporated territory of the County of Madera; and

**WHEREAS**, the City Council is willing to authorize said connection to the City's water and sewer systems, subject to certain conditions.

**NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF MADERA HEREBY** finds, orders and resolves as follows:

1. The above recitals are true and correct.
2. That certain agreement for water and sewer system connections by and between the City and the Madera Unified School District, owner of the property located on the southeast corner of Road 26 and Martin Street, known as 16645 Road 26, a copy of which is on file in the Office of the City Clerk and which reference is hereby made for full particulars as to terms and conditions thereof, is approved.
3. The Covenant to Annex to the City of Madera and Waive the Right to Protest Thereof, a copy of which is on file in the Office of the City Clerk and which reference is hereby made for full particulars as to terms and conditions thereof, is approved.
4. The Mayor is authorized and directed to execute said Agreement and Covenant on behalf of the City.
5. Staff is hereby directed to record the Agreement and Covenant
6. This resolution is effective immediately upon adoption.

\*\*\*\*\*

Recording Requested By:  
City of Madera  
When Recorded Return To:  
City of Madera, City Clerk  
205 W. 4th Street  
Madera, CA 93637

---

Fee Waived Per Sections 27383 & 27388.1(a)(2)(D) of the Government Code

No Doc. Tax Due

**AGREEMENT FOR OUTSIDE CITY LIMITS  
WATER AND SEWER CONNECTIONS FOR 16645 ROAD 26**

AGREEMENT MADE AND ENTERED INTO this \_\_\_\_ day of \_\_\_\_\_, 2018, by and between the CITY OF MADERA, a municipal corporation of the State of California, hereinafter called "CITY" and the MADERA UNIFIED SCHOOL DISTRICT, hereinafter called "APPLICANT".

**W I T N E S S E T H**

**WHEREAS**, APPLICANT is the owner of that certain property consisting of 57.19 acres, more or less, located on the southeast corner of Road 26 and Martin Street, known as 16645 Road 26, in the unincorporated territory of Madera County; and

**WHEREAS**, APPLICANT desires a water and sewer connection to serve APPLICANT'S property at said address; and

**WHEREAS**, CITY is willing to authorize said water and sewer connection subject to conditions agreeable to APPLICANT;

**NOW, THEREFORE**, the parties hereto agree as follows:

1. Subject to and in accordance with all of the conditions set forth in this agreement, CITY hereby authorizes APPLICANT to connect to existing water and sewer mains to serve APPLICANT'S property located on the southeast corner of Road 26 and Martin Street, which property is more particularly described as follows:

See attached Exhibit "A" made a part hereof

2. Prior to any such installations, APPLICANT shall pay to City connection, permit, inspection or other fees as required. On and after connection of APPLICANT'S

property to the CITY water and sewer systems, APPLICANT shall pay to CITY the appropriate monthly water and sewer service charges.

3. APPLICANT agrees that connection at this time is for the purpose of providing domestic water and sewer service to property located on the southeast corner of Road 26 and Martin Street. Any future water connection for property development purposes is subject to approval of CITY.

4. APPLICANT hereby agrees, prior to receipt of CITY water service, to install a water meter and a reduced pressure back flow prevention device at property line in accordance with City Standard Specifications and destroy any existing wells in accordance with the Madera County and California Department of Health Standards; and prior to receipt of CITY sewer service to install a sewer clean out at the property line in accordance with City Standards Specifications or connect directly to a manhole in the street and destroy any existing septic tanks in accordance with the Madera County and California Department of Health Standards.

5. APPLICANT hereby agrees to the annexation to the CITY of all of APPLICANT'S property described herein and agrees to pay any and all fees and charges associated therewith and hereby irrevocably consents to the annexation of said real property as soon as the Subject Property meets the standards for annexation as determined by the City and waives any right to protest such annexation.

6. APPLICANT agrees that water connection shall be subject to all City water regulations and fines as may be contained in City of Madera Municipal Code.

7. CITY reserves the right to terminate water service provided herein in the event of breach by APPLICANT of any of the terms of the agreement, including but not necessarily limited to the non-payment of monthly service charges. In no event shall APPLICANT'S consent to annexation, however, be considered revocable as a result of the terms of this paragraph.

8. This agreement shall be recorded and is considered a covenant running with the land and is binding upon APPLICANT, APPLICANT'S heirs, executors, administrators, assigns and successors in interest.

IN WITNESS WHEREOF, the parties hereto have executed this agreement the day and year hereinabove first written.

CITY OF MADERA

CITY OF MADERA

Accepted by:

By: \_\_\_\_\_

By: \_\_\_\_\_

Andrew J. Medellin, Mayor

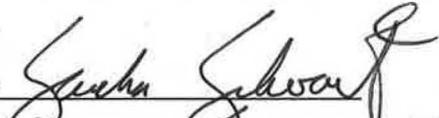
Keith B. Helmuth

City Engineer

OWNERS/APPLICANTS

MADERA UNIFIED SCHOOL DISTRICT

ATTEST:

By:   
Title: DEPUTY SUPERINTENDENT

By: \_\_\_\_\_

Sonia Alvarez, City Clerk

APPROVAL AS TO FORM:

By: \_\_\_\_\_

Brent Richardson, City Attorney

ATTACH NOTARY

ACKNOWLEDGEMENT

# ACKNOWLEDGMENT

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California  
County of MADERA

On September 5, 2018 before me, Daniel Gonzalez  
(insert name and title of the officer)

personally appeared SANDON SCHWARTZ  
who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

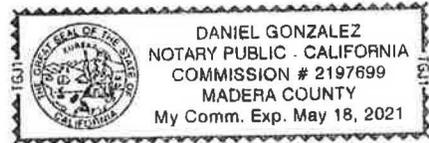
I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature

Daniel Gonzalez

(Seal)



APN 038-010-018

The West 1/5 of the South 1/2 of the North 1/2 of the Northwest 1/4 of the Southwest 1/4 of the Northwest 1/4 of Section 12, Township 11 South, Range 17 East, Mount Diablo Base and Meridian, according to the official Plat thereof.

EXCEPTING THEREFROM the North 10 feet thereof.

ALSO EXCEPTING THEREFROM the West 50 feet thereof.

APN 038-010-019

PARCEL 1:

The East 4/5ths of the South half of the North half of the Northwest quarter of the Southwest quarter of the Northwest quarter of Section 12, Township 11 South, Range 17 East, Mount Diablo Base and Meridian, according to the Official Plat thereof

EXCEPTING THEREFROM the North 10 feet thereof

ALSO EXCEPTING THEREFROM any portion thereof which may lie within the North 155 feet of the South 310 feet of the North half of the Northwest quarter of the Southwest quarter of the Northwest quarter of said Section 12

PARCEL 2:

The North half of the South half of the Northwest quarter of the Southwest quarter of the Northwest quarter of Section 12, Township 11 South, Range 17 East, Mount Diablo Base and Meridian, according to the Official Plat thereof

EXCEPTING THEREFROM that portion in the Deed to the County of Madera, recorded February 3, 1993, as Document No. 9303132, Official Records.

APN 038-010-020

The South half of the South half of the Northwest quarter of the Southwest quarter of the Northwest quarter of Section 12, Township 11 South, Range 17 East, Mount Diablo Base and Meridian, County of Madera, State of California, according to the official plat thereof.

APN 038-020-021

The South half of the Southwest quarter of the Northwest quarter of Section 12, Township 11 South, Range 17 East, M.D.B. & M., according to the United States Government Township Plats.

EXCEPTING THEREFROM that portion thereof lying within the West 50 feet of the South 660 feet of the North one half of said Section 12.

ALSO EXCEPTING THEREFROM an undivided one-half interest in and to the oil, gas and minerals in and under said real property, as reserved by Elmer Britten and Alice R. Britten, husband and wife, in Deed dated February 12, 1953 and recorded February 24, 1953 in Vol. 574 of Official Records, Page 16, Madera County Records.

APN 038-010-029

Unincorporated Area Parcel 1 of Parcel Map No. 1663, according to the map thereof recorded in the County of Madera, State of California, on July 5, 1979 in Book 25 Page 163 of Maps, Madera County Records.

EXCEPTING THEREFROM that portion thereof lying within the North 30 feet of the Southeast quarter of the Northwest quarter of Section 12, Township 1 South, Range 17 East, Mount Diablo Base and Meridian, according to the Official Plat thereof, as conveyed to the County of Madera by Deed recorded May 1, 1979 in Book 1460 Page 448 of Official Records, Document No. 10590.

ALSO EXCEPTING THEREFROM an undivided one-half interest in and to all the oil, gas and minerals in and under said land; as reserved by Helen B. Arnold, a widow and Dorothy A. Poston, an unmarried woman, in Deed dated May 10, 1956 and recorded June 6, 1956 in Book 671, Page 544 of Official Records, Madera County Records, Document No. 19158.

APN 038-010-030

Parcel 2 of Parcel Map No. 1663, recorded in the County of Madera, State of California, on July 6, 1979 in Book 25 Page 163, Madera County Records; more particularly described as all that portion of Southeast quarter of the Northwest quarter of Section 12, Township 11 South, Range 17 East, Mount Diablo Base and Meridian.

EXCEPTING THEREFROM an undivided 1/2 interest in and to all oil, gas, and minerals in and under said land; as reserved by Helen D. Arnold, a widow and Dorothy A. Poston an unmarried woman, in Deed dated May 10, 1956 and recorded June 6, 1956 in Volume 671 of Official Records, Page 544, as Document No. 19158, Madera County Records.

ALSO EXCEPTING THEREFROM the North 30 feet of said Section 12, as conveyed to the County of Madera in Deed dated April 27, 1979 and recorded May 1, 1979 in Volume 1460 of Official Records, Page 448, Madera County Records.

APN 038-010-031

THE LAND REFERRED TO HEREIN BELOW IS SITUATED IN THE COUNTY OF MADERA, STATE OF CALIFORNIA, AND IS DESCRIBED AS FOLLOWS:

Parcel 1 of Parcel Map No. 3917, County of Madera, State of California, according to the map thereof recorded in Book 50 of Parcel Maps, at Pages 101, 102 and 103, Madera County Records.

Excepting therefrom an undivided one-half interest in and to all oil, gas and minerals in and under said land as reserved by J.G. Ward, et ux, in deed dated July 16, 1954 and recorded August 4, 1954 in Book 615 of Official Records, Page 400, Madera County Records.

Also excepting therefrom an undivided one-quarter interest in all oil, gas and minerals and other hydrocarbon substances now or at any time hereafter situated therein and thereunder, as reserved by Alton G. Hays and Katieray Hays, his wife, in deed dated November 1, 1963 and recorded November 6, 1963 in Book 883 of Official Records, Page 11, Madera County Records, as Document No. 15476.

APN 038-010-032

**Parcel 2 of parcel Map No. 3917 according to the map thereof recorded in Book 50 of Parcel Maps at pages 101, 102 and 103, Madera County Official Records.**

**EXCEPTING THEREFROM an undivided one-half interest in and to all oil, gas and minerals in and under said land as reserved by J. G. Ward, etux, in deed dated July 16, 1954 and recorded August 4, 1954 in book 615, Page 400 of Official Madera County Records.**

**ALSO EXCEPTING THEREFROM an undivided one-quarter interest in all oil, gas and minerals and other hydrocarbon substances now or at any time hereafter situated therein and thereunder, as reserved by Alton G. Hays and Katieray Hays, his wife, in deed dated November 1, 1963 and recorded November 6, 1963 in Book 883, Page 11. as document 15476 in Madera County Official Records.**

APN 038-010-033

**The North 155 feet of the South 310 feet of the North half of the Northwest quarter of the Southwest quarter of the Northwest quarter of Section 12, Township 11 South, Range 17 East, Mount Diablo Base and Meridian, according to the Official Plat thereof.**

**EXCEPTING THEREFROM the West 50.00 feet thereof.**

\*\*\*\*\*

Recording Requested By:  
City of Madera  
When Recorded Return To:  
City of Madera, City Clerk  
205 W. 4th Street  
Madera, CA 93637

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Fee Waived Per Sections 27383 & 27388.1(a)(2)(D) of the Government Code

No Doc. Tax Due

**COVENANT TO ANNEX TO THE CITY OF MADERA  
AND WAIVE THE RIGHT TO PROTEST THERETO**

**RECITALS**

WHEREAS, the undersigned, Covenantor, hereby represents and warrants that they are the record owner of the real property (the "Subject Property") commonly known as 16645 Road 26, situated in the County of Madera, State of California, and more particularly described as:

See attached Exhibit "A" made a part hereof

WHEREAS, the Covenantor hereby warrants that any and all parties having record title interest in the Subject Property which may ripen into a fee have subordinated to this instrument; and

WHEREAS, all such instruments of Subordination, if any are attached hereto and made a part of this instrument; and

WHEREAS, Covenantor's property currently is located in unincorporated portion of Madera County and is seeking permission from the City to connect to the City water and sewer system located adjacent to Covenantor's property.

**COVENANTS**

NOW, THEREFORE, the Covenantor hereby covenants, promises and agrees with the City of Madera, for the benefit of said City its public property and the Subject Property, as follows:

1. The Covenantor hereby agrees to willingly participate in the annexation of the Subject Property to the City of Madera, including filing an application for annexation and paying all applicable fees related thereto as soon as the Subject Property meets the standards for annexation as determined by the City.
2. The Covenantor hereby agrees to the annexation of the Subject Property and waives any right to protest the annexation thereof.
3. Whenever the context hereof requires, the neuter shall include the masculine or feminine, or both, the singular shall include the plural. It is the intention hereof that this document shall constitute a covenant running with the Subject Property owned by the Covenantor, jointly and severally binding upon the undersigned and each of their heirs, representatives, successors and assigns.
4. The Covenant shall be released and of no further effect upon a written determination by the City Engineer of the City of Madera that its continued existence and enforcement are no longer necessary.

CITY OF MADERA

Accepted by:

By: \_\_\_\_\_

Keith B. Helmuth  
City Engineer

CITY OF MADERA

By: \_\_\_\_\_

Andrew J. Medellin, Mayor

OWNERS/APPLICANTS

MADERA UNIFIED SCHOOL DISTRICT

ATTEST:

By: \_\_\_\_\_

Sonia Alvarez, City Clerk

By: \_\_\_\_\_

Title: DEPUTY SUPERINTENDENT

APPROVAL AS TO FORM:

By: \_\_\_\_\_

Brent Richardson, City Attorney

ATTACH NOTARY

ACKNOWLEDGEMENT

# ACKNOWLEDGMENT

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California  
County of MADERA

On SEPTEMBER 5, 2018 before me, Daniel Gonzalez, Notary  
(insert name and title of the officer)

personally appeared SANDON SCHWARTZ,  
who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) ~~is~~/are  
subscribed to the within instrument and acknowledged to me that ~~he~~/she/they executed the same in  
~~his~~/her/their authorized capacity~~(ies)~~, and that by ~~his~~/her/their signature(s) on the instrument the  
person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

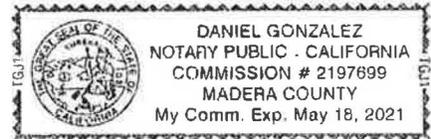
I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature



(Seal)



APN 038-010-018

The West 1/5 of the South 1/2 of the North 1/2 of the Northwest 1/4 of the Southwest 1/4 of the Northwest 1/4 of Section 12, Township 11 South, Range 17 East, Mount Diablo Base and Meridian, according to the official Plat thereof.

EXCEPTING THEREFROM the North 10 feet thereof.

ALSO EXCEPTING THEREFROM the West 50 feet thereof.

APN 038-010-019

PARCEL 1:

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EXCEPTING THEREFROM the North 10 feet thereof

ALSO EXCEPTING THEREFROM any portion thereof which may lie within the North 155 feet of the South 310 feet of the North half of the Northwest quarter of the Southwest quarter of the Northwest quarter of said Section 12

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APN 038-010-020

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APN 038-020-021

The South half of the Southwest quarter of the Northwest quarter of Section 12, Township 11 South, Range 17 East, M.D.B. & M., according to the United States Government Township Plats.

EXCEPTING THEREFROM that portion thereof lying within the West 50 feet of the South 660 feet of the North one half of said Section 12.

ALSO EXCEPTING THEREFROM an undivided one-half interest in and to the oil, gas and minerals in and under said real property, as reserved by Elmer Britten and Alice R. Britten, husband and wife, in Deed dated February 12, 1953 and recorded February 24, 1953 in Vol. 574 of Official Records, Page 16, Madera County Records.

APN 038-010-029

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APN 038-010-030

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ALSO EXCEPTING THEREFROM the North 30 feet of said Section 12, as conveyed to the County of Madera in Deed dated April 27, 1979 and recorded May 1, 1979 in Volume 1460 of Official Records, Page 448, Madera County Records.

APN 038-010-031

THE LAND REFERRED TO HEREIN BELOW IS SITUATED IN THE COUNTY OF MADERA, STATE OF CALIFORNIA, AND IS DESCRIBED AS FOLLOWS:

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Excepting therefrom an undivided one-half interest in and to all oil, gas and minerals in and under said land as reserved by J.G. Ward, et ux, in deed dated July 16, 1954 and recorded August 4, 1954 in Book 615 of Official Records, Page 400, Madera County Records.

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APN 038-010-032

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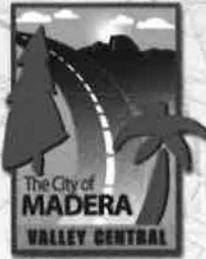
ALSO EXCEPTING THEREFROM an undivided one-quarter interest in all oil, gas and minerals and other hydrocarbon substances now or at any time hereafter situated therein and thereunder, as reserved by Alton G. Hays and Kateray Hays, his wife, in deed dated November 1, 1963 and recorded November 6, 1963 in Book 883, Page 11. as document 15476 in Madera County Official Records.

APN 038-010-033

The North 155 feet of the South 310 feet of the North half of the Northwest quarter of the Southwest quarter of the Northwest quarter of Section 12, Township 11 South, Range 17 East, Mount Diablo Base and Meridian, according to the Official Plat thereof.

EXCEPTING THEREFROM the West 50.00 feet thereof.

\*\*\*\*\*



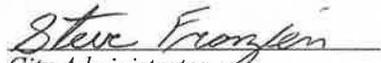
## REPORT TO CITY COUNCIL

Approved By

  
Department Director

Council Meeting of October 3, 2018

Agenda Item Number          B-6

  
City Administrator

**SUBJECT:      CONSIDERATION OF A RESOLUTION ACCEPTING AN  
IRREVOCABLE OFFER OF DEDICATION DEED FROM THE  
PROPERTY OWNER FOR THE OLIVE AVENUE WIDENING  
AND RECONSTRUCTION PROJECT BETWEEN GATEWAY  
DRIVE AND KNOX STREET**

### RECOMMENDATION:

That the City Council approves Resolution No. 18 - \_\_\_\_\_:

1.     Accepting the Irrevocable Offer of Dedication Deed.
2.     Authorizing the City Clerk to prepare the Certificate of Acceptance.
3.     Authorizing the City Engineer to have the deed recorded by the County Clerk/Recorder

### SUMMARY:

The Irrevocable Offer of Dedication Deed for thirty feet of right of way was a requirement of the A&S Metals Conditional Use Permit (CUP 2010-10). The deed is for a right of way easement that is within the adopted Specific Plan for Olive Avenue.

### Engineering

## **DISCUSSION:**

The A&S Metals Conditional Use Permit (CUP 2010-10) required the property owner, at his own expense, to provide to the City of Madera an irrevocable offer of dedication deed for an additional 30 feet of right of way easement along the parcel's frontage. A copy of the deed and legal description is attached hereto.

The project will consist of widening and reconstructing Olive Avenue between Gateway Drive and Roosevelt Street to Arterial Street Standards of a 100 foot right of way with four travel lanes with a median and completing the arterial street standard improvements on Olive Avenue between Roosevelt Street and Knox Street. The Project will include a new UPRR crossing protection and signal and installation of a traffic signals at the intersections of Roosevelt Street and Knox Street. The project also includes street widening improvements to meet Collector Street Standards on Knox Street between Neplus Way and Olive Avenue.

In April 1996, the City of Madera adopted a Mitigated Negative Declaration for the East Olive Plan Line and Building Setback Project (East Olive Avenue Plan Line) for the widening of Olive Avenue to a 100 foot right of way arterial standard street. The Mitigated Negative Declaration was certified based on an Initial Study in conformance with the California Environmental Quality Act (CEQA). On November 10, 2015, the City of Madera Planning Commission approved an Addendum to the Mitigated Negative Declaration for the Adoption of the East Olive Plan Line to include Olive Avenue between Gateway Drive and Knox Street. The approval of the addendum was based on an analysis of the proposed project within the Environmental Assessment, Initial Study and Mitigated Negative Declaration prepared by staff pursuant to the CEQA Section 15164.

## **FISCAL IMPACT:**

There will be no impact to the City's General Fund for the right of way costs.

## **CONSISTENCY WITH THE VISION MADERA 2025 PLAN**

**Strategy 126** - This project supports this strategy for providing clean, attractive streets that are safe and aesthetically pleasing.

**Strategy 138** – This project supports this strategy to establish and enforce ADA standards throughout the community.

**RESOLUTION NO. 18-\_\_\_\_\_**

**A RESOLUTION OF THE COUNCIL OF THE CITY OF MADERA,  
CALIFORNIA, ACCEPTING THE IRREVOCABLE OFFER OF  
DEDICATION DEED FROM THE PROPERTY OWNER FOR THE  
OLIVE AVENUE WIDENING AND RECONSTRUCTION PROJECT**

**WHEREAS**, the City Council of the City of Madera has approved the Olive Avenue Widening and Reconstruction Project between Gateway Drive and Knox Street and Knox Street between Neplus Way and Olive Avenue (the Project); and

**WHEREAS**, the Project requires additional right of way to widen Olive Avenue to Arterial Street standards, a width of 100 feet; and

**WHEREAS**, the property owner listed in Exhibit A attached hereto, has submitted the Irrevocable Offer of Dedication Deed as required by Conditional Use Permit (CUP 2010-10); and

**WHEREAS**, in April 1996, the City of Madera adopted a Mitigated Negative Declaration for the East Olive Avenue Plan Line and Building Set Back Project (East Olive Avenue Plan Line) for the widening of Olive Avenue to a 100 foot right of way arterial standard street. The Mitigated Negative Declaration was certified based on an Initial Study in conformance with the California Environmental Quality Act (CEQA). The Addendum to the Mitigated Negative Declaration for the widening of East Olive Avenue to 100 feet right of way arterial standard was approved by the Madera Planning Commission on November 10, 2015; and

**WHEREAS**, the Irrevocable Offer of Dedication Deed recommended for acceptance is on file in the office of the City Clerk.

**NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF MADERA** hereby resolves, finds, determines and orders as follows:

1. The above recitals are true and correct.
2. The City Council of the City of Madera approves the Irrevocable Offer of Dedication Deed, a copy of which is on file in the Office of the City Clerk and referred to for particulars.
3. The City Clerk is authorized to prepare the Certificate of Acceptance for the Deed.
4. The City Engineer is authorized to have the Deed recorded by the County of Madera Clerk/Recorder.
5. This resolution is effective immediately upon adoption.

\* \* \* \* \*

**EXHIBIT A**

**PROPERTY OWNER LIST**

IRREVOCABLE OFFER OF DEDICATION DEED

For

Olive Avenue Widening & Reconstruction Project

**APN**

**PROPERTY OWNER**

011-300-010

SJR, LLC.

RECORDING REQUESTED BY:

City of Madera

AFTER RECORDING RETURN TO:

City of Madera

205 W. 4th Street

Madera, CA 93637

Attn: City

Clerk

Fee waived per Section 27383 of the Government Code

No Fee Due

APN: 011-300-010

No Doc Tax Due R&T 11922

IRREVOCABLE OFFER OF DEDICATION DEED

FOR A VALUABLE CONSIDERATION, RECEIPT OF WHICH IS HEREBY ACKNOWLEDGED, **SJR LLC, A CALIFORNIA LIMITED LIABILITY COMPANY**, DO HEREBY IRREVOCABLY OFFER TO **THE CITY OF MADERA**, A MUNICIPAL CORPORATION OF THE STATE OF CALIFORNIA,

an easement for street, sidewalk, municipal and public utilities and any and all other municipal purposes over, under, through and across, on and in the following described real property in the City of Madera, County of Madera, State of California, being more particularly described in the **LEGAL DESCRIPTION** attached hereto and made a part hereof:

By: [Signature]  
Stanley G. Silva, Jr.

Date: 8/14/18

CALIFORNIA ALL-PURPOSE ACKNOWLEDGEMENT CIVIL CODE#1189

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certification is attached, and not the truthfulness, accuracy, or validity of the document.

State of California  
County of Monterey

On Aug. 14, 2018 before me, Lorena Miranda Notary Public, personally appeared Stanley G. Silva Jr.

who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/~~are~~ subscribed to the within instrument and acknowledged to me that he/~~she~~/they executed the same in his/~~her~~/their authorized capacity(~~ies~~) and that by his/~~her~~/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify, under PENALTY OF PERJURY, under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS MY HAND AND OFFICIAL SEAL

Signature: [Signature] (Seal)



## **Right-of-Way Acquisition**

### **Olive Avenue**

# **Legal Description**

**APN 011-300-010, Owner SJR LLC**

All that portion of the northeast quarter of the northwest quarter of Section 30, Township 11 South, Range 18 East, Mount Diablo Base and Meridian, in the City of Madera, County of Madera, State of California, according to Record of Survey, recorded April 17, 1986, in Book 32, Page 20, Madera County Records, being more particularly described as follows:

Commencing at the north quarter corner of said Section 30; thence S 0° 22' 35" E, along the quarter section line of said Section 30, a distance of 15.00 feet, to a point on the south right-of-way line for Olive Avenue; thence N 89° 05' 19" W, along said Olive Avenue right-of-way line, a distance of 394.78 feet to the northeasterly corner of the parcel depicted in said Record of Survey, being THE TRUE POINT OF BEGINNING;

Thence S 9° 03' 03" E, along the easterly boundary of said parcel, a distance of 30.46 feet to a point on the easterly boundary of said parcel; thence N 89° 05' 19" W, along a line parallel with, and 45.00 feet south of, the north line of said Section 30, a distance of 275.00 feet to a point on the westerly boundary of said parcel; thence N 9° 03' 03" W, along said westerly boundary, a distance of 30.46 feet to a point on the south right-of-way line for Olive Avenue; thence

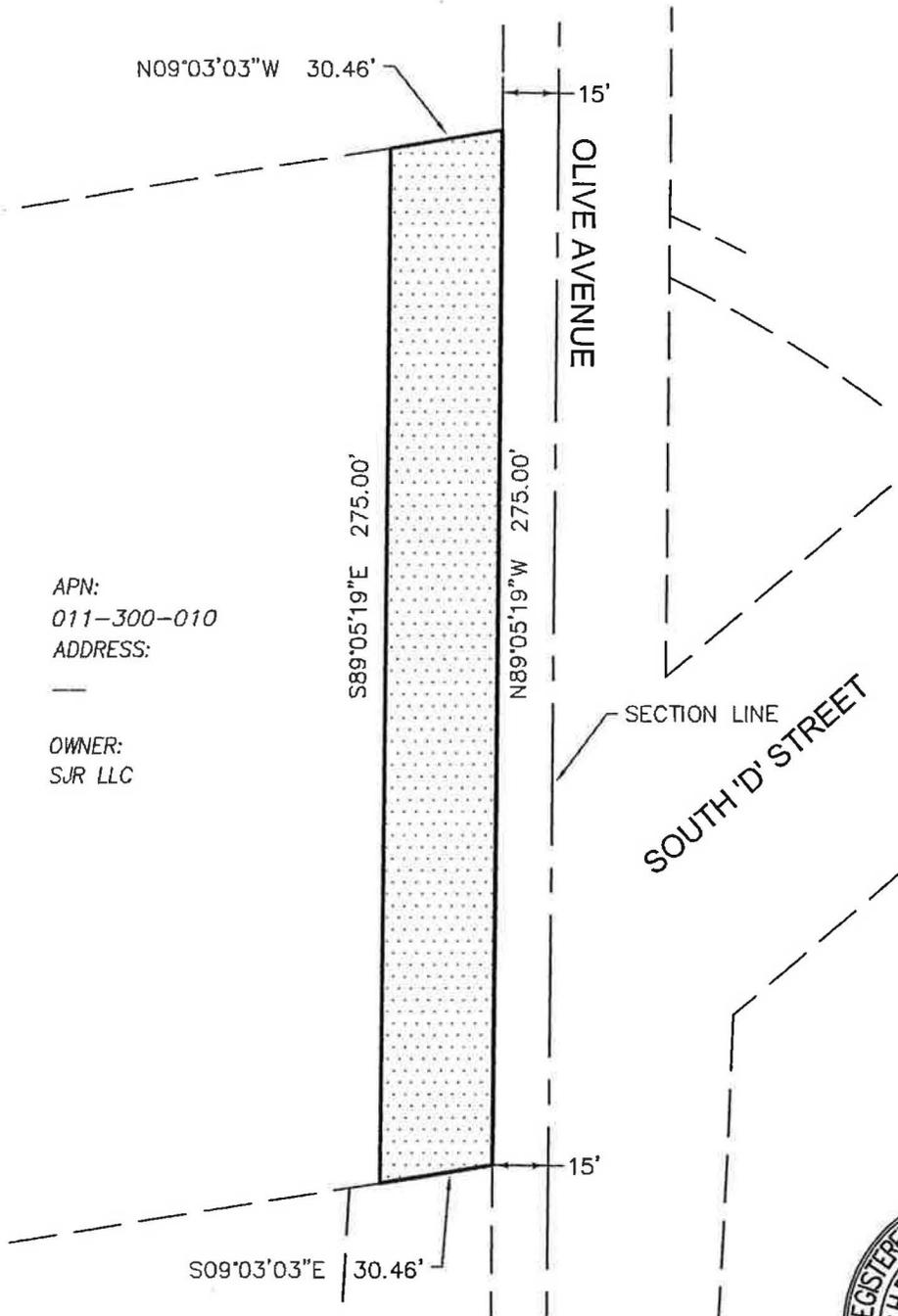
S 89° 05' 19" E, along said right-of-way line, parallel with, and 15.00 feet south of the north line of said Section 30, a distance of 275.00 feet to THE TRUE POINT OF BEGINNING.

Containing an area of 8250 square feet, more or less.

APN 011-300-010



EXHIBIT "A"



APN:  
011-300-010  
ADDRESS:  
—  
OWNER:  
SJR LLC



SCALE: 1"=50'

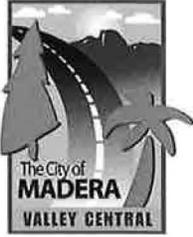


INDICATES REAL PROPERTY AREA TO BE GRANTED TO THE CITY OF MADERA CONTAINING ±8250 SQ. FT.



CITY OF MADERA - ENGINEERING DEPARTMENT

<p>CITY: CITY OF MADERA ADDRESS: 205 W. 4TH STREET MADERA, CA 93637 SURVEYOR: CHRISTIAN M. BACH R.C.E. NO. 18715 TELEPHONE: (559) 661-5418</p>	<p>REAL PROPERTY TO BE GRANTED TO THE CITY OF MADERA BEING A PORTION OF...</p>	<p>F.B. NO _____ Dr. By: _____ Ch. By: _____ Date: _____ SCALE 1" = 50' SHEET 1 OF 1</p>
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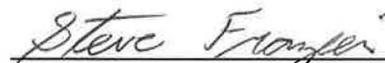
## REPORT TO CITY COUNCIL

Council Meeting of: October 3, 2018

Agenda Item No.: B- 7

**Approved by:**

  
\_\_\_\_\_  
Tim Przybyla, Director of Finance

  
\_\_\_\_\_  
Steve Frazier, City Administrator

**SUBJECT:**

CONSIDERATION OF A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MADERA, CALIFORNIA, APPROVING AGREEMENT AND ENGAGEMENT LETTER FOR AUDIT SERVICES WITH PRICE, PAIGE & COMPANY, AUTHORIZING THE MAYOR TO EXECUTE THE AGREEMENT, AUTHORIZING THE MAYOR AND THE CITY ADMINISTRATOR EXECUTE THE ENGAGEMENT LETTER AND AMENDING THE CITY OF MADERA 2018/2019 BUDGET

**RECOMMENDATION:**

Staff recommends the City Council approve the attached resolution approving the Agreement and Engagement Letter for audit services with Price, Paige & Company, authorizing the Mayor to execute the Agreement, authorizing the Mayor and the City Administrator to execute the Engagement Letter and amending the City of Madera 2018/2019 Budget.

**DISCUSSION/BACKGROUND:**

At the Council meeting of July 17, 2013, the Council adopted Resolution No. 13-126 approving the award of an agreement for audit services to Price, Paige and Company (PP&C). The City has been pleased with the professional services that PP&C has provided. However, that contract has expired, and staff would like to utilize the services of PP&C for one more year to have them complete the audit of the City's 2017/2018 Financial Statements. Utilizing them for one more year will give staff the additional time needed to complete a thorough RFP process for the selection of new auditors. Because PP&C has recently completed our 2016/2017 and gone through an extensive update of their audit processes resulting from our conversion to the Tyler Munis ERP system, PP&C has the unique familiarity with our system to complete this audit in a timely manner. PP&C

has also indicated that they have the necessary staffing to complete this audit for us. Although the agreement includes the scope of work and other services to be performed, an Engagement Letter is required annually to further emphasize the work to be performed and the responsibilities of each party. In addition to the City Administrator's signature, the Mayor's signature is also required on the Engagement Letter. The resolution authorizes the Mayor to sign the agreement, authorizes the Mayor and City Administrator to sign the Engagement Letter and approves an amendment to the City of Madera Fiscal Year 2018/2019 General Fund Budget.

Last year, staff had set the goal of preparing a Comprehensive Annual Financial Report (CAFR), as compared to the Basic Audited Financial Statements that the City has been preparing for the past eleven years. The main differences between a CAFR and Basic Audited Financial Statements are the additions of a transmittal letter and comparative information that is purchased from an outside agency such as Avenu Insights & Analytics (formerly Muni Services). Such information is not required for Basic Audited Financial Statements. However, the additional information is necessary for a city to apply for and achieve a Governmental Finance Officers Association (GFOA) CAFR Award. Staff would like to achieve such an award. But, we feel that staff is stretched too thin and the budget is too tight to pursue a GFOA CAFR Award for the City's 2017/2018 Audited Financial Statements. The auditors have quoted \$7,500 for the additional services that a CAFR would require of them, and it would cost about \$5,000 more to have an outside agency provide us with the additional comparative information that is required for a CAFR. Staff is hopeful to get better pricing for CAFR services when we go through the RFP process for new auditors. If the Council so desires, though, staff will increase the proposed budget amendment by \$12,500 and work with the Price Paige & Company to prepare a CAFR for Fiscal Year 2017/2018.

**FISCAL IMPACT:**

The cost to prepare the Fiscal Year 2017/2018 City Audit is \$53,700; the Single Audit is \$5,400; the GASB 68 Preparation is \$2,250; and the GASB 75 Preparation is \$2,500 for a total cost of \$63,850. An appropriation of \$52,000 has been set up under the Central Administration budget for Auditing and GASB 68 Implementation. However, because the fee for these services has increased to \$58,450 (excluding the \$5,400 for the Single Audit), we need to increase that budget appropriation by \$6,450. The \$5,400 cost for the Single Audit has been appropriated within the Finance Department budget under the Contract Services budget line item.

**CONSISTENCY WITH THE VISION MADERA 2025 PLAN:**

Approval of this item is consistent with Strategy 115 of the Vision Plan – Economic Resource Provision: Ensure sufficient resources to provide adequate City services and prepare for future growth. It is also in line with funding core services as articulated by the Vision Madera 2025 Plan.

RESOLUTION No. 18 - \_\_\_\_\_

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MADERA, CALIFORNIA, APPROVING AGREEMENT AND ENGAGEMENT LETTER WITH PRICE PAIGE & COMPANY FOR PROFESSIONAL AUDITING SERVICES, AUTHORIZING THE MAYOR TO EXECUTE THE AGREEMENT, AUTHORIZING THE MAYOR AND CITY ADMINISTRATOR TO EXECUTE THE ENGAGEMENT LETTER AND APPROVING AMENDMENT TO THE CITY OF MADERA 2018/2019 BUDGET

WHEREAS, the City of Madera (the "City") has a fiduciary responsibility to have its financial record and transactions audited each fiscal year by an independent Certified Public Accounting firm; and

WHEREAS, the City approved Resolution No. 13-126 on July 17, 2013 approving the award of agreement for audit services to Price Paige & Company for up to five years; and

WHEREAS, the City has been pleased with the professional audit services that Price Paige & Company has provided over the last five fiscal years; and

WHEREAS, time is of the essence in beginning and completing the 2017/18 audit and the accounting firm of Price Paige & Company has a unique understanding of and familiarity with the City of Madera's financial statements and the City's conversion to the Tyler Munis Enterprise Resource Planning (ERP) system; and

WHEREAS, staff will complete a formal request for proposal (RFP) process within the next nine (9) months to identify a successor auditor for future fiscal years; and

WHEREAS, the signing of an Agreement and an Engagement Letter between the auditor and the City is standard operating procedures for such engagements; and

WHEREAS, the Engagement Letter will become part of the Agreement; and

WHEREAS, the Engagement Letter calls for an increase that was not anticipated in the City of Madera 2018/2019 Budget; and

WHEREAS, the City of Madera needs to increase the 2018/2019 General Fund Budget by the amount of \$6,450 to cover the cost of this increase; and

WHEREAS, staff has prepared a proposed budget amendment that is attached to this document as Exhibit AA and incorporated as part of this resolution.

NOW THEREFORE, THE COUNCIL OF THE CITY OF MADERA does hereby resolve, find and order as follows:

1. The above recitals are true and correct.
2. The Agreement and Engagement Letter with Price Paige & Company, a copy of which

is on file in the office of the City Clerk and referred to for particulars, is hereby approved.

3. The Mayor is hereby authorized to execute the Agreement with Price Paige & Company.
4. The Mayor and City Administrator are hereby authorized to execute the Engagement Letter with Price Paige & Company.
5. The City of Madera Fiscal Year 2018/2019 General Fund Budget is hereby amended to include the appropriate changes shown in Exhibit AA to this resolution.
6. The budget amendment attached as Exhibit AA and incorporated into this resolution is hereby approved.
7. A signed copy of this resolution shall be placed on file in the Office of the Director of Financial Services who shall prepare entries necessary to reflect budget changes identified in the City's accounting system.
8. The resolution is effective immediately upon adoption.

EXHIBIT AA

CITY OF MADERA

Budget Appropriations: Res.#18- 10/3/2018

Budget Amendment for Fiscal Year 2018/19

<u>FUND</u>	<u>ORG</u>	<u>OBJECT</u>				
<u>DIVISION</u>	<u>CODE</u>	<u>CODE</u>	<u>DESCRIPTION</u>		(+)	(-)
<b>AUDIT FEE ADJUSTMENT</b>						
<u>General Fund (1020)</u>						
Central Administration	10201110	6442	Audit Fees		6,450.00	
			To increase appropriation for Audit Fees, per proposal		<u>6,450.00</u>	-

## **AGREEMENT FOR PROFESSIONAL SERVICES**

THIS AGREEMENT FOR PROFESSIONAL AUDITING SERVICES ("Agreement"), made this 3<sup>rd</sup> day of October 2018, by and between the City of Madera ("City") and Price Paige & Company Accountancy Corporation, ("Service Provider");

### **RECITALS**

A. City desires to retain a qualified firm to provide professional auditing services in accordance with the terms of the City of Madera Engagement Letter (Engagement Letter), attached hereto as Exhibit "A" and incorporated herein as though set forth in full and incorporated herein as though fully set forth. The City desires to have the Service Provider perform the work in accordance with the Engagement Letter prepared by the Service Provider. The work to be performed in accordance with Exhibit "A" is hereinafter referred to as "Professional Auditing Services."

B. The Service Provider represents to City that it is a firm composed of highly trained professionals and is fully qualified to conduct these services for City as described in the Engagement Letter and accepted as final.

C. The Service Provider is considered uniquely qualified to complete the requested Professional Auditing Services for the City of Madera in a timely manner, due to its recent completion of the City of Madera 2016/2017 Audited Financial Statements, its availability of professional staff to provide these services at this time and its familiarity with the City's conversion to a new enterprise resource planning (ERP) system, Tyler Munis.

### **AGREEMENT**

NOW, THEREFORE, in consideration of the foregoing and the mutual covenants and agreements herein contained, it is agreed by and between the City and the Service Provider as follows:

1. Services. The City hereby employs Service Provider to perform the Professional Auditing Services herein set forth at the compensation and upon the terms and conditions herein expressed, and Service Provider hereby agrees to perform such services for said compensation, and upon said terms and conditions City hereby authorizes Service Provider to commence work on October 4, 2018. In the event of any inconsistency between the terms contained in the Engagement Letter and the terms set forth in the main body of this Agreement, the terms set forth in the main body of this Agreement shall govern.

2. Compensation. As compensation for all services of Service Provider in performance of this Agreement, City shall pay Service Provider as described herein. For the services rendered pursuant to this Agreement, Service Provider shall be compensated and reimbursed, in accordance with the schedule of fees set forth in Exhibit "A,"

A. Method of Payment. In any month in which Service Provider wishes to receive payment, Service Provider shall no later than the first working day of such month, submit to City in the form approved by City's Finance Director, an invoice for services rendered prior to the date of the invoice. Payments shall be based on the rates set forth in Exhibit "A" for authorized services performed. City shall pay Service Provider for all expenses stated thereon, which are approved by City consistent with this Agreement, within thirty (30) days of receipt of Service Provider's invoice.

3. Changes. In the event any change or changes in the Scope of Services/Work is requested by City, the parties hereto shall execute a written amendment to this Agreement, setting forth with particularity all terms of such amendment, including, but not limited to, any additional fees. An amendment may be entered into:

A. To provide for revisions or modifications to documents or other work product or work when documents or other work product or work is required by the enactment or revision of law subsequent to the preparation of any documents, other work product, or work;

B. To provide for additional services not included in this Agreement or not customarily furnished in accordance with generally accepted practice in Service Provider's profession.

Any changes to this Agreement requested by either City or Service Provider may only be effected if mutually agreed upon in writing by duly authorized representatives of the parties hereto. This Agreement shall not be modified or amended or any rights of a party to it waived except by such a writing.

4. Appropriations. This Agreement is subject to and contingent upon funds being appropriated therefore by the City Council of City for each fiscal year covered by the Agreement. If such appropriations are not made, this Agreement shall automatically terminate without penalty to City.

5. Entire Agreement. This Agreement consists of the following documents, in order of precedence, and shall be the entire agreement between parties:

This Agreement

Exhibit A. City of Madera Engagement Letter, dated August 31, 2018

6. Term of Agreement. Unless earlier terminated in accordance with Section 12 of this Agreement, this Agreement shall continue in full force and effect for a one (1) year period commencing on October 4, 2018, unless extended by mutual written agreement of the parties. City and Service Provider may not, even upon agreement of both parties, extend this Agreement for any additional terms without the completion of a formal request for proposal (RFP) process.

7. Time for Completion. The time for completion of the services to be performed by Service Provider is an essential condition of this Agreement. Service Provider shall prosecute regularly and diligently the work of this Agreement according to the agreed upon schedule of performance set forth in Exhibit "A". Service Provider shall not be accountable for delays in the progress of its work caused by any condition beyond its control and without the fault or negligence of Service Provider. Delays shall not entitle Service Provider to any additional compensation regardless of the party responsible for the delay.

8. Performance Schedule

A. Time of Essence. Time is of the essence in the performance of this Agreement.

B. Schedule of Performance. All services rendered pursuant to this Agreement shall be performed pursuant to the agreed upon schedule of performance set forth in Exhibit "A". The extension of any time-period must be approved in writing by the City's Finance Director.

9. Force Majeure. The time for performance of services to be rendered pursuant to this Agreement may be extended because of any delays due to unforeseeable causes beyond the control and without the fault or negligence of Service Provider, including, but not limited to, acts of God or of a public enemy, acts of the government, fires, earthquakes, floods, epidemic, quarantine restrictions, riots, strikes, freight embargoes, and unusually severe weather if Service Provider shall within ten (10) days of the commencement of such condition notify the Finance Director who shall thereupon ascertain the facts and the extent of any necessary delay, and extend the time for performing the services for the period of the enforced delay when and if in the Finance Director's judgment such delay is justified, and the Finance Director's determination shall be final and conclusive upon the parties to this Agreement.

10. Qualifications of Employees. The City may require dismissal from the work on this contract, employees whom it deems incompetent, careless or otherwise objectionable to the public interest.

11. Notices. Except as otherwise specifically provided in this Agreement, any notice, submittal or communication required or permitted to be served on a party hereto, may be served by personal delivery to the person or the office of the person identified below. Service may also be made by mail, by placing first class postage affixed thereto, and addressed as indicated below, and depositing said envelope in the United States mail to:

**City of Madera**

Finance Department

205 W. 4<sup>th</sup> Street  
Madera, CA 93637  
559-661-5454

**Service Provider**

Price Paige & Company Accountancy

677 Scott Avenue  
Clovis, CA 93612  
559-299-9540

## 12. Termination

A. Termination for Contract Default. If at any time, in the opinion of the City Council, upon recommendation of the Finance Director, 1) Service Provider fails to conform to the requirements of this contract; 2) Service Provider seeks relief under any law for the benefit of insolvents or is adjudicated bankrupt; 3) any legal proceedings are commenced against the Service Provider which may interfere with the performance of the contract; or 4) Service Provider has failed to supply an adequate working force, or material of proper quality, or has failed in any other respect to prosecute the work with the diligence and force specified and intended in and by the terms of the contract, notice thereof in writing may be served upon him; and should he neglect or refuse to provide means for a satisfactory compliance with contract as directed by the Finance Director within fourteen (14) days from the receipt of such notice the City Council in any such case shall have the right and power, at its option and without prejudice to any other right it may have, to terminate the contract. Any excess of the cost arising there from will be charged against the Service Provider and his sureties, who will be liable thereof. In the event of such termination, all monies due the Service Provider or retained under terms of the contract shall be forfeited to the City; but such forfeiture will not release the Service Provider or this sureties from liability for failure to fulfill the contract.

B. Termination for Convenience. City reserves the right to terminate this Agreement at any time, with or without cause, upon thirty (30) days written notice to Service Provider, except that where termination is due to the fault of Service Provider and constitutes an immediate danger to health, safety, and general welfare, the period of notice shall be such shorter time as may be determined by the City. Upon receipt of the notice of termination, Service Provider shall immediately cease all services hereunder except such as may be specifically approved by the Finance Director. Service Provider shall be entitled to compensation for all services rendered prior to receipt of the notice of termination and for any services authorized by the Finance Director thereafter. Service Provider may terminate this Agreement, with or without cause, upon thirty (30) days written notice to City.

13. Assignment and Subcontracting. The Service Provider shall not assign or subcontract the work, or any part thereof, without the previous written consent of the City, nor shall He assign, by power of attorney or otherwise, any of the money payable under this contract unless written consent of the City has been obtained. No right under this contract, no claim for money due or to become due hereunder shall be asserted against the City, or persons acting for the City, by reason of any so-called assignment of this contract or any part thereof, unless such assignment has been authorized by the written consent of the City. In case the Service Provider is permitted to assign monies due or to become due under this contract, the instrument of assignment shall contain a clause subordinating the claim of the assignee to all prior liens for services rendered or materials supplied for the performance of work.

Should any subservice provider fail to perform in a satisfactory manner the work undertaken by him, his subcontract shall be immediately terminated by the Service Provider upon notice from the City. The Service Provider shall be fully responsible and accountable to the City for the acts and omissions of his subservice providers, and of persons directly or indirectly employed by them, as he is for the acts and omissions of persons directly employed by him. Nothing contained in this contract shall create any contractual relation between any subcontract and the City.

14. Independent Contractor. Neither City nor any of its employees shall have any control over the manner, mode, or means by which Service Provider, its agents or employees, perform the services required herein, except as otherwise set forth herein. Service Provider shall perform all services required herein as an independent contractor of City and shall not be an employee of City and shall remain at all times as to City a wholly independent contractor with only such obligations as are consistent with that role; however, City shall have the right to review Service Provider's work product, result, and advice. Service Provider shall not at any time or in any manner represent that it or any of its agents or employees are agents or employees of City.

15. Indemnification.

Service Provider shall indemnify, defend, and hold harmless the City, and its officers, employees, and agents ("City indemnitees"), from and against any and all causes of action, claims, liabilities, obligations, judgments, or damages, including reasonable legal counsels' fees and costs of litigation ("claims"), arising out of the Service Provider's performance of its obligations under this agreement or out of the operations conducted by Service Provider.

16 Insurance Requirements. During the term of this Agreement, Service Provider shall maintain, keep in force and pay all premiums required to maintain and keep in force liability and property damage insurance. Without limiting Consultant's indemnification of City, and prior to commencement of Work, Consultant shall obtain, provide, and continuously maintain at its own expense during the term of the Agreement, and shall require any and all Subcontractors and Subconsultants of every Tier to obtain and maintain, policies of insurance of the type and amounts described below and in form satisfactory to the City.

#### Minimum Scope and Limits of Insurance

Consultant shall maintain limits no less than:

□ \$1,000,000 General Liability (including operations, products and completed operations) per occurrence, \$2,000,000 general aggregate, for bodily injury, personal injury and property damage, including without limitation, blanket contractual liability. Coverage shall be at least as broad as Insurance Services Office (ISO) Commercial General Liability coverage form CG 00 01. General liability policies shall be endorsed

using ISO form CG 20 10 that the City and its officers, officials, employees and agents shall be additional insureds under such policies.

\$1,000,000 Automobile Liability combined single limit per accident for bodily injury or property damage at least as broad as ISO Form CA 00 01 for all activities of Consultant arising out of or in connection with Work to be performed under this Agreement, including coverage for any owned, hired, non-owned or rented vehicles. Automobile Liability policies shall be endorsed to provide that the City and its officers, officials, employees and agents shall be additional insureds under such policies.

Worker's Compensation as required by the State of California and \$1,000,000 Employer's Liability per accident for bodily injury or disease. Consultant shall submit to the City, along with the certificate of insurance, a Waiver of Subrogation endorsement in favor of the City, its officers, agents, employees, and volunteers.

\$1,000,000 Professional Liability (Errors & Omissions) per claim and in the aggregate. Consultant shall maintain professional liability insurance that insures against professional errors and omission that may be made in performing the Services to be rendered in connection with this Agreement. Any policy inception date, continuity date, or retroactive date must be before the effective date of this Agreement, and Consultant agrees to maintain continuous coverage through a period no less than three years after completion of the services required by this Agreement. The cost of such insurance shall be included in Consultant's bid.

#### Maintenance of Coverage

Consultant shall procure and maintain, for the duration of the contract, insurance against claims for injuries to persons or damages to property, which may arise from or in connection with the performance of the Work hereunder by Consultant, its agents, representatives, employees, subcontractors or subconsultants as specified in this Agreement.

#### Proof of Insurance

Consultant shall provide to the City certificates of insurance and endorsements, as required, as evidence of the insurance coverage required herein, along with a waiver of subrogation endorsement for workers' compensation. Insurance certificates and endorsements must be approved by the City prior to commencement of performance. Current evidence of insurance shall be kept on file with the City at all times during the term of this Agreement. Agency reserves the right to require complete, certified copies of all required insurance policies, at any time.

#### Acceptable Insurers

All insurance policies shall be issued by an insurance company currently authorized by the Insurance commissioner to transact business of insurance in the State of California, with an assigned policyholders' Rating of A- (or higher) and a Financial Size Category Class VII (or larger), in accordance with the latest edition of Best's Key Rating Guide.

#### Waiver of Subrogation

All insurance coverage maintained or procured pursuant to this agreement shall be endorsed to waive subrogation against the City, its elected or appointed officers, agents,

officials, employees, and volunteers, or shall specifically allow Consultant, or others providing insurance evidence in compliance with these specifications, to waive their right of recovery prior to a loss. Consultant hereby waives its own right of recovery against the City and shall require similar written express waivers and insurance clauses from each of its subconsultants or subcontractors.

#### Enforcement of Contract Provisions (non estoppel)

Consultant acknowledges and agrees that any actual or alleged failure on the part of the Agency to inform Consultant of non-compliance with any requirement imposes no additional obligations on the City, nor does it waive any rights hereunder.

#### Specifications not Limiting

Requirements of specific coverage features or limits contained in this Section are not intended as a limitation on coverage, limits or other requirements, or a waiver of any coverage normally provided by any insurance. Specific reference to a given coverage feature is for purposes of clarification only as it pertains to a given issue and is not intended by any party or insured to be all inclusive, or to the exclusion of other coverage, or a waiver of any type. If Consultant maintains higher limits than the minimums required above, the entity shall be entitled to coverage at the higher limits maintained by Consultant.

#### Notice of Cancellation

Consultant agrees to oblige its insurance agent or broker and insurers to provide to the City with thirty (30) calendar days notice of cancellation (except for nonpayment for which ten (10) calendar days notice is required) or nonrenewal of coverage for each required coverage.

#### Self-insured Retentions

Any self-insured retentions must be declared to and approved by the City. The City reserves the right to require that self-insured retentions be eliminated, lowered or replaced by a deductible. Self-insurance will not be considered to comply with these specifications unless approved by the City's Risk Manager.

#### Timely Notice of Claims

Consultant shall give the City prompt and timely notice of claims made or suits instituted that arise out of or result from Consultant's performance under this Agreement, and that involve or may involve coverage under any of the required liability policies.

#### Additional Insurance

Consultant shall also procure and maintain, at its own cost and expense, any additional kinds of insurance, which in its own judgement may be necessary for its proper protection and prosecution of the Work.

17. Successor and Assigns. City and Service Provider each binds itself, its partners, successors, legal representatives and assigns to the other party to this Agreement and to the partners, successors, legal representatives and assigns of such other party in respect of all promises and agreements contained herein.

18. Legal Requirements and Permits. The Service Provider agrees to fully comply with all local, City, State and Federal laws, regulations and ordinances governing performance of contractual services required hereunder, and it will be the responsibility of the Service Provider to obtain any and all necessary licenses, permits and/or clearances.

19. Attorney's fees/venue. In the event that any action is brought to enforce the terms of this Agreement, the party found by the court to be in default agrees to pay reasonable attorney's fees to the successful party in an amount to be fixed by the Court. The venue for any claim being brought for breach of this Agreement shall be in Madera County.

20. Governing Law. The laws of the State of California shall govern the rights and obligations of the parties under the Agreement, including the interpretation of the Agreement. If any part of the Agreement is adjudged to be invalid or unenforceable, such invalidity shall not affect the full force and effect of the remainder of the Agreement.

21. Familiarity with Work. By executing this Agreement, Service Provider warrants that it has carefully considered how the work should be performed and fully understands the facilities, difficulties, and restrictions attending performance of the work under this Agreement.

22. Records and Reports

A. Reports. Service Provider shall periodically prepare and submit to the Finance Director such reports concerning the performance of the services required by this Agreement as the Finance Director shall require.

B. Records. Service Provider shall keep such books and records as shall be necessary to properly perform the services required by this Agreement and enable the Finance Director to evaluate the performance of such services. The Finance Director shall have full and free access to such books and records at all reasonable times, including the right to inspect, copy, audit, and make records and transcripts from such records.

C. Release of Documents. All drawings, specifications, reports, records, documents, and other materials prepared by Service Provider in the performance of services under this Agreement shall not be released publicly without the prior written approval of the Finance Director.

D. Cost Records. Service Provider shall maintain all books, documents, papers, employee time sheets, accounting records, and other evidence pertaining to costs incurred while performing under this Agreement and shall make such materials available at its offices at all reasonable times during the term of this Agreement and for three (3) years from the date of final payment for inspection by City and copies thereof shall be promptly furnished to City upon request.

23. Severability. In the event that any one or more of the phrases, sentences, clauses,

paragraphs, or sections contained in this Agreement shall be declared invalid or unenforceable by valid judgment or decree of a court of competent jurisdiction, such invalidity or unenforceability shall not affect any of the remaining phrases, sentences, clauses, paragraphs, or sections of this Agreement, which shall be interpreted to carry out the intent of the parties hereunder.

24. Authority. The persons executing this Agreement on behalf of the parties hereto warrant that they are duly authorized to execute this Agreement on behalf of said parties and that by so executing this Agreement the parties hereto are formally bound to the provisions of this Agreement.

25. Waiver. No delay or omission in the exercise of any right or remedy of a non-defaulting party on any default shall impair such right or remedy or be construed as a waiver. No consent or approval of City shall be deemed to waive or render unnecessary City's consent to or approval of any subsequent act of Service Provider. Any waiver by either party of any default must be in writing and shall not be a waiver of any other default concerning the same or any other provision of this Agreement.

26. Rights and Remedies are Cumulative. Except with respect to rights and remedies expressly declared to be exclusive in this Agreement, the rights and remedies of the parties are cumulative and the exercise by either party of one or more of such rights or remedies shall not preclude the exercise by it, at the same or different times, of any other rights or remedies for the same default or any other default by the other party.

27. Legal Action. In addition to any other rights or remedies, either party may take legal action, in law or in equity, to cure, correct, or remedy any default, to recover damages for any default, to compel specific performance of this Agreement, to obtain injunctive relief, a declaratory judgment, or any other remedy consistent with the purposes of this Agreement.

This agreement and the attachment and exhibit incorporated herein by reference, represents the entire agreement and understanding between the parties. Any modifications to this Agreement shall be in writing and signed by authorized representatives of the parties. One or more waivers of any term, condition or covenant by either party shall not be construed as a waiver of any other term, condition or covenant.

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

CITY OF MADERA

PRICE PAIGE & COMPANY  
ACCOUNTANCY CORPORATION

By: \_\_\_\_\_  
Andy Medellin, Mayor

By: \_\_\_\_\_  
Fausto Hinojosa, CPA, CFE  
Audit Principal, Shareholder

APPROVED AS TO FORM  
City Attorney

ATTEST:  
City Clerk

By: \_\_\_\_\_  
Brent Richardson

By: \_\_\_\_\_  
Sonia Alvarez

## EXHIBIT A



**PRICE PAIGE & COMPANY**  
Accountancy Corporation

The Place to Be

August 31, 2018

Andrew J. Medellin, Mayor  
Tim Przybyla, Director of Financial Services  
City of Madera  
205 West Fourth Street  
Madera, CA 93637

We are pleased to confirm our understanding of the services we are to provide to the City of Madera, California (the City) for the year ended June 30, 2018. We will audit the financial statements of the governmental activities, the business-type activities, each major fund, and the aggregate remaining fund information, including the related notes to the financial statements, which collectively comprise the basic financial statements, of the City as of and for the year ended June 30, 2018. Accounting standards generally accepted in the United States of America provide for certain required supplementary information (RSI), such as the management's discussion and analysis (MD&A), to supplement City's basic financial statements. Such information, although not a part of the basic financial statements, is required by the Governmental Accounting Standards Board who considers it to be an essential part of financial reporting for placing the basic financial statements in an appropriate operational, economic, or historical context. As part of our engagement, we will apply certain limited procedures to the City's RSI in accordance with auditing standards generally accepted in the United States of America. These limited procedures will consist of inquiries of management regarding the methods of preparing the information and comparing the information for consistency with management's responses to our inquiries, the basic financial statements, and other knowledge we obtained during our audit of the basic financial statements. We will not express an opinion or provide any assurance on the information because the limited procedures do not provide us with sufficient evidence to express an opinion or provide any assurance. The following RSI is required by U.S. generally accepted accounting principles and will be subjected to certain limited procedures, but will not be audited:

1. Management's Discussion and Analysis
2. Budgetary Comparison Schedules
3. Schedule of Changes in Net Position Liability and Related Ratios
4. Schedule of Proportionate Share of Net Pension Liability (Asset)
5. Schedule of Schedule of Plan Contributions – Pension
6. Schedule of Changes in the Net OPEB Liability and Related Ratios
7. Schedule of Contributions

We have also been engaged to report on supplementary information other than RSI that accompanies the City's financial statements. We will subject the following supplementary information to the auditing procedures applied in our audit of the financial statements and certain additional procedures, including comparing and reconciling such information directly to the underlying accounting and other records used to prepare the financial statements or to the financial statements themselves, and other additional procedures in accordance with auditing standards generally accepted in the United States of America, and we will provide an opinion on it in relation to the financial statements as a whole in a report combined with our auditor's report on the financial statements.

1. Schedule of Expenditures of Federal Awards
2. Combining and Individual Fund Statements

677 Scott Avenue  
Clovis, CA 93612

tel 559.299.9540  
fax 559.299.2344

## **Audit Objectives**

The objective of our audit is the expression of opinions as to whether your financial statements are fairly presented, in all material respects, in conformity with U.S. generally accepted accounting principles and to report on the fairness of the supplementary information referred to in the second paragraph when considered in relation to the financial statements as a whole. The objective also includes reporting on—

- Internal control over financial reporting and compliance with provisions of laws, regulations, contracts, and award agreements, noncompliance with which could have a material effect on the financial statements in accordance with *Government Auditing Standards*.
- Internal control over compliance related to major programs and an opinion (or disclaimer of opinion) on compliance with federal statutes, regulations, and the terms and conditions of federal awards that could have a direct and material effect on each major program in accordance with the Single Audit Act Amendments of 1996 and Title 2 U.S. *Code of Federal Regulations* (CFR) Part 200, *Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards* (Uniform Guidance).

The *Government Auditing Standards* report on internal control over financial reporting and on compliance and other matters will include a paragraph that states that (1) the purpose of the report is solely to describe the scope of testing of internal control and compliance and the results of that testing, and not to provide an opinion on the effectiveness of the City's internal control or on compliance, and (2) the report is an integral part of an audit performed in accordance with *Government Auditing Standards* in considering the City's internal control and compliance. The Uniform Guidance report on internal control over compliance will include a paragraph that states that the purpose of the report on internal control over compliance is solely to describe the scope of testing of internal control over compliance and the results of that testing based on the requirements of the Uniform Guidance. Both reports will state that the report is not suitable for any other purpose.

Our audit will be conducted in accordance with auditing standards generally accepted in the United States of America; the standards for financial audits contained in *Government Auditing Standards*, issued by the Comptroller General of the United States; the Single Audit Act Amendments of 1996; and the provisions of the Uniform Guidance, and will include tests of accounting records, a determination of major program(s) in accordance with the Uniform Guidance, and other procedures we consider necessary to enable us to express such opinions. We will issue written reports upon completion of our Single Audit. Our reports will be addressed to the Honorable Mayor and Members of the City Council of the City of Madera. We cannot provide assurance that unmodified opinions will be expressed. Circumstances may arise in which it is necessary for us to modify our opinions or add emphasis-of-matter or other-matter paragraphs. If our opinions are other than unmodified, we will discuss the reasons with you in advance. If, for any reason, we are unable to complete the audit or are unable to form or have not formed opinions, we may decline to express opinions or issue reports, or we may withdraw from this engagement.

## **Audit Procedures—General**

An audit includes examining, on a test basis, evidence supporting the amounts and disclosures in the financial statements; therefore, our audit will involve judgment about the number of transactions to be examined and the areas to be tested. An audit also includes evaluating the appropriateness of accounting policies used and the reasonableness of significant accounting estimates made by management, as well as evaluating the overall presentation of the financial statements. We will plan and perform the audit to obtain reasonable assurance about whether the financial statements are free of material misstatement, whether from (1) errors, (2) fraudulent financial reporting, (3) misappropriation of assets, or (4) violations of laws or governmental regulations that are attributable to the government or to acts by management or employees acting on behalf of the government. Because the determination of abuse is subjective, *Government Auditing Standards* do not expect auditors to provide reasonable assurance of detecting abuse.

Because of the inherent limitations of an audit, combined with the inherent limitations of internal control, and because we will not perform a detailed examination of all transactions, there is a risk that material misstatements or noncompliance may exist and not be detected by us, even though the audit is properly planned and performed in accordance with U.S. generally accepted auditing standards and *Government Auditing Standards*. In addition, an audit is not designed to detect immaterial misstatements or violations of laws or governmental regulations that do not have a direct and material effect on the financial statements or major programs. However, we will inform the appropriate level of management of any material errors, any fraudulent financial reporting, or misappropriation of assets that come to our attention. We will also inform the appropriate level of management of any violations of laws

or governmental regulations that come to our attention, unless clearly inconsequential, and of any material abuse that comes to our attention. We will include such matters in the reports required for a Single Audit. Our responsibility as auditors is limited to the period covered by our audit and does not extend to any later periods for which we are not engaged as auditors.

Our procedures will include tests of documentary evidence supporting the transactions recorded in the accounts, and may include tests of the physical existence of inventories, and direct confirmation of receivables and certain other assets and liabilities by correspondence with selected individuals, funding sources, creditors, and financial institutions. We will request written representations from your attorneys as part of the engagement, and they may bill you for responding to this inquiry. At the conclusion of our audit, we will require certain written representations from you about your responsibilities for the financial statements; schedule of expenditures of federal awards; federal award programs; compliance with laws, regulations, contracts, and grant agreements; and other responsibilities required by generally accepted auditing standards.

#### **Audit Procedures—Internal Control**

Our audit will include obtaining an understanding of the government and its environment, including internal control, sufficient to assess the risks of material misstatement of the financial statements and to design the nature, timing, and extent of further audit procedures. Tests of controls may be performed to test the effectiveness of certain controls that we consider relevant to preventing and detecting errors and fraud that are material to the financial statements and to preventing and detecting misstatements resulting from illegal acts and other noncompliance matters that have a direct and material effect on the financial statements. Our tests, if performed, will be less in scope than would be necessary to render an opinion on internal control and, accordingly, no opinion will be expressed in our report on internal control issued pursuant to *Government Auditing Standards*.

As required by the Uniform Guidance, we will perform tests of controls over compliance to evaluate the effectiveness of the design and operation of controls that we consider relevant to preventing or detecting material noncompliance with compliance requirements applicable to each major federal award program. However, our tests will be less in scope than would be necessary to render an opinion on those controls and, accordingly, no opinion will be expressed in our report on internal control issued pursuant to the Uniform Guidance.

An audit is not designed to provide assurance on internal control or to identify significant deficiencies or material weaknesses. However, during the audit, we will communicate to management and those charged with governance internal control related matters that are required to be communicated under AICPA professional standards, *Government Auditing Standards*, and the Uniform Guidance.

#### **Audit Procedures—Compliance**

As part of obtaining reasonable assurance about whether the financial statements are free of material misstatement, we will perform tests of the City's compliance with provisions of applicable laws, regulations, contracts, and agreements, including grant agreements. However, the objective of those procedures will not be to provide an opinion on overall compliance and we will not express such an opinion in our report on compliance issued pursuant to *Government Auditing Standards*.

The Uniform Guidance requires that we also plan and perform the audit to obtain reasonable assurance about whether the auditee has complied with federal statutes, regulations, and the terms and conditions of federal awards applicable to major programs. Our procedures will consist of tests of transactions and other applicable procedures described in the *OMB Compliance Supplement* for the types of compliance requirements that could have a direct and material effect on each of the City's major programs. The purpose of these procedures will be to express an opinion on the City's compliance with requirements applicable to each of its major programs in our report on compliance issued pursuant to the Uniform Guidance.

#### **Other Services**

We will assist in preparing the financial statements, schedule of expenditures of federal awards, and related notes of the City in conformity with U.S. generally accepted accounting principles and the Uniform Guidance based on information provided by you. We will also prepare the GASB 68 and GASB 75 calculations for the City. These nonaudit services do not constitute an audit under *Government Auditing Standards* and such services will not be

conducted in accordance with *Government Auditing Standards*. We will perform the services in accordance with applicable professional standards. We, in our sole professional judgment, reserve the right to refuse to perform any procedure or take any action that could be construed as assuming management responsibilities.

### **Management Responsibilities**

Management is responsible for (1) designing, implementing, establishing, and maintaining effective internal controls relevant to the preparation and fair presentation of financial statements that are free from material misstatement, whether due to fraud or error, including internal controls over federal awards, and for evaluating and monitoring ongoing activities to help ensure that appropriate goals and objectives are met; (2) following laws and regulations; (3) ensuring that there is reasonable assurance that government programs are administered in compliance with compliance requirements; and (4) ensuring that management and financial information is reliable and properly reported. Management is also responsible for implementing systems designed to achieve compliance with applicable laws, regulations, contracts, and grant agreements. You are also responsible for the selection and application of accounting principles; for the preparation and fair presentation of the financial statements, schedule of expenditures of federal awards, and all accompanying information in conformity with U.S. generally accepted accounting principles; and for compliance with applicable laws and regulations (including federal statutes) and the provisions of contracts and grant agreements (including award agreements). Your responsibilities also include identifying significant contractor relationships in which the contractor has responsibility for program compliance and for the accuracy and completeness of that information.

Management is also responsible for making all financial records and related information available to us and for the accuracy and completeness of that information. You are also responsible for providing us with (1) access to all information of which you are aware that is relevant to the preparation and fair presentation of the financial statements, (2) access to personnel, accounts, books, records, supporting documentation, and other information as needed to perform an audit under the Uniform Guidance, (3) additional information that we may request for the purpose of the audit, and (4) unrestricted access to persons within the government from whom we determine it necessary to obtain audit evidence.

Your responsibilities include adjusting the financial statements to correct material misstatements and confirming to us in the management representation letter that the effects of any uncorrected misstatements aggregated by us during the current engagement and pertaining to the latest period presented are immaterial, both individually and in the aggregate, to the financial statements as a whole.

You are responsible for the design and implementation of programs and controls to prevent and detect fraud, and for informing us about all known or suspected fraud affecting the government involving (1) management, (2) employees who have significant roles in internal control, and (3) others where the fraud could have a material effect on the financial statements. Your responsibilities include informing us of your knowledge of any allegations of fraud or suspected fraud affecting the government received in communications from employees, former employees, grantors, regulators, or others. In addition, you are responsible for identifying and ensuring that the government complies with applicable laws, regulations, contracts, agreements, and grants. Management is also responsible for taking timely and appropriate steps to remedy fraud and noncompliance with provisions of laws, regulations, contracts, and grant agreements, or abuse that we report. Additionally, as required by the Uniform Guidance, it is management's responsibility to evaluate and monitor noncompliance with federal statutes, regulations, and the terms and conditions of federal awards; take prompt action when instances of noncompliance are identified including noncompliance identified in audit findings; promptly follow up and take corrective action on reported audit findings; and prepare a summary schedule of prior audit findings and a separate corrective action plan.

You are responsible for identifying all federal awards received and understanding and complying with the compliance requirements and for the preparation of the schedule of expenditures of federal awards (including notes and noncash assistance received) in conformity with the Uniform Guidance. You agree to include our report on the schedule of expenditures of federal awards in any document that contains and indicates that we have reported on the schedule of expenditures of federal awards. You also agree to include the audited financial statements with any presentation of the schedule of expenditures of federal awards that includes our report thereon. Your responsibilities include acknowledging to us in the written representation letter that (1) you are responsible for presentation of the schedule of expenditures of federal awards in accordance with the Uniform Guidance; (2) you believe the schedule of expenditures of federal awards, including its form and content, is stated fairly in accordance with the Uniform Guidance; (3) the methods of measurement or presentation have not changed from those used in

the prior period (or, if they have changed, the reasons for such changes); and (4) you have disclosed to us any significant assumptions or interpretations underlying the measurement or presentation of the schedule of expenditures of federal awards.

You are also responsible for the preparation of the other supplementary information, which we have been engaged to report on, in conformity with U.S. generally accepted accounting principles. You agree to include our report on the supplementary information in any document that contains, and indicates that we have reported on, the supplementary information. You also agree to include the audited financial statements with any presentation of the supplementary information that includes our report thereon. Your responsibilities include acknowledging to us in the written representation letter that (1) you are responsible for presentation of the supplementary information in accordance with GAAP; (2) you believe the supplementary information, including its form and content, is fairly presented in accordance with GAAP; (3) the methods of measurement or presentation have not changed from those used in the prior period (or, if they have changed, the reasons for such changes); and (4) you have disclosed to us any significant assumptions or interpretations underlying the measurement or presentation of the supplementary information.

Management is responsible for establishing and maintaining a process for tracking the status of audit findings and recommendations. Management is also responsible for identifying and providing report copies of previous financial audits, attestation engagements, performance audits, or other studies related to the objectives discussed in the Audit Objectives section of this letter. This responsibility includes relaying to us corrective actions taken to address significant findings and recommendations resulting from those audits, attestation engagements, performance audits, or studies. You are also responsible for providing management's views on our current findings, conclusions, and recommendations, as well as your planned corrective actions, for the report, and for the timing and format for providing that information.

You agree to assume all management responsibilities relating to the financial statements, schedule of expenditures of federal awards and related notes, and any other nonaudit services we provide. You will be required to acknowledge in the management representation letter our assistance with preparation of the financial statements, schedule of expenditures of federal awards, and related notes and that you have reviewed and approved the financial statements, schedule of expenditures of federal awards, and related notes prior to their issuance and have accepted responsibility for them. Further, you agree to oversee the nonaudit services by designating an individual, preferably from senior management, with suitable skill, knowledge, or experience; evaluate the adequacy and results of those services; and accept responsibility for them.

#### **Electronic Data Communication and Storage and Use of Third Party Service Provider**

In the interest of facilitating our services to the City, we may communicate by facsimile transmission, send data over the Internet, store electronic data via computer software applications hosted remotely on the Internet, or allow access to data through third-party vendors' secured portals or clouds. Electronic data that is confidential to the City may be transmitted or stored using these methods. We may use third-party service providers to store or transmit this data, such as providers of tax return preparation and document management software. In using these data communication and storage methods, our firm employs measures designed to maintain data security. We use reasonable efforts to keep such communications and data access secure in accordance with our obligations under applicable laws and professional standards. We also require all of our third-party vendors to do the same.

You recognize and accept that we have no control over the unauthorized interception or breach of any communications or data once it has been sent or has been subject to unauthorized access, notwithstanding all reasonable security measures employed by us or our third-party vendors, and consent to our use of these electronic devices and applications and submission of confidential client information to third-party service providers during this engagement.

#### **Engagement Administration, Fees and Other**

We understand that your employees will prepare all cash, accounts receivable, or other confirmations we request and will locate any documents selected by us for testing.

We will schedule the engagement based in part on deadlines, working conditions, and the availability of your key personnel. We expect to begin the work soon after you provide a complete trial balance along with all requested reconciliations and supporting schedules. It is our expectation that the audit would be completed

and issued by February 28, 2019. We will plan the engagement based on the assumption that your personnel will cooperate and provide assistance by performing tasks such as preparing requested schedules, retrieving supporting documents, and preparing confirmations. If, for whatever reason, your personnel are unavailable to provide the necessary assistance in a timely manner, it may substantially increase the work we have to do to complete the engagement within the established deadlines, resulting in an increase in fees over our original fee estimate.

At the conclusion of the engagement, we will complete the appropriate sections of the Data Collection Form that summarizes our audit findings. It is management's responsibility to electronically submit the reporting package (including financial statements, schedule of expenditures of federal awards, summary schedule of prior audit findings, auditors' reports, and corrective action plan) along with the Data Collection Form to the federal audit clearinghouse. We will coordinate with you the electronic submission and certification. The Data Collection Form and the reporting package must be submitted within the earlier of 30 calendar days after receipt of the auditors' reports or nine months after the end of the audit period.

We will provide copies of our reports to the City; however, management is responsible for distribution of the reports and the financial statements. Unless restricted by law or regulation, or containing privileged and confidential information, copies of our reports are to be made available for public inspection.

The audit documentation for this engagement is the property of Price Paige & Company and constitutes confidential information. However, subject to applicable laws and regulations, audit documentation and appropriate individuals will be made available upon request and in a timely manner to your cognizant agency or its designee, a federal agency providing direct or indirect funding, or the U.S. Government Accountability Office for purposes of a quality review of the audit, to resolve audit findings, or to carry out oversight responsibilities. We will notify you of any such request. If requested, access to such audit documentation will be provided under the supervision of Price Paige & Company personnel. Furthermore, upon request, we may provide copies of selected audit documentation to the aforementioned parties. These parties may intend, or decide, to distribute the copies or information contained therein to others, including other governmental agencies.

The audit documentation for this engagement will be retained for a minimum of seven years after the report release date.

Fausto Hinojosa, CPA, CFE, is the engagement partner and is responsible for supervising the engagement and signing the reports or authorizing another individual to sign them.

Our fees for the City's audit for the fiscal year ended June 30, 2018 are as follows:

City Audit	\$ 53,700
Single Audit Report	5,400
GASB 68 Preparation	2,250
GASB 75 Preparation	<u>2,500</u>
Total	<u>\$ 63,850</u>

Our fee estimates are based on anticipated cooperation from your personnel and the assumption that unexpected circumstances will not be encountered during the audit. If significant additional time is necessary, we will discuss it with you before we incur the additional costs. Our fees for these services will be billed at the hourly billing rates for the individual involved, plus out-of-pocket expenses. We will issue a monthly billing statement for the work completed in that month. Payments for services are due when rendered and interim billings may be submitted as work progresses and expenses are incurred.

If any dispute pertaining to our work product arises among the parties hereto, the parties agree first to try in good faith to settle the dispute by mediation administered by the American Arbitration Association under its Rules for Professional Accounting and Related Services Disputes before resorting to litigation. The costs of any mediation proceeding shall be shared equally by all parties.

All work will be suspended if your account becomes 90 days past due. No work will be resumed until your account is fully paid. Client and accountant both agree that any dispute over fees charged by the accountant to the client will be submitted for resolution by arbitration in accordance with the Rules for Professional Accounting and Related

Services Disputes of the American Arbitration Association. Such arbitration shall be binding and final. IN AGREEING TO ARBITRATION, WE BOTH ACKNOWLEDGE THAT, IN THE EVENT OF A DISPUTE OVER FEES CHARGED BY THE ACCOUNTANT, EACH OF US IS GIVING UP THE RIGHT TO HAVE THE DISPUTE DECIDED IN A COURT OF LAW BEFORE A JUDGE OR JURY AND INSTEAD WE ARE ACCEPTING THE USE OF ARBITRATION FOR RESOLUTION.

We appreciate the opportunity to be of service to you and believe this letter accurately summarizes the significant terms of our engagement. If you have any questions, please let us know. If you agree with the terms of our engagement as described in this letter, please return a signed copy (via email or regular mail) at your earliest convenience.

Very truly yours,



Fausto Hinojosa, CPA, CFE  
Price Paige & Company

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RESPONSE:

This letter correctly sets forth the understanding of the City of Madera, California.

---

*Management Signature* City Administrator *Date*  
*Title*

---

*Governance Signature* Mayor *Date*  
*Title*



## REPORT TO CITY COUNCIL

COUNCIL MEETING OF October 3, 2018

AGENDA ITEM NUMBER B-8

APPROVED BY:

  
DEPARTMENT DIRECTOR

  
CITY ADMINISTRATOR

**SUBJECT: CONSIDERATION OF A RESOLUTION ACCEPTING PUBLIC UTILITY AND PEDESTRIAN EASEMENT DEED, OFFERED BY TOMMY LEE JARRELL, IN CONJUNCTION WITH A NEW RESIDENTIAL COMPLEX BEING CONSTRUCTED AT 733 LINDEN STREET, AND AUTHORIZING THE CITY CLERK TO EXECUTE AND CAUSE TO BE RECORDED, A CERTIFICATE OF ACCEPTANCE**

### RECOMMENDATION:

That the City Council approves Resolution No. 18 - \_\_\_\_:

1. Accepting the PUBLIC UTILITY AND PEDESTRIAN EASEMENT DEED as offered by TOMMY LEE JARRELL
2. Authorizing the City Clerk to execute of the Certificate of Acceptance for said deed and cause it to be recorded.

### SUMMARY:

TOMMY LEE JARRELL, the owner of the property located at 733 Linden Street, APN Nos. 006-360-013 & 014, has offered a public utility and pedestrian easement deed along Linden Street as a condition of project development. It is recommended that the City Council accept this public utility and pedestrian easement offer as it meets the City's dedication requirements. A copy of the deed is attached.

### Engineering

205 W. Fourth Street • Madera, CA 93637 • TEL (559) 661-5418 • FAX (559) 675-6605

[www.cityofmadera.ca.gov](http://www.cityofmadera.ca.gov)

**HISTORY:**

On September 12, 2017, Precise Plan 2017-04 was approved, to allow for the development of a multi-family residential complex within the Groves Neighborhood Specific Plan area. The ten foot wide public utility and pedestrian easement deed dedication along Linden Street now being offered was required as a condition of this Site Plan Review.

**FISCAL IMPACT:**

Acceptance of the aforementioned PUBLIC UTILITY AND PEDESTRIAN EASEMENT DEED imposes no additional expense to the City or the General Fund.

**CONSISTENCY WITH THE VISION MADERA 2025 PLAN:**

Acceptance of this offer of dedication is consistent with Action 101.6, which calls for the City to ensure that infrastructure can sustain population growth, as well as action 126, which calls for safe and aesthetically pleasing streets.

RESOLUTION NO. 18 - \_\_\_\_

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MADERA, CALIFORNIA, ACCEPTING PUBLIC UTILITY AND PEDESTRIAN EASEMENT DEED, OFFERED BY TOMMY LEE JARRELL, LOCATED AT 733 LINDEN STREET, AND AUTHORIZING THE CITY CLERK TO EXECUTE AND CAUSE TO BE RECORDED, A CERTIFICATE OF ACCEPTANCE**

**WHEREAS**, property owner, **TOMMY LEE JARRELL**, has offered for dedication to the City a PUBLIC UTILITY AND PEDESTRIAN EASEMENT DEED for public utility and pedestrian purposes; and

**WHEREAS**, the City Engineer has certified to this Council that the public utility and pedestrian easement deed offered meets the current project's dedication requirements.

**NOW THEREFORE, THE CITY COUNCIL OF THE CITY OF MADERA**

**HEREBY** finds, orders and resolves as follows:

1. The above recitals are true and correct.
2. The Public Utility and Pedestrian Easement Deed, granted to the City by Tommy Lee Jarrell, a copy of which is on file in the office of the City Clerk and referred to for particulars, is accepted.
3. The City Clerk is hereby authorized and directed to execute and cause to be recorded the Public Utility and Pedestrian Easement Deed and Certificate of Acceptance as authorized by Resolution No 1572 adopted November 21, 1960.
4. This resolution is effective immediately upon adoption.

\*\*\*\*\*

RECORDING REQUESTED BY:

City of Madera

AFTER RECORDING RETURN TO:

City Clerk

City of Madera

205 W. 4th Street

Madera, CA 93637

NO DOCUMENTARY TAX DUE – R&T 11922 (Amended)

Presented for Recordation by the City of Madera

Fee Waived Per Sections 27383 & 27388.1(a)(2)(D) of the Government Code.....No Fee Due 0

APN: ~~006-360-014-000~~ 006-360-013-000

PUBLIC UTILITY AND PEDESTRIAN EASEMENT

FOR A VALUABLE CONSIDERATION, RECEIPT OF WHICH IS HEREBY ACKNOWLEDGED,  
(Property Owner : **Tommy Lee Jarrell** ,

DOES HEREBY GRANT TO THE CITY OF MADERA, A MUNICIPAL CORPORATION OF THE  
STATE OF CALIFORNIA

An easement for street and any and all other municipal purposes over, under, through and across, on  
and in the following described real property in the City of Madera, California, County of Madera, State  
of California, being more particularly described as follows:

(See Exhibit 'A' attached hereto and made a part hereof)

Date: 9/11/18

By: 

Property Owner Signature(s) above, Printed Name Below

Tom Jarrell

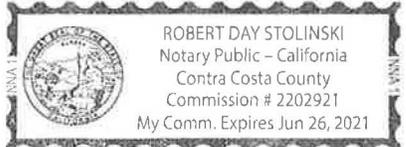
A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California)  
County of Madera)

On 9/11/2018, before me, ROBERT DAY A STOLINSKI, Notary Public, personally appeared \_\_\_\_\_ who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies) and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS MY HAND AND OFFICIAL SEAL  
Robert Day Stolinski



# EXHIBIT "A"

## PUBLIC UTILITY AND PEDESTRIAN EASEMENT

A PARCEL OF LAND IN THE SOUTHWEST ¼ OF THE NORTHWEST ¼ OF SECTION 23, TOWNSHIP 11 SOUTH RANGE 17 EAST, MOUNT DIABLO BASE AND MERIDIAN, ACCORDING TO THE OFFICIAL PLAT THEREOF, DESCRIBD AS FOLLOWS:

THE WEST 10 FEET OF PARCEL 1. TOGETHER WITH THE WEST 10 FEET OF PARCEL 2 ACCORDING TO THE NOTICE OF MERGER RECORDED IN DOC# 2018008052 04/17/2018

APN # 006-360-013-00, 006-360-014-000



# EXHIBIT "A"

100.00'

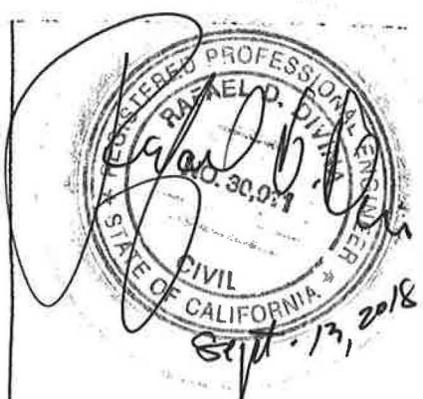
108.00'

PARCEL 2 : 006-360-014-000

PARCEL 1 : 006-360-013-000

292.20'

292.20'



10 FEET WIDE UTILITY AND PEDESTRIAN EASEMENT

100.00'

108.00'

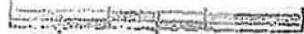
208.60'

30'

LINDEN STREET

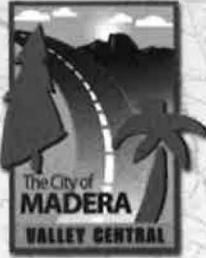
CENTER LINE

0' 40' 60'



10' 30'

SCALE = 1" = 40'



## REPORT TO CITY COUNCIL

COUNCIL MEETING OF October 3, 2018

AGENDA ITEM NUMBER B-9

APPROVED BY:

  
DEPARTMENT DIRECTOR

  
CITY ADMINISTRATOR

**SUBJECT: CONSIDERATION OF A RESOLUTION ACCEPTING PUBLIC UTILITY EASEMENT DEED, OFFERED BY ARTURO MEJIA AND MICAELA A. MEJIA, IN CONJUNCTION WITH A USED AUTOMOTIVE SALES BUSINESS LOCATED ON THE NORTHWEST CORNER OF YOSEMITE AVENUE AND HIGH STREET, AND AUTHORIZING THE CITY CLERK TO EXECUTE AND CAUSE TO BE RECORDED, A CERTIFICATE OF ACCEPTANCE**

### RECOMMENDATION:

That the City Council approves Resolution No. 18 - \_\_\_\_:

1. Accepting the PUBLIC ULILITY EASEMENT DEED as offered by ARTURO MEJIA AND MICAELA A. MEJIA
2. Authorizing the City Clerk to execute of the Certificate of Acceptance for said deed and cause it to be recorded.

### SUMMARY:

ARTURO MEJIA AND MICAELA A. MEJIA, owners of the property located at northwest corner of Yosemite Avenue and High Street, APN Nos. 007-123-003, 004, 005 & 006, have offered a public utility easement deed along Yosemite Avenue and High Street as a condition of project development. It is recommended that the City Council accept this public utility easement offer as it meets the City's dedication requirements. A copy of the deed is attached.

### Engineering

205 W. Fourth Street • Madera, CA 93637 • TEL (559) 661-5418 • FAX (559) 675-6605

[www.cityofmadera.ca.gov](http://www.cityofmadera.ca.gov)

**HISTORY:**

On March 13, 2018, Site Plan Review 2017-53 was approved, to allow for the development of a used automotive sales business. The ten foot wide public utility easement deed dedication along Yosemite Avenue and High Street now being offered was required as a condition of this Site Plan Review.

**FISCAL IMPACT:**

Acceptance of the aforementioned PUBLIC UTILITY EASEMENT DEED imposes no additional expense to the City or the General Fund.

**CONSISTENCY WITH THE VISION MADERA 2025 PLAN:**

Acceptance of this offer of dedication is consistent with Action 101.6, which calls for the City to ensure that infrastructure can sustain population growth, as well as action 126, which calls for safe and aesthetically pleasing streets.

RESOLUTION NO. 18 - \_\_\_\_

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MADERA, CALIFORNIA, ACCEPTING PUBLIC UTILITY EASEMENT DEED, OFFERED BY ARTURO MEJIA AND MICAELA A. MEJIA, IN CONJUNCTION WITH A USED AUTOMOTIVE SALES BUSINESS LOCATED ON THE NORTHWEST CORNER OF YOSEMITE AVENUE AND HIGH STREET, AND AUTHORIZING THE CITY CLERK TO EXECUTE AND CAUSE TO BE RECORDED, A CERTIFICATE OF ACCEPTANCE**

**WHEREAS**, property owners, **ARTURO MEJIA AND MICAELA A. MEJIA**, have offered for dedication to the City a PUBLIC UTILITY EASEMENT DEED for public utility purposes; and

**WHEREAS**, the City Engineer has certified to this Council that the public utility easement deed offered meets the current project's dedication requirements.

**NOW THEREFORE, THE CITY COUNCIL OF THE CITY OF MADERA**

**HEREBY** finds, orders and resolves as follows:

1. The above recitals are true and correct.
2. The Public Utility Easement Deed, a copy of which is on file in the office of the City Clerk and referred to for particulars, is accepted.
3. The City Clerk is hereby authorized and directed to record the Street Easement Deed and Certificate of Acceptance as authorized by Resolution No 1572 adopted November 21, 1960.
4. This resolution is effective immediately upon adoption.

\* \* \* \* \*

RECORDING REQUESTED BY:

City of Madera

AFTER RECORDING RETURN TO:

City Clerk

City of Madera

205 W. 4th Street

Madera, CA 93637

NO DOCUMENTARY TAX DUE – R&T 11922 (Amended)

Presented for Recordation by the City of Madera

Fee waived per Section 27383 of the Government Code.....No Fee Due 0

Fee waived per Section 27568.1 (A)(2)(D) of the Government Code

APN: 007-123—003, 004, 005, 006 (Portion)

PUBLIC UTILITY EASEMENT

FOR A VALUABLE CONSIDERATION, RECEIPT OF WHICH IS HEREBY ACKNOWLEDGED,  
**Arturo Mejia and Micaela A. Mejia,**

DO HEREBY GRANT TO **THE CITY OF MADERA**, A MUNICIPAL CORPORATION OF THE STATE OF CALIFORNIA

An easement for street and any and all other municipal purposes over, under, through and across, on and in the following described real property in the City of Madera, California, County of Madera, State of California, being more particularly described as follows:

(See Exhibit 'A' and 'B' attached hereto and made a part hereof)

By: Arturo Mejia Date: 9-14-18  
Arturo Mejia

By: Micaela Mejia Date: 9-14-18  
Micaela A. Mejia

SEE ATTACHMENT

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

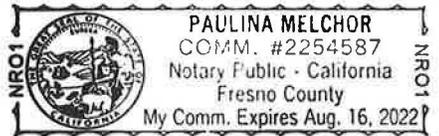
State of California)  
County of Madera)

On 9/14/18, before me, PAULINA MELCHOR Notary Public, personally appeared ARTURO JAVIER MEJIA who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies) and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS MY HAND AND OFFICIAL SEAL

Paulina Melchor



**ACKNOWLEDGEMENT**

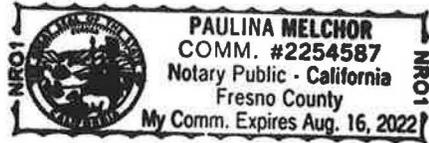
A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California }  
County of Fresno }

On, **September 14, 2018** before me, **Paulina Melchor**, a Notary Public, personally appeared, **Micaela Alvarez Mejia**, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) ~~is~~ ~~are~~ subscribed to the within instrument and acknowledged to me that ~~he~~ ~~(she)~~ ~~they~~ executed the same in ~~his~~ ~~her~~ ~~their~~ authorized capacity ~~(ies)~~, and that by ~~his~~ ~~her~~ ~~their~~ signature ~~(s)~~ on the instrument the person ~~(s)~~, or the entity upon behalf of which the person ~~(s)~~ acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

**WITNESS my hand and official seal.**



*Paulina Melchor*  
\_\_\_\_\_  
**Paulina Melchor, Notary Public**  
My Commission Expiration Date: August 16, 2022

(Seal)

**Description of Attached Document**

Title or Type of Document: **Letter of Transmittal**  
Document Date: **09/14/2018**  
Number of Page(s): **5 (Including this Acknowledgment)**  
Signer(s): **Micaela Alvarez Mejia**

## EXHIBIT "A"

LEGAL DESCRIPTION  
PUBLIC UTILITY EASEMENT  
APN: 007-123-003, 004, 005, 006 (Portion)

Those portions of Lots 9 through 15 as shown on the map recorded in Book 4 of Maps at Page 32, Madera County Records, being a subdivision of the Northeasterly half of Block 45 of Map of Part of Madera recorded in Book 3 of Plats at Page 45, Fresno County Records, described as follows:

The Northeasterly 10.00 feet of said Lot 9.

Together with the Northeasterly 10.00 feet of said Lot 10.  
Excepting therefrom that portion thereof lying within the Southeasterly 10.00 feet of said Lot 10.

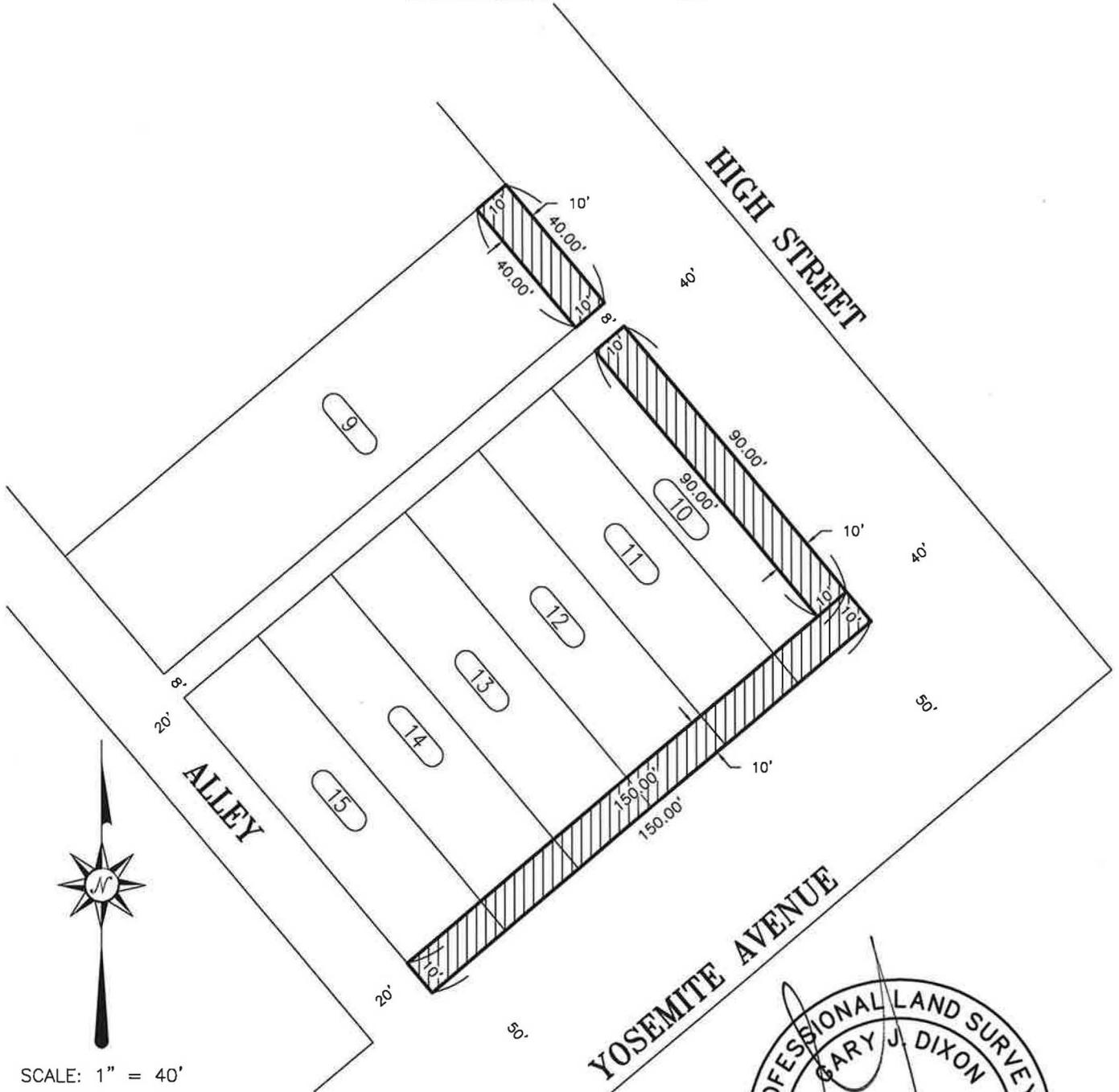
Together with the Southeasterly 10.00 feet of said Lots 10 through 15.

Containing 2,800 square feet, more or less.



9-10-18

# EXHIBIT 'B'



SCALE: 1" = 40'



PROPOSED PUBLIC UTILITY EASEMENT.

PUBLIC UTILITY EASEMENT AREA 2,800 SQUARE FEET +/-

LOT NUMBERS AS SHOWN ON MAP RECORDED IN BOOK 4 OF MAPS AT PAGE 32, MADERA COUNTY RECORDS, BEING A SUBDIVISION OF THE NORTHEASTERLY HALF OF BLOCK 45 OF MAP OF PART OF MADERA RECORDED IN BOOK 3 OF PLATS AT PAGE 45, FRESNO COUNTY RECORDS.

15

9.10.18

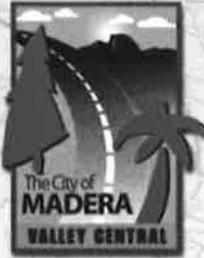


18-058  
 YOSEMITE/HIGH

**DIXON & ASSOCIATES, INC.**  
**LAND SURVEYING**

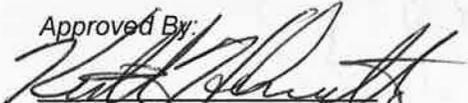
620 DEWITT, #101  
 CLOVIS, CALIFORNIA, 93612

PH: (559)297-4200 FAX: (559)297-4272



## REPORT TO CITY COUNCIL

Approved By:

  
Department Director

Council Meeting of October 3, 2018

Agenda Item Number B-10

  
City Administrator

**SUBJECT:** CONSIDERATION OF A RESOLUTION APPROVING THE AWARD OF CONTRACT FOR FIRE STATION NO. 58 FIRE STATION CONSTRUCTION NORTHWEST CITY PROJECT NO. FD-00002 IN THE AMOUNT OF \$6,568,364.60 TO DAVIS MORENO CONSTRUCTION, INC., AUTHORIZING CONSTRUCTION CONTINGENCIES OF UP TO 10% AND CONSTRUCTION INSPECTION AND MANAGEMENT OF UP TO 5%, AND AUTHORIZING THE MAYOR TO EXECUTE THE CONTRACT ON BEHALF OF THE CITY

CONSIDERATION OF A RESOLUTION APPROVING A CONTRACT WITH MOORE TWINING ASSOCIATES, INC., FOR ON-DEMAND TESTING SERVICES NOT TO EXCEED \$35,000 FOR FIRE STATION NO. 58 FIRE STATION CONSTRUCTION NORTHWEST CITY PROJECT NO. FD-00002, AND AUTHORIZING THE MAYOR TO EXECUTE THE CONTRACT ON BEHALF OF THE CITY

### **RECOMMENDATION:**

1. Adoption of a Resolution:
  - a. Approving the award of contract for Fire Station No. 58 Fire Station Construction Northwest City Project No. FD-00002 in the amount of \$6,568,364.60 to Davis Moreno Construction, Inc.
  - b. Authorizing Construction Contingencies of up to 10% as approved by the City Engineer.
  - c. Authorizing Contingencies of up to 5% for Construction Inspection and Management as approved by the City Engineer.
  - d. Authorizing the Mayor to execute the Agreement on behalf of the City
2. Adoption of a Resolution:
  - a. Approving On-Demand Testing Services Agreement with Moore Twining, Inc., not to exceed \$35,000 as approved by the Engineer.
  - b. Authorizing the Mayor to execute the Agreement on behalf of the City.

### **Engineering**

## **SUMMARY:**

The low bid of \$6,568,364.60 received for the project is approximately 8.9 percent below the Engineer's Cost Estimate of \$7,370,000. The low bidder meets all the requirements necessary to be awarded the construction contract. The project funding is included in the current 2018/19 City budget.

## **DISCUSSION:**

The new Fire Station No. 58 consists of constructing a 9,020 square foot "Essential Services Facility" that will include 3 fire truck bays and can accommodate a hook and ladder fire truck. Included within the building is a reception area and station office, battalion chief, captain and firemen quarters, locker area, kitchen/dining area, turnout cleaning and storage area, IT and communications room. The new station will be fully energy efficient.

The new fire station will be fully landscaped, with ADA compliant sidewalks, parking areas for staff and visitors. A perimeter fence will be constructed including security features for the grounds and building.

The site work consists of constructing a fully paved high-strength PCC concrete entrance, perimeter access and exits for the 3-bay fire station. Sewer, water and storm drains connections to existing off-site infrastructure will be extended to service the fire station facility. Included with the Project is an emergency stand-by generator with a fueling enclosure.

The project includes utility installations for a gas main and appurtenances by City contractor from the PG&E gas meter installation location to the fire station, electrical conduits will be installed by City contractor from a new pole and transformer to be installed by PG&E to serve the fire station. The City contractor will also install AT&T conduit and appurtenances and Comcast conduit within a joint trench to serve the facility. PG&E will provide cabling/wiring to energize the new station and/or to activate their services. The PG&E Rule 16 cost for their portion of the installations is \$57,951.97. The remaining costs for extension of utilities by AT&T and Comcast is estimated at approximately \$35,000. Upon completion of their installations the final costs will be provided.

The City Engineering Division will provide Construction Management for the overall project and Construction Inspection for the site work. The City's Building Division will provide building inspections for compliance with the Building Code and Building Permit requirements.

RRM Design Group, Inc., the design architect will provide services during construction as required for completion of the project, the construction phase was included in their initial contract and approved by the City Council.

Materials testing, compaction testing, concrete testing including other testing as required in accordance with the specifications and building code will be performed by Moore Twining Associates, Inc. The testing will be performed on an on-demand basis as approved by the City Engineer at a cost not to exceed \$35,000. Moore Twining Associates Inc., was selected to provide a Geotechnical Engineering Investigation for the project and the project report is incorporated into the specifications.



Measure K Appropriation - 2018/19 FY Budget	2,100,000
Loan Against FY 19/10 Measure K Revenues	300,000
Loan Against FY 20/21 Measure K Revenues	300,000
Bond Proceeds - 30 Year Bond	4,219,369
<b>Total Project Funding – All Sources</b>	<b>\$8,219,369</b>

**CONSISTENCY WITH THE VISION MADERA 2025 PLAN:**

The 2025 Action Plan includes Strategy #421: Ensure the safety and protection of Madera and its community members through adequate first response to emergencies. Maintain sufficient resources to expand protection as the community grows.

**RESOLUTION NO. 18-\_\_**

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MADERA APPROVING THE AWARD OF CONTRACT FOR FIRE STATION NO. 58 FIRE STATION CONSTRUCTION NORTHWEST CITY PROJECT NO. FD-00002 IN THE AMOUNT OF \$6,568,364.60 TO DAVIS MORENO CONSTRUCTION, INC., AUTHORIZING CONSTRUCTION CONTINGENCIES OF UP TO 10% AND CONSTRUCTION INSPECTION AND MANAGEMENT OF UP TO 5%, AND AUTHORIZING THE MAYOR TO EXECUTE THE CONTRACT ON BEHALF OF THE CITY**

**WHEREAS**, The Engineering Department advertised a solicitation for bids for the Fire Station No. 58 Fire Station Construction Northwest City Project No. FD-00002, and

**WHEREAS**, Sealed bids were received and opened by the City Engineer; and

**WHEREAS**, Funding for project construction is programmed in the City's FY 2018/19 Budget, and

**WHEREAS**, On July 31, 2017, a Negative Declaration Determination was approved for the project pursuant to the provisions of the California Environmental Quality Act (CEQA).

The project will not have a significant effect on the environment.

**NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF MADERA HEREBY** finds, orders and resolves as follows:

1. The above recitals are true and correct.
2. The City Council has reviewed and considered all information presented including the report to the City Council from the Engineering Department.
3. The City finds that Davis Moreno Construction, Inc., is the lowest responsible and responsive bidder.
4. The Agreement for the Fire Station No. 58 Fire Station Construction Northwest City Project No. FD-00002, a copy of which is on file in the office of the City Clerk and which is referred to for more particulars, is hereby approved.
5. Construction Contingencies of up to 10% of the Agreement amount as approved by the City Engineer are hereby authorized.
6. Construction Inspection and Management contingencies of up to 5% of the Agreement amount as approved by the City Engineer are hereby authorized.
7. The Mayor is authorized to execute the Agreement on behalf of the City.
8. This Resolution is effective immediately upon adoption.

\* \* \* \* \*

**RESOLUTION NO. 18-\_\_**

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MADERA, CALIFORNIA, APPROVING A CONTRACT WITH MOORE TWINING & ASSOCIATES, INC., FOR ON-DEMAND TESTING SERVICES NOT TO EXCEED \$35,000 FOR THE FIRE STATION NO. 58 FIRE STATION CONSTRUCTION NORTHWEST CITY PROJECT NO. FD-00002, AND AUTHORIZING THE MAYOR TO EXECUTE THE CONTRACT ON BEHALF OF THE CITY**

**WHEREAS**, The City of Madera is undertaking construction of the new Fire Station No. 58 Fire Station Construction Northwest City Project No. FD-00002, and

**WHEREAS**, The Engineering Department selected Moore Twining Associates, Inc., to provide Professional Geotechnical Services for the Fire Station No. 58 Fire Station Construction Northwest City Project No. FD-00002, and

**WHEREAS**, Moore Twining Associates, Inc., has provided a Geotechnical Engineering Investigation report for the Fire Station No. 58 Fire Station Construction Northwest City Project No. FD00002 site that is incorporated in the specifications; and

**WHEREAS**, Moore Twining Associates, Inc., shall provide Professional On-Demand Materials Testing Services for the Fire Station No. 58 Fire Station Construction Northwest City Project No. FD-00002, and

**WHEREAS**, Funding for project construction is programmed in the City's FY 2018/19 Budget, and

**WHEREAS**, the City Engineer has prepared an agreement for such services with Moore Twining Associates, Inc. that is on file in the office of the City Clerk of the City of Madera and the "Agreement" is referred to for more particulars.

**NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF MADERA HEREBY** finds, orders and resolves as follows:

1. The above recitals are true and correct.
2. The City Council has reviewed and considered all information presented including the report to the City Council from the Engineering Department.
3. The Agreement with Moore Twining Associates, Inc., for On-Demand Testing Services, a copy of which is on file in the office of the City Clerk and referred to for particulars, is approved in an amount not to exceed \$35,000
4. The Mayor is authorized to execute the Agreement on behalf of the City.
5. This Resolution is effective immediately upon adoption.

\* \* \* \* \*

## AGREEMENT

**THIS AGREEMENT**, made this 3<sup>rd</sup> day of October, 2018, between the City of Madera, hereinafter called "**OWNER**", and Davis Moreno Construction, Inc., doing business as (an individual), or (a partnership), or (a corporation), hereinafter called "**CONTRACTOR**".

**WITNESSETH:** That for and in consideration of the payments and agreements hereinafter mentioned:

1. The **CONTRACTOR** shall commence and complete all **WORK** required for the "**CITY OF MADERA FIRE STATION NO. 58 - FIRE STATION CONSTRUCTION NORTHWEST, CITY PROJECT NO. FD-00002**"

2. The **CONTRACTOR** shall furnish all of the material, supplies, tools, equipment, labor and other services necessary for the construction and completion of the **WORK** described herein.

3. The **CONTRACTOR** shall commence the **WORK** required by the **CONTRACT DOCUMENTS** within 10 calendar days after the date of the **NOTICE TO PROCEED** and will complete the same within the time period set forth in the **CONTRACT DOCUMENTS**. The **CONTRACTOR** shall submit a Payment Bond and Performance Bond in the amount of \$6,568,364.60, each and Insurance Certificates as specified in the **CONTRACT DOCUMENTS** prior to commencing any **WORK**.

4. The **CONTRACTOR** agrees to perform all of the **WORK** described in the **DOCUMENTS** for the unit and lump sum prices set forth in the Bid Schedule.

5. The term "**CONTRACT DOCUMENTS**" means and includes the following:

- (A) Advertisement for Bids
- (B) Information for Bidders
- (C) Bid Proposal
- (D) Bid Bond
- (E) Agreement
- (F) Payment Bond
- (G) Performance Bond
- (H) Insurance Requirements for Contractors
- (I) General Conditions
- (J) Special Conditions
- (K) City of Madera Standard Specifications and Drawings
- (L) State Standard Plans and Specifications

(M) **PLANS** and **SPECIFICATIONS** prepared or issued by CITY OF MADERA, entitled "**CITY OF MADERA, FIRE STATION NO. 58 - FIRE STATION CONSTRUCTION NORTHWEST, CITY PROJECT NO. FD-00002 [PROJECT NAME]**" dated JULY 2018.

Addenda Nos. 1, dated 08/21/18

Addenda Nos. 2, dated 08/23/18

Addenda Nos. 3, dated 08/28/18

Addenda Nos. 4, dated 08/29/18

6. In the event the **CONTRACTOR** does not complete the **WORK** within the time limit specified herein or within such further time as authorized, the **CONTRACTOR** shall pay to the **OWNER** liquidated damages in the amount of **One Thousand Dollars (\$1,000.00)** per day for each and every calendar day delay in finishing the **WORK** beyond the completion date so specified.

7. The **OWNER** will pay to the **CONTRACTOR** in the manner and at such times as set forth in the General Conditions such amounts as required by the **CONTRACT DOCUMENTS**. For any moneys earned by the **CONTRACTOR** and withheld by the **OWNER** to ensure the performance of the Contract, the **CONTRACTOR** may, at his request and expense, substitute securities equivalent to the amount withheld in the form and manner and subject to the conditions provided in Division 2, Part 5, Section 22300 of the Public Contract Code of the State of California.

8. In the event of a dispute between the **OWNER** and the **CONTRACTOR** as to an interpretation of any of the specifications or as to the quality or sufficiency of material or workmanship, the decision of the **OWNER** shall for the time being prevail and the **CONTRACTOR**, without delaying the job, shall proceed as directed by the **OWNER** without prejudice to a final determination by negotiation, arbitration by mutual consent or litigation, and should the **CONTRACTOR** be finally determined to be either wholly or partially correct, the **OWNER** shall reimburse him for any added costs he may have incurred by reason of work done or material supplied beyond the terms of the contract as a result of complying with the **OWNER'S** directions as aforesaid. In the event the **CONTRACTOR** shall neglect to prosecute the work properly or fail to perform any provisions of the **CONTRACT**, the **OWNER**, after three days written notice to the **CONTRACTOR**, may, without prejudice to any other remedy it may have, make good such deficiencies and may deduct the cost thereof from the payment then or thereafter due to the **CONTRACTOR**, subject to final settlement between the parties as in this paragraph herein above provided.

9. Attention is directed to Section 1735 of the Labor Code, which reads as follows:

"No discrimination shall be made in the employment of persons upon public works because of the race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical conditions, marital status, or sex of such persons except as provided in Section 12940 of the Government Code, and every contractor for public works violating this section is subject to all the penalties imposed for by violation of this chapter".

10. In accordance with the provisions of Article 5, Chapter I, Part 7, Division 2 (commencing with Section 1860) and Chapter 4, Part I, Division 4 (commencing with Section 3700) of the Labor Code of the State of California, the **CONTRACTOR** is required to secure the payment of compensation to his employees and shall for that purpose obtain and keep in effect adequate Worker's Compensation Insurance.

The undersigned **CONTRACTOR** is aware of the provisions of Section 3700 of the Labor Code which requires every employer to be insured against Liability for Worker's Compensation or to undertake self-insurance in accordance with the provisions before commencing the performance of the **WORK** of this Agreement.

11. The **CONTRACTOR** shall comply with Part 7, Chapter I, Article 2, Section 1775 of the Labor Code of the State of California. The **CONTRACTOR** shall, as a penalty to the **OWNER**, forfeit fifty dollars (\$50.00) for each calendar day, or portion thereof, for each workman paid less than the prevailing rates for such work or craft in which such workman is employed for any public

work done under the Contract by him or by any **SUBCONTRACTOR** under him. The difference between such prevailing wage rates and the amount paid to each workman for each calendar day or portion thereof for which each workman was paid less than a prevailing wage rate, shall be paid to each workman by the **CONTRACTOR**.

12. The **CONTRACTOR** shall comply with Part 7, Chapter 1, Article 2, Section 1776 of the Labor Code of the State of California. The **CONTRACTOR** shall keep and require that all **SUBCONTRACTORS** keep accurate payroll records showing the name, address, social security number, work classification, straight time and overtime hours worked each day and week, and the actual per diem wages paid to each journeyman, apprentice worker or other employee employed by him in connection with public work. Such payroll records shall be certified and shall be available for inspection at all reasonable hours at the principal office of the **CONTRACTOR** by the **OWNER**, its officers and agents and to the representatives of the Division of Labor Law Enforcement of the State Department of Industrial Relations. In the event of non-compliance with the requirements of Section 1776, the **CONTRACTOR** shall have 10 days in which to comply subsequent to receipt of written notice specifying in what respects the **CONTRACTOR** must comply. Should non-compliance still be evident after the ten (10) day period, the **CONTRACTOR** shall, as a penalty to the **OWNER** forfeit twenty-five dollars (\$25.00) for each calendar day, or portion thereof, for each worker until strict compliance is effectuated. Upon the request of the Division of Apprenticeship Standards or the Division of Labor Standards Enforcement, these penalties shall be withheld from progress payments then due.

13. Attention is directed to the provisions in Sections 1777.5 and 1777.6 of the Labor Code concerning the employment of apprentices by the **CONTRACTOR** or any **SUBCONTRACTOR** under him. It is the **CONTRACTOR'S** responsibility to ensure compliance by both itself and all **SUBCONTRACTORS**.

Section 1777.5 provides, in part, as follows:

The **CONTRACTOR** or **SUBCONTRACTOR**, if he is covered by this section, upon the issuance of the approval certificate, or if he has been previously approved in the craft or trade, shall employ the number of apprentices or the ratio of apprentices to journeyman stipulated in the apprenticeship standards. Upon proper showing by the **CONTRACTOR** that he employs apprentices in the craft or trade in the State on all of his/her contracts on an annual average of not less than one hour of apprentice work for every five hours of labor performed by a journeyman, or in the land surveyor classification, one apprentice for each five journeyman, the Division of Apprenticeship Standards may grant a certification exempting the **CONTRACTOR** from the one (1) to five (5) hourly ratio as set forth in this section. This section shall not apply to contracts of general **CONTRACTORS** or to contracts of specialty contractors not bidding for work through a general or prime **CONTRACTOR**, when the contracts of general **CONTRACTORS**, or those specialty **CONTRACTORS** involve less than thirty thousand dollars (\$30,000). Any work performed by a journeyman in excess of eight hours per day or forty (40) hours per week shall not be used to calculate the hourly ratio required by this section.

Apprenticeable craft or trade, as used in this section, shall mean a craft or trade determined as an apprenticeable occupation in accordance with rules and regulations prescribed by the Apprenticeship Council. The joint apprenticeship committee shall have the discretion to grant a certificate, which shall be subject to the approval of the Administrator of Apprenticeship, exempting a **CONTRACTOR** from the 1 to 5 ratio set forth in this section when it finds that any one of the following conditions is met:

- (a) In the event unemployment for the previous three month period in such area exceeds an average of 15 percent, or
- (b) In the event the number of apprentices in training in such area exceeds a ratio of 1 to 5, or
- (c) If there is a showing that the apprenticeable craft or trade is replacing at least one-thirtieth of its journeymen annually through apprenticeship training, either (1) on a statewide basis, or (2) on a local basis, or
- (d) If assignment of an apprentice to any work performed under a public works contract would create a condition which should jeopardize his life or the life, safety, or property of fellow employees, or the public at large or if the specific task to which the apprentice is to be assigned is of a nature that training cannot be provided by a journeyman.

When such exemptions are granted to an organization which represents **CONTRACTORS** in a specific trade from the 1 to 5 ratio on a local or statewide basis the member **CONTRACTORS** will not be required to submit individual applications for approval to local joint apprenticeship committees, provided they are already covered by the local apprenticeship standards.

The **CONTRACTOR** is required to make contributions to funds established for the administration of apprenticeship programs if he employs registered apprentices or journeymen in apprenticeable trade on such contracts and if other **CONTRACTORS** on the public work site are making such contributions. The **CONTRACTOR**, and any **SUBCONTRACTOR** under him, shall comply with the requirements of Sections 1777.5 and 1777.6 of the Labor Code in the employment of apprentices. Information relative to number of apprentices, identifications, wages, hours of employment and standards of working conditions shall be obtained from the Division of Apprenticeship Standards. Consult the white pages of your telephone directory under California, State of, Industrial Relations, Apprenticeship Standards, for the telephone number and address of the nearest office. Willful failure by the **CONTRACTOR** to comply with the provisions of Sections 1777.5 will subject the **CONTRACTOR** to the penalties set forth in Section 1777.7 of the Labor Code.

14. Pursuant to California Labor Code Section 1813, eight hours in any one calendar day and forty (40) hours in any calendar week shall be the maximum hours any workman is required or permitted to work, except in cases of extraordinary emergency caused by fires, flood, or danger to life and property. The **CONTRACTOR** doing the work, or his duly authorized agent, shall file with **OWNER** a report, verified by his oath, setting forth the nature of the said emergency, which report shall contain the name of said worker and the hours worked by him on the said day, and the **CONTRACTOR** and each **SUBCONTRACTOR** shall also keep an accurate record showing the names and actual hours worked of all workers employed by him in connection with the work contemplated by this Agreement, which record shall be open at all reasonable hours to the inspection of the **OWNER**, or its officer or agents and to the Chief of all Division of Labor Statistics and Law Enforcement of the Department of Industrial Relations, his deputies or agents; and it is hereby further agreed that said **CONTRACTOR** shall forfeit as a penalty to the **OWNER** the sum of Twenty-Five Dollars (\$25.00) for each laborer, workman or any **SUBCONTRACTOR** under him for each calendar day during which such laborer, workman or mechanic is required or permitted to labor more than eight (8) hours in violation of this stipulation.

Overtime and shift work may be established as a regular procedure by the **CONTRACTOR** with reasonable notice and written permission of the **OWNER**. No work other than overtime and shift work established as a regular procedure shall be performed between the hours of 6:00 P.M. and 7:00 A.M. nor on Saturdays, Sundays or holidays except such work as is necessary for the proper care and protection of the work already performed or in case of an emergency.

**CONTRACTOR** agrees to pay the costs of overtime inspection except those occurring as a result of overtime and shift work established as a regular procedure. Overtime inspection shall include inspection required during holidays, Saturdays, Sundays and weekdays. Costs of overtime inspection will cover engineering, inspection, general supervision and overhead expenses which are directly chargeable to the overtime work. **CONTRACTOR** agrees that **OWNER** shall deduct such charges from payments due the **CONTRACTOR**.

15. The **CONTRACTOR** shall comply with Division 2, Chapter 4, Part 1 of the Public Contract Code relating to subletting and subcontracting, specifically included but not limited to Sections 4104, 4106, and 4110, which by this reference are incorporated into this Agreement as though fully set forth herein.

16. The **CONTRACTOR** and the **OWNER** agree that changes in this Agreement or in the work to be done under this Agreement shall become effective only when written in the form of a supplemental agreement or change order and approved and signed by the **OWNER** and the **CONTRACTOR**. It is specifically agreed that the **OWNER** shall have the right to request any alterations, deviations, reductions or additions to the contract or the plans and specifications or any of them, and the amount of the cost thereof shall be added to or deducted from the amount of the contract price aforesaid by fair and reasonable valuations thereof.

This contract shall be held to be completed when the work is finished in accordance with the original plans and specifications as amended by such changes. No such change or modification shall release or exonerate any surety upon any guaranty or bond given in connection with this contract.

17. **Contractor** shall indemnify, defend with legal counsel approved by City, and hold harmless City, its officers, officials, employees, and volunteers from and against all liability, loss, damage, expense, and cost (including without limitation reasonable legal counsel fees, expert fees and all other costs and fees of litigation) of every nature arising out of or in connection with **Contractor's** negligence, recklessness, or willful misconduct in the performance of work hereunder, or its failure to comply with any of its obligations contained in this AGREEMENT, except such loss or damage caused by the sole active negligence or willful misconduct of the City. Should conflict of interest principles preclude a single legal counsel from representing both City and **Contractor**, or should City otherwise find **Contractor's** legal counsel unacceptable, then **Contractor** shall reimburse the City its costs of defense, including without limitation, reasonable legal counsel fees, expert fees, and all other costs and fees of litigation. The **Contractor** shall promptly pay any final judgment rendered against the City (and its officers, officials, employees and volunteers) with respect to claims determined by a trier of fact to have been the result of the **Contractor's** negligent, reckless, or wrongful performance. It is expressly understood and agreed that the foregoing provisions are intended to be as broad and inclusive as is permitted by the law of the State of California and will survive termination of this Agreement.

**Contractor** obligations under this section apply regardless of whether or not such claim,

charge, damage, demand, action, proceeding, loss, stop notice, cost, expense, judgment, civil fine or penalty, or liability was caused in part or contributed to by an Indemnitee. However, without affecting the rights of City under any provision of this agreement, **Contractor** shall not be required to indemnify and hold harmless City for liability attributable to the active negligence of City, provided such active negligence is determined by agreement between the parties or by the findings of a court of competent jurisdiction. In instances where City is shown to have been actively negligent and where City's active negligence accounts for only a percentage of the liability involved, the obligation of **Contractor** will be for that entire portion or percentage of liability not attributable to the active negligence of City.

**Contractor** agrees to obtain or cause to be obtained executed defense and indemnity agreements with provisions identical to those set forth in this Section from each and every Subcontractor and Subconsultant, of every Tier. In the event the **Contractor** fails to do so, **Contractor** agrees to be fully responsible to provide such defense and indemnification according to the terms of this Section.

18. Contractor must comply with the insurance requirements as described in the section "**INSURANCE REQUIREMENTS FOR CONTRACTORS WITH CONSTRUCTION RISK**", pages **35-37** of the Contract Documents.

19. Amendments- Any changes to this Agreement requested by either City or **Davis Moreno Construction, Inc.** may only be effected if mutually agreed upon in writing by duly authorized representatives of the parties hereto. This Agreement shall not be modified or amended or any rights of a party to it waived except by such writing.

20. Termination.

A. This Agreement may be terminated at any time by either party upon fifteen (15) calendar days written notice. In the event the Agreement is terminated by either party, **Davis Moreno Construction, Inc.** shall be compensated for services performed to the date of termination based upon the compensation rates and subject to the maximum amounts payable agreed to together with such additional services performed after termination which are authorized in writing by the City representative to wind up the work performed to date of termination.

B. City may immediately suspend or terminate this Agreement in whole or in part by written notice where, if in the determination of City, there is:

1. An illegal use of funds by **Davis Moreno Construction, Inc.**;
2. A failure by **Davis Moreno Construction, Inc.** to comply with any material term of this Agreement;
3. A substantially incorrect or incomplete report submitted by **Davis Moreno Construction, Inc.** to City.

In no event shall any payment by City or acceptance by **Davis Moreno Construction, Inc.** constitute a waiver by such party of any breach of this Agreement or any default which may then exist on the part of either party. Neither shall such payment impair or prejudice any remedy available to either party with respect to such breach or default. City shall have the right to demand of **Davis Moreno Construction, Inc.** the repayment to City of any funds disbursed to **Davis Moreno Construction, Inc.** under this Agreement which, as determined by the appropriate court or arbitrator, were not expended in accordance with the terms of this Agreement.

Notice of termination shall be mailed to the City:

City of Madera  
Engineering Department  
205 W. 4<sup>th</sup> Street  
Madera, Ca 93637

To the Contractor **Davis Moreno Construction, Inc.**  
4720 North Blythe Avenue  
Fresno, CA 93722

**Notices.** All notices and communications from the **Davis Moreno Construction, Inc.** shall be to City's designated Project Manager or Principal-In-Charge. Verbal communications shall be confirmed in writing. All written notices shall be provided and addressed as soon as possible, but not later than thirty (30) days after termination.

21. Compliance With Laws- City shall comply with all Federal, State and local laws, ordinances, regulations and provisions applicable in the performance of City's services.

Wherever reference is made in this Agreement to standards or codes in accordance with which work is to be performed or tested, the edition or revision of the standards or codes current on the effective date of this Agreement shall apply, unless otherwise expressly stated.

22. Attorneys' Fees/Venue- In the event that any action is brought to enforce the terms of this Agreement, the party found by the court to be in default agrees to pay reasonable attorneys' fees to the successful party in an amount to be fixed by the Court. The venue for any claim being brought for breach of this Agreement shall be in Madera County or as appropriate in the U.S. District Court for the Eastern District of California, located in the City of Madera.

23. Governing Law- The laws of the State of California shall govern the rights and obligations of the parties under the Agreement, including the interpretation of the Agreement. If any part of the Agreement is adjudged to be invalid or unenforceable, such invalidity shall not affect the full force and effect of the remainder of the Agreement.

24. City's Authority- Each individual executing or attesting to this Agreement on behalf of the City hereby covenants and represents: (i) that he or she is duly authorized to execute or attest and deliver this Agreement on behalf of such corporation in accordance with a duly adopted resolution of the corporation's articles of incorporation or charter and bylaws; (ii) that this Agreement is binding upon such corporation; and (iii) that Contractor is a duly organized and legally existing municipal corporation in good standing in the State of California.

25. Contractor's Legal Authority - Each individual executing or attesting this Agreement on behalf of **Davis Moreno Construction, Inc.** hereby covenants and represents: (i) that he or she is duly authorized to execute or attest and deliver this Agreement on behalf of such corporation in accordance with such corporation's articles of incorporation or charter and by-laws; (ii) that this Agreement is binding upon such corporation; and (iii) that **Davis Moreno Construction, Inc.** is a duly organized and legally existing corporation in good standing in the State of California.

26. Remedies for Default. Failure by a party to perform any term, condition or covenant required of the party under this Agreement shall constitute a "default" of the offending party under this Agreement. In the event that a default remains uncured for more than ten (10) days following receipt of written notice of default from the other party, a "breach" shall be deemed to have occurred. Any failure or delay by a party in asserting any of its rights and remedies as to any default shall not operate as a waiver of any default or of any rights or remedies associated with a default.

27. Independent Contractor. In performance of the work, duties, and obligations assumed by the Contractor under this Agreement, it is mutually understood and agreed that the

City, including any and all of City's officers, agents and employees will, at all times, be acting and performing as an independent contractor, and shall act in an independent capacity and not as an officer, agent, servant, employee, joint venturer, partner, or associate of **City**. Furthermore, **City** shall have no right to control or supervise or direct the manner or method by which City shall perform its work and functions. The City shall comply with all applicable provisions of law and the rules and regulations, if any, of governmental authorities having jurisdiction over the subject matter hereof.

Because of its status as an independent contractor, City shall have absolutely no right to employment rights and benefits available to **City** employees. City shall be solely liable and responsible for providing to, or on behalf of, its employees all legally required employee benefits. In addition, City shall be solely responsible and hold **City** harmless from all matters relating to payment of City's employees, including compliance with Social Security, withholding and all other regulations governing such matters. It is acknowledged that during the term of this Agreement, City may be providing services to others unrelated to **City** or to this Agreement.

28. Sole Agreement- This instrument constitutes the sole and only Agreement between City and **Davis Moreno Construction, Inc.** in connection to the Project and correctly sets forth the obligations of the City and **Davis Moreno Construction, Inc.** to each other as of its date. Any Agreements or representations in connection with the Project, not expressly set forth in this instrument are null and void.

27. Assignment- Neither the **Davis Moreno Construction, Inc.** nor City will assign its interest in this Agreement without the written consent of the other.

28. Caltrans is required by 23 code of Federal Regulations (CFR), part 200, Section 200.9 (b)(7) to conduct reviews of sub-recipients (Local Agencies) of federal-aid to ensure compliance with Title VI of the Civil Rights Act of 1964 and the related statues (Title VI) through the requirements under the Federal Highway Administration (FHWA), the U.S. Department of Transportation (USDOT), and the U.S. Department of Justice (USDOJ) regulations and guidance materials related to the implementation of Title VI.

The scope of the process reviews conducted by Caltrans focuses on the Local Agency's adherence to the FHWA's Title VI Program (Race, Color and National Origin) and the related statues protecting additional classes as required under

- Federal-Aid Highway Act of 1973 (Sex)
- The Age Discrimination Act of 1975 (Age), and
- The Americans with Disabilities Act of 1990 (ADA)(Disability) and Section 504 of the Rehabilitation Act of 1973 (Disability).

29 This Agreement shall be binding upon all parties hereto and their respective heirs, executors, administrators, successors, and assigns.

**IN WITNESS WHEREOF** the parties hereto have executed, or caused to be executed by their duly authorized officials, this Agreement in THREE copies, each of which shall be deemed an original on the date first above written.

**City of Madera**  
Herein Called OWNER

By: \_\_\_\_\_  
Andrew J. Medellin, Mayor

APPROVE AS TO FORM:

\_\_\_\_\_  
J. Brent Richardson, City Attorney

ATTEST:

\_\_\_\_\_  
Sonia Alvarez, City Clerk

BY: \_\_\_\_\_  
Herein Called CONTRACTOR

BY: \_\_\_\_\_

\_\_\_\_\_  
Federal Tax I.D. No.

\_\_\_\_\_  
Contractor License Number

\_\_\_\_\_  
DIR Registration Number

NOTE: This Notary Acknowledgment on the following page is required for verification of Contractor's signature.

**Acknowledgment**

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California )

County of \_\_\_\_\_ )

On \_\_\_\_\_, 2018 before me, \_\_\_\_\_  
(insert name and title of officer)

Personally appeared \_\_\_\_\_,  
who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are  
subscribed to the within instrument and acknowledged to me that he/she/they executed the same  
in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument  
the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing  
paragraph is true and correct.

WITNESS my hand and official seal.

Signature \_\_\_\_\_ (Seal)

## INSURANCE REQUIREMENTS FOR CONTRACTORS WITH CONSTRUCTION RISK

Without limiting Contractor's indemnification of City, and prior to commencement of Work, Contractor shall obtain, provide, and continuously maintain at its own expense during the term of the Agreement, and shall require any and all Subcontractors and Subconsultants of every Tier to obtain and maintain, policies of insurance of the type and amounts described below and in form satisfactory to the City.

### *Minimum Scope and Limits of Insurance*

Contractor shall maintain limits no less than:

- **\$5,000,000 General Liability** (including operations, products and completed operations) per occurrence, \$10,000,000 general aggregate, for bodily injury, personal injury and property damage, including without limitation, blanket contractual liability. Coverage shall be at least as broad as Insurance Services Office (ISO) Commercial General Liability coverage form CG 00 01. General liability policies shall be endorsed using ISO forms CG 20 10 and CG 20 37 to provide that the City and its officers, officials, employees and agents shall be additional insureds under such policies. The additional insured coverage under the Contractor's policy shall be primary and non-contributory and will not seek contribution from the City's insurance or self-insurance and shall be at least as broad as CG 20 01 04 13.
- **\$1,000,000 Automobile Liability** combined single limit per accident for bodily injury or property damage at least as broad as ISO Form CA 00 01 for all activities of Contractor arising out of or in connection with Work to be performed under this Agreement, including coverage for any owned, hired, non-owned or rented vehicles. Automobile Liability policies shall be endorsed to provide that the City and its officers, officials, employees and agents shall be additional insureds under such policies.
- **Worker's Compensation** as required by the State of California and **\$1,000,000 Employer's Liability** per accident for bodily injury or disease. Contractor shall submit to the City, along with the certificate of insurance, a Waiver of Subrogation endorsement in favor of the City, its officers, agents, employees, and volunteers.
- **Builder's Risk (Course of Construction)** insurance covering all risks of loss less policy exclusions equivalent to the completed value of the project with no coinsurance penalty provisions. Contractor may submit evidence of Builder's Risk insurance as evidence of course of construction coverage. Termination of coverage shall not occur prior to full completion of the applicable project. The City of Madera, its officers, officials, employees and agents shall be named as loss payee. Policy must include: (1) coverage for any ensuing loss from faulty workmanship, Nonconforming Work, omission, or deficiency in design or specifications; (2) coverage against machinery accidents and operational testing; (3) coverage for removal of debris, and insuring the buildings, structures, machinery, equipment, materials, facilities, fixtures, and all other properties constituting a part of the Project; (4) transit coverage, including ocean marine coverage (unless insured by the supplier), with sub-limits sufficient to insure the full replacement value of any key equipment item; and (5) coverage with sub-limits sufficient to insure the full replacement value of any property or equipment stored either on or off the Site. Such insurance shall be on a form acceptable to City to ensure adequacy of terms and sub-limits.
- **\$1,000,000 Professional Liability** for design/build, if applicable.
- Performance Bond, Payment Bond and Subdivision/Completion Bond for 100% of the contract price.

#### *Maintenance of Coverage*

Contractor shall procure and maintain, for the duration of the contract, insurance against claims for injuries to persons or damages to property, which may arise from or in connection with the performance of the Work hereunder by Contractor, his agents, representatives, employees, subcontractors or subconsultants as specified in this Agreement.

#### *Proof of Insurance*

Contractor shall provide to the City certificates of insurance and endorsements, as required, as evidence of the insurance coverage required herein. Insurance certificates and endorsements must be approved by the City prior to commencement of performance. Current evidence of insurance shall be kept on file with the City at all times during the term of this Agreement. City reserves the right to require complete, certified copies of all required insurance policies, at any time.

#### *Acceptable Insurers*

All insurance policies shall be issued by an insurance company currently authorized by the Insurance commissioner to transact business of insurance in the State of California, with an assigned policyholders' Rating of A- (or higher) and a Financial Size Category Class VII (or larger), in accordance with the latest edition of Best's Key Rating Guide.

#### *Waiver of Subrogation*

All insurance coverage maintained or procured pursuant to this agreement shall be endorsed to waive subrogation against the City, its elected or appointed officers, agents, officials, employees, and volunteers, or shall specifically allow Contractor, or others providing insurance evidence in compliance with these specifications, to waive their right of recovery prior to a loss. Contractor hereby waives its own right of recovery against the City and shall require similar written express waivers and insurance clauses from each of its subconsultants or subcontractors.

#### *Enforcement of Contract Provisions (non estoppel)*

Contractor acknowledges and agrees that any actual or alleged failure on the part of the Agency to inform Contractor of non-compliance with any requirement imposes no additional obligations on the City, nor does it waive any rights hereunder.

#### *Specifications not Limiting*

Requirements of specific coverage features or limits contained in this Section are not intended as a limitation on coverage, limits or other requirements, or a waiver of any coverage normally provided by any insurance. Specific reference to a given coverage feature is for purposes of clarification only as it pertains to a given issue and is not intended by any party or insured to be all inclusive, or to the exclusion of other coverage, or a waiver of any type. If Contractor maintains higher limits than the minimums required above, the entity shall be entitled to coverage at the higher limits maintained by Contractor.

#### *Notice of Cancellation*

Contractor agrees to oblige its insurance agent or broker and insurers to provide to the City with thirty (30) calendar days notice of cancellation (except for nonpayment for which ten (10) calendar days notice is required) or nonrenewal of coverage for each required coverage.

*Self-insured Retentions*

Any self-insured retentions must be declared to and approved by the City. The City reserves the right to require that self-insured retentions be eliminated, lowered or replaced by a deductible. Self-insurance will not be considered to comply with these specifications unless approved by the City's Risk Manager.

*Timely Notice of Claims*

Contractor shall give the City prompt and timely notice of claims made or suits instituted that arise out of or result from Contractor's performance under this Agreement, and that involve or may involve coverage under any of the required liability policies.

*Additional Insurance*

Contractor shall also procure and maintain, at its own cost and expense, any additional kinds of insurance, which in its own judgement may be necessary for its proper protection and prosecution of the Work.

## **HOLD HARMLESS AND INDEMNIFICATION AGREEMENT**

Contractor shall indemnify, defend and hold harmless, City of Madera, And its officers, officials, employees and agents of the above from and against all claims, damages, losses and expenses including attorney fees arising out of the performance of the work described herein, caused in whole or in part by any negligent act or omission of the Contractor, any subcontractor, anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable, except where caused by the active negligence, sole negligence, or willful misconduct of the Entity.

**PAYMENT BOND**

KNOW ALL MEN BY THESE PRESENTS: that

\_\_\_\_\_  
(Name of Contractor)

\_\_\_\_\_  
(Address of Contractor)

a \_\_\_\_\_, hereinafter called Principal,  
(Corporation, Partnership or Individual)

\_\_\_\_\_  
(Name of Surety)

\_\_\_\_\_  
(Address of Surety)

hereinafter call Surety, are held and firmly bound unto

\_\_\_\_\_  
City of Madera  
(Name of Owner)

\_\_\_\_\_  
205 West 4<sup>th</sup> Street, Madera CA 93637  
(Address of Owner)

hereinafter called OWNER, in the penal sum of \_\_\_\_\_ Dollars, (\$ \_\_\_\_\_) in lawful money of the United States, for the payment of which sum well and truly made, we bind ourselves, successors, and assigns, jointly and severally, firmly by these presents, and also by the provisions of Part 2, Title 14, Chapter 2 of the California Code of Civil Procedure (Section 995.010, et seq.) and of Section 3247, et seq. of the California Civil Code.

THE CONDITION OF THIS OBLIGATION is such that whereas, the Principal entered into a certain contract with the Owner, dated the \_\_\_ day of \_\_\_, 2018 a copy of which is hereto attached and made a part hereof for the construction of:

**“CITY OF MADERA FIRE STATION NO. 58 - FIRE STATION CONSTRUCTION  
NORTHWEST, CITY PROJECT NO. FD-00002”**

NOW, THEREFORE, if the Principal and all subcontractors shall promptly make payment to all mechanics, material men, contractors, subcontractors, lessors of equipment, artisans, architects, registered engineers, licensed land surveyors, machinists, builders, teamsters and laymen and all persons and laborers of every class performing labor upon or bestowing skill or necessary services on or furnishing materials or leasing equipment to be used or consumed in or furnishing appliances, teams or power contributing to the work described in the above mentioned contract, and to any other persons named in Section 3181 of the California Civil Code, and of amounts due under the Employment Insurance Code with respect to work or labor performed under the contract, or for any amounts required to be deducted, withheld and paid over the Employment Development Department from the wages of employees of the contractor and subcontractors pursuant to Section 13020 of the Unemployment Insurance code, with respect to such work and labor, then this obligation shall be null and void: otherwise it shall remain in full force and effect.

PROVIDED FURTHER, that this obligation shall inure to the benefit of all persons named in Section 3181 of the California Civil code, and all such claimants and their assigns shall have a right of action in any suit brought upon this bond.

PROVIDED FURTHER, that no suit, action or other proceeding to recover on this bond shall be maintained unless commenced within six (6) months from the completion of the work described in the above mentioned contract, as "completion" is defined in Section 3086 of the California Civil Code.

PROVIDED FURTHER, that the said Surety, for value received hereby stipulates and agrees that no change, extension of time, alteration or addition to the terms of the contract of accompanying the same shall in any way affect its obligation on this Bond, and it does hereby waive notice of any such change, extension of time, alteration or addition to the terms of the contract or to the work or to the specifications.

PROVIDED FURTHER, that no final settlement between the Owner and the Contractor shall abridge the right of any beneficiary hereunder, whose claim may be unsatisfied.

IN WITNESS WHEREOF, this instrument is executed in THREE counterparts, each one of which shall be deemed an original, this the \_\_\_\_\_ day of \_\_\_\_\_, 2018.

ATTEST:

\_\_\_\_\_  
Principal

BY: \_\_\_\_\_(s)

\_\_\_\_\_  
(Principal) Secretary

(Seal)

\_\_\_\_\_  
(Witness as to Principal)

\_\_\_\_\_  
(Address)  
\_\_\_\_\_

ATTEST:

\_\_\_\_\_  
(Surety) Secretary

\_\_\_\_\_  
(Surety)

(SEAL)

\_\_\_\_\_  
Witness as to Surety

BY: \_\_\_\_\_  
Attorney in Fact

\_\_\_\_\_  
(Address)

\_\_\_\_\_  
(Address)  
\_\_\_\_\_

NOTE: Date of Bond must not be prior to date of Contract. If Contractor is Partnership, all partners should execute Bond.

**PERFORMANCE BOND**

KNOW ALL MEN BY THESE PRESENTS: that

\_\_\_\_\_  
(Name of Contractor)

\_\_\_\_\_  
(Address of Contractor)

a \_\_\_\_\_, hereinafter called Principal,  
(Corporation, Partnership or Individual)

\_\_\_\_\_  
(Name of Surety)

\_\_\_\_\_  
(Address of Surety)

hereinafter call Surety, are held and firmly bound unto

\_\_\_\_\_  
City of Madera  
(Name of Owner)

\_\_\_\_\_  
205 West 4<sup>th</sup> Street, Madera CA 93637  
(Address of Owner)

hereinafter called OWNER, in the penal sum of \_\_\_\_\_ Dollars, (\$  
) in lawful money of the United States, for the payment of which sum well and truly made, we bind ourselves, successors, and assigns, jointly and severally, firmly by these presents.

THE CONDITION OF THIS OBLIGATION is such that whereas, the Principal entered into a certain contract with the Owner, dated the \_\_\_\_ day of \_\_\_\_\_, 2018 a copy of which is hereto attached and made a part hereof for the construction of:

**"CITY OF MADERA FIRE STATION NO. 58 - FIRE STATION CONSTRUCTION  
NORTHWEST, CITY PROJECT NO. FD-00002"**

NOW, THEREFORE, if the Principal shall well, truly and faithfully perform its duties, all the undertakings, covenants, terms, conditions, and agreements of said Contract during the original term thereof, and any extensions thereof which may be granted by the Owner, with or without notice to the surety and during the one year guaranty period, and if he shall satisfy all claims and demands incurred under such Contract, and shall fully indemnify and save harmless the Owner from all costs and damages which it may suffer by reason of failure to do so, and shall reimburse and repay the Owner all outlay and expense which the Owner may incur in making good any default, then this obligation shall be null and void: otherwise it shall remain in full force and effect.

PROVIDED FURTHER, that the said Surety, for value received hereby stipulates and agrees that no change, extension of time, alteration or addition to the terms of the contract or to work to be performed thereunder or the specifications accompanying the same shall in any way affect its obligation on this Bond, and it does hereby waive notice of any such change, extension of time, alteration or addition to the terms of the contract or to the work or to the specifications.

PROVIDED FURTHER, that no final settlement between the Owner and the Contractor shall abridge the right of any beneficiary hereunder, whose claim may be unsatisfied.

IN WITNESS WHEREOF, this instrument is executed in THREE counterparts, each one of which shall be deemed an original, this the \_\_\_\_\_ day \_\_\_\_\_ 2018.

ATTEST: \_\_\_\_\_  
Principal

BY: \_\_\_\_\_(s) \_\_\_\_\_  
(Principal) Secretary

(Seal)

\_\_\_\_\_  
(Witness as to Principal)

\_\_\_\_\_  
(Address)

ATTEST:

\_\_\_\_\_  
(Surety) Secretary

\_\_\_\_\_  
(Surety)

(SEAL)

\_\_\_\_\_  
Witness as to Surety

BY: \_\_\_\_\_  
Attorney in Fact

\_\_\_\_\_  
(Address)

\_\_\_\_\_  
(Address)

NOTE: Date of Bond must not be prior to date of Contract. If Contractor is Partnership, all partners should execute Bond.

**AGREEMENT FOR PROFESSIONAL ON-DEMAND SERVICES FOR MATERIALS TESTING SERVICES FOR FIRE STATION NO. 58, CITY PROJECT NO. FD-00002**

This Agreement made and entered into this 19th day of September 2018 between the City of Madera, a municipal corporation of the State of California, hereinafter called "CITY", and Moore Twining Associates, Inc., hereinafter called "ENGINEER".

**WITNESSETH**

**WHEREAS**, CITY plans to construct the Fire Station No. 58, City Project No. FD-00002, hereinafter called "the Project"; and

**WHEREAS**, CITY needs the services of the ENGINEER, for the Materials Testing Services of sewer, water and storm drain pipeline systems, roadway/PCC construction and undergrounding of PG&E, AT&T and Comcast utilities to provide services to the new Fire Station No., also to provide compaction and materials testing as specified for construction of the Fire Station No. 58, construction of the Building in accordance with the Uniform Building Code; and

**WHEREAS**, ENGINEER is qualified and licensed to provide the required professional quality assurance and acceptance testing services required by Caltrans and CITY desires to hire ENGINEER for such purposes.

**NOW THEREFORE:**

The parties hereto mutually agree as follows:

**1. SERVICES OF ENGINEER:**

CITY hereby hires ENGINEER to provide on-demand quality assurances and acceptance testing services for construction of sewer, water and storm drain pipeline systems, roadway/PCC construction and undergrounding of PG&E, AT&T and Comcast utilities to provide services to the new Fire Station No. 58 to support CITY as set forth herein in connection with the Project. Said work to be performed pursuant to this agreement is more particularly described in Section 2 – Scope of Work.

**2. SCOPE OF WORK:**

ENGINEER shall provide the professional on-demand quality assurance and acceptance testing services for quality control management of bridge construction and roadway materials set forth in EXHIBIT A – FEE SCHEDULE and EXHIBIT B – ON\_DEMAND QUALITY ASSURANCES AND ACCEPTANCE TESTING SERVICES, attached hereto and incorporated herein by reference. ENGINEER shall comply with all Caltrans and City of Madera construction engineering and inspection standards and requirements.

### **3. RESPONSIBILITIES:**

The City Engineer shall be the Responsible Engineer in charge of the Project. The ENGINEER shall report to the City's Construction Manager/Resident Engineer for the Project or other construction managers as designated by the CITY. The ENGINEER'S responsibility will only be related to the quality assurance and acceptance testing services of bridge construction and roadway materials for the Project.

### **4. COMPENSATION:**

The ENGINEER shall be reimbursed for actual costs based on hourly billing rates that include labor wages, employee benefits, overhead and net fee/profit and be reimbursed for direct costs for supplies, travel/mileage and printing reports and for actual materials testing lab cost for the total estimated amount of Thirty-five Thousand Dollars (\$35,000). The reimbursement for actual costs shall be paid at the hourly billing rates and itemized rates set forth in the ENGINEER'S FEE SCHEDULE, EXHIBIT "A" – attached here to and incorporated herein by reference.

CITY and ENGINEER agree that the hourly rates in EXHIBIT "A" shall remain in full force and effect through December 31, 2019. It is understood and agreed by both parties that all expenses incidental to ENGINEER'S performance of services and deliverables to be reimbursed are included in Other Direct Costs listed in the Cost Proposal. There shall be no compensation for any type of equipment purchase.

CITY and ENGINEER mutually agree that the on-demand quality assurance and acceptance testing services may change due to the contractor's schedule and selection of vendors and differing conditions encountered during construction. Therefore, the final compensation may be more or less than the ENGINEER'S estimated cost. However, the ENGINEER shall not be entitled to compensation for any expenses exceeding \$35,000 unless the parties enter into an approved amendment to this agreement which provides for such compensation.

### **5. COST PRINCIPLES AND PAYMENT:**

Allowable elements of cost shall comply with the Cost Principles and Procedures, 48 CFR, Federal Acquisition Regulations System, Chapter 1, Part 31 et seq. Also, compliance with the administrative requirements set forth in 49 CFR, Part 18, Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments is required.

Payments for all undisputed portions of each invoice as provided for hereunder shall be made within 30 days of receipt and approval of ENGINEER'S monthly invoices for the work performed as specified herein. ENGINEER'S invoice shall specify the billed hours and hourly rates for each employee classification. A summary of costs to date for each component of the work shall accompany the invoice. This summary shall also estimate the percentage of the work completed for each component.

The Cost Proposal is subject to an audit or Certified Public Account (CPA) Indirect Cost (Overhead) Audit Work Review. The Cost Proposal shall be adjusted by the ENGINEER and approved by the CITY to conform to the Workpaper Review recommendations or audit recommendations. The ENGINEER agrees that the individual terms of cost identified in the audit report shall be incorporated into the Agreement by this reference if directed by the CITY at its sole discretion. Refusal by the ENGINEER to incorporate the Workpaper Review recommendations or audit recommendations will be considered a breach of the Agreement terms and cause for termination of the Agreement.

Progress payments will be made monthly in arrears based on services provided and allowable incurred costs including the fixed fee percentage. If ENGINEER fails to submit the required deliverables specified in the Scope of Services, CITY shall have the right to delay payment and/or terminate this Agreement in accordance with the provisions of this Agreement.

ENGINEER shall submit invoices no later than 45 calendar days after the performance of work for which ENGINEER is billing. Invoices shall follow the format included in the ENGINEER'S cost proposal. Invoices shall include a detail of ENGINEER'S services related to the tasks listed in the Contractor's schedule. The final invoice shall be submitted within 60 days of the CITY'S acceptance of the Project. Invoices shall be mailed to the address listed in Section 25 of this Agreement.

#### **6. EXTRA SERVICES:**

Extra services not contemplated hereunder as set forth in this Agreement or for such services beyond the control of the CITY or ENGINEER as may be specifically requested by CITY or ENGINEER through the City Engineer in writing. Extra services shall be mutually agreed to and ENGINEER shall be compensated at the hourly rates in EXHIBIT "A", provided however, the City Engineer's authority is limited to expenditures not to exceed an additional amount of \$3,500.

#### **7. DOCUMENTATION & DELIVERABLES:**

ENGINEER shall provide to the City's Resident Engineer the appropriate documentation in a format specified in the Caltrans Construction Manual, of the work to be inspected and approved to the Resident Engineer. Such documentation and reports shall be consistent with the Caltrans Construction Manual and provided in a timely manner for the task at hand and per the contract documents.

Upon Completion and acceptance of the project by the CITY, ENGINEER shall deliver the original documents, files, records, drawings, final reports required by Caltrans and other documents prepared for the project.

#### **8. AUDITS AND INSPECTIONS ACCESS:**

For the purpose of determining compliance with Public Contract Code 10115, et seq. and Title 21, California Code of Regulations, Chapter 21, Section 2500 et seq., when applicable and other

matters connected with the performance of this Agreement pursuant to Government Code 8546.7; the CITY and ENGINEER shall maintain all books, documents, papers, accounting records, and other evidence pertaining to the performance of this Agreement, including but not limited to, the costs of administering this Agreement.

ENGINEER shall, upon reasonable notice and at any time during regular business hours, and as often as CITY, may deem necessary, make available to the CITY, or its authorized representative for examination, all of its books, records and data with respect to matters covered by this Agreement. ENGINEER shall permit CITY, to audit and inspect all invoices, materials, payrolls, records of personnel, conditions of employment, and other data relating to matters covered by this Agreement. ENGINEER shall retain all of these documents for a period of three (3) years after final payment to ENGINEER.

## **9. INSURANCE REQUIREMENTS FOR CONSULTANTS**

Without limiting Consultant's indemnification of City, and prior to commencement of Work, Consultant shall obtain, provide, and continuously maintain at its own expense during the term of the Agreement, and shall require any and all Subcontractors and Subconsultants of every Tier to obtain and maintain, policies of insurance of the type and amounts described below and in form satisfactory to the City.

### *Minimum Scope and Limits of Insurance*

Consultant shall maintain limits no less than:

- **\$1,000,000 General Liability** (including operations, products and completed operations) per occurrence, \$2,000,000 general aggregate, for bodily injury, personal injury and property damage, including without limitation, blanket contractual liability. Coverage shall be at least as broad as Insurance Services Office (ISO) Commercial General Liability coverage form CG 00 01. General liability policies shall be endorsed using ISO form CG 20 10 that the City and its officers, officials, employees and agents shall be additional insureds under such policies.
- **\$1,000,000 Automobile Liability** combined single limit per accident for bodily injury or property damage at least as broad as ISO Form CA 00 01 for all activities of Consultant arising out of or in connection with Work to be performed under this Agreement, including coverage for any owned, hired, non-owned or rented vehicles. Automobile Liability policies shall be endorsed to provide that the City and its officers, officials, employees and agents shall be additional insureds under such policies.
- **Worker's Compensation** as required by the State of California and **\$1,000,000 Employer's Liability** per accident for bodily injury or disease. Consultant shall submit to the City, along with the certificate of insurance, a Waiver of Subrogation endorsement in favor of the City, its officers, agents, employees, and volunteers.
- **\$1,000,000 Professional Liability (Errors & Omissions)** per claim and in the aggregate. Consultant shall maintain professional liability insurance that insures against professional errors and omission that may be made in performing the Services to be rendered in connection with this Agreement. Any policy inception date, continuity date, or retroactive

date must be before the effective date of this Agreement, and Consultant agrees to maintain continuous coverage through a period no less than three years after completion of the services required by this Agreement. The cost of such insurance shall be included in Consultant's bid.

#### *Maintenance of Coverage*

Consultant shall procure and maintain, for the duration of the contract, insurance against claims for injuries to persons or damages to property, which may arise from or in connection with the performance of the Work hereunder by Consultant, its agents, representatives, employees, subcontractors or subconsultants as specified in this Agreement.

#### *Proof of Insurance*

Consultant shall provide to the City certificates of insurance and endorsements, as required, as evidence of the insurance coverage required herein, along with a waiver of subrogation endorsement for workers' compensation. Insurance certificates and endorsements must be approved by the City prior to commencement of performance. Current evidence of insurance shall be kept on file with the City at all times during the term of this Agreement. Agency reserves the right to require complete, certified copies of all required insurance policies, at any time.

#### *Acceptable Insurers*

All insurance policies shall be issued by an insurance company currently authorized by the Insurance commissioner to transact business of insurance in the State of California, with an assigned policyholders' Rating of A- (or higher) and a Financial Size Category Class VII (or larger), in accordance with the latest edition of Best's Key Rating Guide.

#### *Waiver of Subrogation*

All insurance coverage maintained or procured pursuant to this agreement shall be endorsed to waive subrogation against the City, its elected or appointed officers, agents, officials, employees, and volunteers, or shall specifically allow Consultant, or others providing insurance evidence in compliance with these specifications, to waive their right of recovery prior to a loss. Consultant hereby waives its own right of recovery against the City and shall require similar written express waivers and insurance clauses from each of its subconsultants or subcontractors.

#### *Enforcement of Contract Provisions (non estoppel)*

Consultant acknowledges and agrees that any actual or alleged failure on the part of the Agency to inform Consultant of non-compliance with any requirement imposes no additional obligations on the City, nor does it waive any rights hereunder.

#### *Specifications not Limiting*

Requirements of specific coverage features or limits contained in this Section are not intended as a limitation on coverage, limits or other requirements, or a waiver of any coverage normally provided by any insurance. Specific reference to a given coverage feature is for purposes of clarification only as it pertains to a given issue and is not intended by any party or insured to be all inclusive, or to the exclusion of other coverage, or a waiver of any type. If Consultant maintains higher limits than the

minimums required above, the entity shall be entitled to coverage at the higher limits maintained by Consultant.

*Notice of Cancellation*

Consultant agrees to oblige its insurance agent or broker and insurers to provide to the City with thirty (30) calendar days notice of cancellation (except for nonpayment for which ten (10) calendar days notice is required) or nonrenewal of coverage for each required coverage.

*Self-insured Retentions*

Any self-insured retentions must be declared to and approved by the City. The City reserves the right to require that self-insured retentions be eliminated, lowered or replaced by a deductible. Self-insurance will not be considered to comply with these specifications unless approved by the City's Risk Manager.

*Timely Notice of Claims*

Consultant shall give the City prompt and timely notice of claims made or suits instituted that arise out of or result from Consultant's performance under this Agreement, and that involve or may involve coverage under any of the required liability policies.

*Additional Insurance*

Consultant shall also procure and maintain, at its own cost and expense, any additional kinds of insurance, which in its own judgement may be necessary for its proper protection and prosecution of the Work.

**10. OWNERSHIP OF DOCUMENTS:**

The responsible Professional Engineer shall sign and date all construction materials inspection documents and reports and other engineering reports furnished by ENGINEER and, where appropriate, indicate their registration number. The documents shall be prepared in a format consistent with the Caltrans Construction Manual.

If the Agreement is terminated at any time, the ENGINEER shall submit all project related documents, deliverables and correspondence whether in complete form, draft form or in progress. These items will become the sole property of the CITY which may use them to complete the Project.

Upon completion and acceptance of the Project, all documents required in performing services under this Agreement shall, be submitted to, and remain the sole property of CITY.

Reuse or modifications of documents for any purpose other than as intended under this Agreement shall be at CITY'S sole risk and without liability to ENGINEER. CITY shall indemnify, defend and hold harmless ENGINEER for any claims, loss, cost or damages arising out of, pertain to, or relate to such reuse or modification, including use of incomplete documents.

**11. CONFIDENTIALITY OF DATA:**

All financial, statistical, personal, technical, or other data and information relative to the CITY'S operations, which are designated confidential by the CITY and made available to the

ENGINEER, in order to carry out this Agreement, shall be protected by the ENGINEER from unauthorized use and disclosure. Permission to disclose information on one occasion, or public hearing held by the CITY relating to this Agreement, shall not authorize the ENGINEER to further disclose such information or disseminate the same on any other occasion.

The ENGINEER shall not comment publicly to the press or any other media regarding this Agreement or the CITY'S actions on the same, except to the CITY'S staff, ENGINEER'S own personnel involved in the performance of the Agreement, at public hearings or in response to questions from a Legislative committee. The ENGINEER shall not issue any news release or public relations item of any nature, whatsoever, regarding work performed or to be performed under this Agreement without prior review of the contents thereof by the CITY, and receipt of the CITY'S written permission.

**12. TIME OF COMPLETION:**

Based on the contractor's construction schedule, ENGINEER'S quality control and testing services should be completed by December 31, 2019. The final task will be the submittal of documents for the Final Report. This agreement may be extended by mutual written agreement.

**13. TERMINATION OF AGREEMENT:**

A. This agreement may be terminated at any time by either party upon thirty (30) calendar days written notice. In the event the Agreement is terminated by either party, ENGINEER shall be compensated for services performed to the date of termination based upon the compensation rates and subject to the maximum amounts payable agreed to together with such additional services performed after termination which are authorized by the City Engineer to wind up the work performed to date of termination.

B. CITY may immediately suspend or terminate this Agreement in whole or in part by written notice where, in the determination of CITY, there is:

1. An illegal use of funds by ENGINEER;
2. A failure by ENGINEER to comply with any material term of this Agreement;
3. A substantially incorrect or incomplete report submitted by ENGINEER to CITY.

In no event shall any payment by CITY or acceptance by ENGINEER constitute a waiver by such party of any breach of this Agreement or any default which may then exist on the part of either party. Neither shall such payment impair or prejudice any remedy available to either party with respect to such breach or default. CITY shall have the right to demand of ENGINEER the repayment to CITY of any funds disbursed to ENGINEER under this Agreement which, as determined by the appropriate court or arbitrator, were not expended in accordance with the terms of this Agreement.

**14. APPROVAL:**

CITY will give reasonably prompt consideration to all matters submitted by ENGINEER for approval to the end that there will be no significant delays in ENGINEER'S program of work. An approval, authorization or request to ENGINEER given by CITY will only be binding upon CITY under the terms of this Agreement if in writing and signed on behalf of CITY by a CITY representative or designee.

**15. HOLD HARMLESS:**

ENGINEER shall defend and indemnify the CITY, its officers, officials, employees and designated volunteers for claims that arise out of, pertain to, or relate to the negligence, recklessness, or willful misconduct of the ENGINEER, its officers, subconsultants, agents, employees or contractors, in performing or failing to perform any work, services or functions under this Agreement.

**16. RESPONSIBILITY FOR OTHERS:**

ENGINEER shall be responsible to CITY for its services and the services of its subconsultants. ENGINEER shall not be responsible for the acts or omissions of the CITY or other parties engaged by CITY, nor for their construction means, methods, techniques, sequences, or procedures, or their health and safety precautions and programs.

**17. PROFESSIONAL RESPONSIBILITY:**

ENGINEER shall be obligated to comply with applicable standards of professional care in the performance of the Construction Engineering Services. Engineer recognizes that opinions relating to environmental, geologic, and geotechnical conditions are based on limited data and that actual conditions may vary from those encountered at the times and locations where the data are obtained, despite the use of due professional care.

**18. PARTIES BOUND BY AGREEMENT:**

This Agreement shall be binding upon CITY, ENGINEER, and their successors in interest, legal representatives, executors, administrators and permitted assigns with respect to all covenants as set forth herein. ENGINEER shall not subcontract, assign, or transfer any of the work except as otherwise provided for in this agreement.

**19. COMPLETE AGREEMENT OF PARTIES:**

This Agreement, including attachments incorporated herein by reference, represents the entire Agreement and understanding between the parties. Any modifications of this Agreement shall be in writing and signed by authorized representatives of the parties. One or more waivers of any term, condition or covenant by either party shall not be construed as a waiver of any other term, condition or covenant.

## **20. ASSIGNMENT WITH APPROVAL:**

It is understood that neither party shall assign, sublet, subcontract or transfer its rights or obligation under this Agreement without the prior express, written consent of the other party.

## **21. INDEPENDENT CONTRACTOR:**

In performance of the work, duties and obligations assumed by ENGINEER under this Agreement, it is mutually understood and agreed that ENGINEER, including any and all of ENGINEER'S officers, agents and employees will, at all times, be acting and performing as an independent contractor, and shall act in an independent capacity and not as an officer, agent, servant,, employee, joint venture, fiduciary, partner or associate of CITY. Furthermore, CITY shall have no right to control or supervise or direct the manner or method by which ENGINEER shall perform its work and function. However, CITY shall retain the right to administer this Agreement so as to verify that ENGINEER is performing its obligations in accordance with the terms and conditions hereof. ENGINEER and CITY shall comply with all applicable provisions of law and the rules and regulations, if any, of governmental authorities having jurisdiction over the subject matter hereof.

Because of its status as an independent contractor, ENGINEER shall have absolutely no right to employment rights and benefits available to CITY employees. ENGINEER shall be solely liable and responsible for providing to, or on behalf of, its employees all legally required employee benefits. In addition, ENGINEER shall be solely responsible and hold CITY harmless from all matters relating to payment of ENGINEER'S employees, including compliance with Social Security, withholding and all other regulations governing such matters. It is acknowledged that during the term of this Agreement ENGINEER may be providing services to others unrelated to CITY or to this Agreement.

## **22. CONFLICT OF INTEREST**

The ENGINEER shall disclose any financial, business, or other relationship with CITY that may have an impact upon the outcome of the Agreement, or any ensuing CITY construction project. The ENGINEER shall also list current clients who may have a financial interest in the outcome of the Agreement, or ensuing CITY construction project. The ENGINEER hereby certifies that it does not now have, nor shall it acquire any financial or business interest that would conflict with the performance of services under this Agreement.

The ENGINEER hereby certifies that neither the ENGINEER, its employees, nor any firm affiliated with the ENGINEER providing services on this Project, prepared the Plans, Specification, and Estimates for any construction contract included within the Agreement. An affiliated firm is one, which is subject to the control of the same persons through joint-ownership, or otherwise. The ENGINEER further certifies that neither the ENGINEER, nor any firm affiliated with the ENGINEER, will bid on any construction subcontracts included within the construction contract.

Additional, ENGINEER certifies that no person working under this Agreement is also employed by the construction contractor for any project included within this Agreement.

**23. REBATES, KICKBACKS OR OTHER UNLAWFUL CONSIDERATION**

The ENGINEER warrants that this Agreement was not obtained or secured through rebates, kickbacks or other unlawful consideration, either promised or paid to any CITY employee. For breach or violation of this warranty, CITY shall have the right in its discretion; to terminate this Agreement without liability; to pay only for the value of the work actually performed; or to deduct from the contract price; or otherwise recover the full amount of such rebate, kickback or other unlawful consideration.

**24. GOVERNING LAW:**

Any controversy or claim arising out of, or relating to, this Agreement which cannot be amicably settled without court action shall be litigated either in the appropriate State court for Madera County, California, or as appropriate in the U. S. District Court for the Eastern District of California, located in Fresno County. The rights and obligations of the parties and all interpretations and performance of this Agreement shall be governed in all respects by the laws of the State of California.

**25. AMENDMENTS:**

Any changes to this Agreement requested either by CITY or ENGINEER may only be affected if mutually agreed upon in writing by duly authorized representatives of the parties hereto. This Agreement shall not be modified or amended or any rights of a party to it waived except by such in writing.

**26. COMPLIANCE WITH LAWS AND WAGE RATES:**

Consistent with the professional standard of care, ENGINEER shall comply with all Federal, State, and local laws, ordinances, regulations and provisions applicable in the performance of ENGINEER'S services. ENGINEER may use professional practices and standards regarding the interpretation of these laws.

Wherever reference is made in this Agreement to standards or codes in accordance with which work is to be performed or tested, the edition or revision of the standards or codes current on the effective date of this Agreement shall apply, unless otherwise expressly stated. This includes compliance with prevailing wage rates and their payment in accordance with California Labor Code, Section 1775.

**27. ENGINEER'S LEGAL AUTHORITY:**

Each individual executing or attesting this Agreement on behalf of ENGINEER hereby covenants and represents: (i) that he or she is duly authorized to execute or attest and deliver this Agreement on behalf of such corporation in accordance with a duly adopted resolution of the corporation's board of directors and in accordance with such corporation's articles of incorporation or charter and by-laws; (ii) that this Agreement is binding upon such corporation; and (iii) that ENGINEER is a duly organized and legally existing corporation in good standing in the State of California.

**28. NOTICES:**

Any and all notices or other communications required or permitted by this Agreement or by law to be served on or given to either party to this Agreement by the other party shall be in writing, and shall be deemed duly served and given when personally delivered to the party to whom it is directed or any managing employee or that party or, in lieu or personal service, when deposited in the United States mail, first class postage prepaid, addressed as follows:

CITY  
Engineering Division  
205 W. 4th Street  
Madera, CA 93637  
Attention: Keith B. Helmuth, P.E.  
City Engineer

ENGINEER  
Moore Twining Associates, Inc.  
2527 Fresno Street  
Fresno, CA 93721  
Harry Moore  
President

**29. COVENANT AGAINST CONTINGENT FEES**

The ENGINEER warrants they have not employed or retained any company or person, other than a bona fide employee working for the ENGINEER; to solicit or secure this agreement; and that they have not paid or agreed to pay any company or person other than a bona fide employee, any fee, commission, percentage, brokerage fee, gift, or any other consideration, contingent upon or resulting from the award, or formation of this agreement. For breach or violation of this warranty, CITY shall have the right to annul this agreement without liability, or at its discretion; to deduct from the agreement price or consideration, or otherwise recover the full amount of such fee, commission, percentage, brokerage fee, gift or contingent fee.

**30. PROHIBITION OF EXPENDING CITY, STATE OR FEDERAL FUNDS FOR LOBBYING**

The ENGINEER certifies to the best of his or hers knowledge and belief that:

1. No city, state or federal appropriated funds have been paid, or will be paid by-or-on behalf of the ENGINEER to any person for influencing or attempting to influence an officer or employee of any state or federal agency; a Member of the State Legislature or United States Congress; an officer or employee of the Legislature or Congress; or any employee of a Member of the Legislature or Congress, in connection with the awarding of any state or federal contract; the making of any state or federal grant; the entering into of any cooperative agreement, and the extension, contribution, renewal, amendment, or modification of any state or federal contract, grant, loan or cooperative agreement.
2. If any funds other than federal appropriated funds have been paid, or will be paid to any person for influencing or attempting to influence an officer or employee of any federal agency; a Member of Congress; an officer or employee of Congress or an employee of a Member of Congress; in connection with this federal contract, grant, loan, or cooperative agreement; the ENGINEER shall complete and submit Standard Form-LL, "Disclosure Form to Report Lobbying" in accordance with its instructions.

This certification is a material representation of fact upon which reliance was place when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by Section 1352, Title 31, US. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure. The ENGINEER also agrees by signing this document the he or she shall require that the language of this certification be included in all lower-tier subcontracts, which exceed \$100,000, and that all such sub recipients shall certify and disclose accordingly.

### **31. CERTIFICATIONS**

The Exhibits and Certifications listed on the ATTACHMENTS page, incorporated herein and attached hereto, are a part of this agreement.

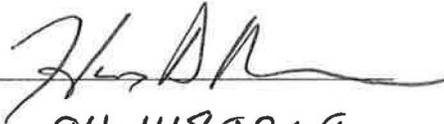
### **32. SOLE AGREEMENT:**

This instrument constitutes the sole and only agreement between ENGINEER and CITY respecting the Project and correctly sets the obligations of the ENGINEER and CITY to each other as of this date. Any agreements or representations respecting the above project, not expressly set forth in this instrument are null and void.

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

\* \* \* \* \*

By: \_\_\_\_\_  
Andrew J. Medellin, Mayor

By:   
94-1480968  
Taxpayer I.D. Number

**APPROVED AS TO FORM:**

By: \_\_\_\_\_  
Brent Richardson, City Attorney

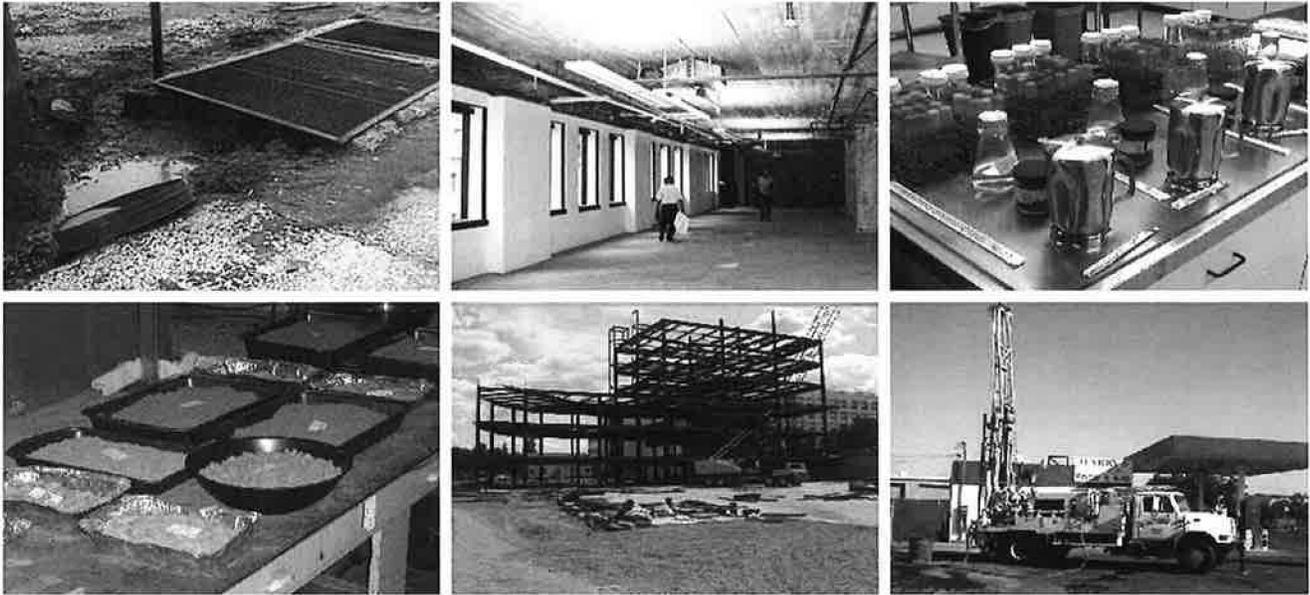
**ATTEST:**

By: \_\_\_\_\_  
Sonia Alvarez, City Clerk

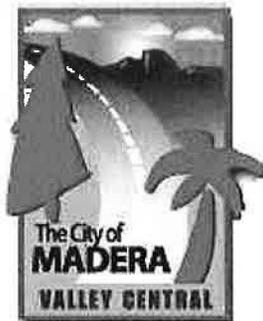
# **ATTACHMENTS**

## **EXHIBIT A FEE SCHEDULE**

## **EXHIBIT B ON DEMAND MATERIALS TESTING SERVICES**



**2018 Prevailing Wage  
Fee Schedule for  
The City of Madera  
Fire Station #58**



Moore Twining Associates, Incorporated  
[www.mooretwining.com](http://www.mooretwining.com)



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## Introduction

Moore Twining Associates, Inc. (Moore Twining), founded in 1898, has continually provided professional consulting and analytical services throughout California for the past 120 years. Moore Twining provides professional services in geotechnical



engineering, environmental services, construction inspection, materials testing, drilling services, and analytical chemistry.

Offices are maintained in Riverside, Fresno, Monterey (Sand City), and Sacramento, with the Fresno office also serving as the corporate headquarters. Our professional staff consists of registered geotechnical engineers,

registered civil engineers, registered professional geologists, certified engineering geologists, chemists, certified field inspectors, laboratory technicians, and administrative personnel.

Our reputation for service and integrity is known by individuals involved in all aspects of the engineering and testing industries throughout California. We take pride in providing our clients with consistently reliable and cost-effective services.

### Office Locations

<b>Fresno</b> (Corporate Headquarters)	2527 Fresno Street Fresno, California 93721 Phone: 559.268.7021 Fax: 559.268.7126 <i>Chemistry Division Fax:</i> 559.268.0740
<b>Riverside</b>	11800 Sterling Ave., Suite C Riverside, California 92503 Phone: 951.898.8932 Fax: 951.898.8974
<b>Monterey</b>	501 Ortiz Avenue Sand City, California 93955 Phone: 831.392.1056 Fax: 831.392.1059
<b>Sacramento</b>	165 Commerce Circle, Suite D Sacramento, California 95815 Phone: 916.381.9477 Fax: 916.381.9478

## Basis of Fees

1. Fees stated in this fee schedule are for professional services, construction inspection, drilling and materials testing services provided by Moore Twining Associates, Inc. Analytical Chemistry fees are presented separately upon request.
2. The fees listed herein are typical of engineering, inspection, and testing services most frequently provided by Moore Twining Associates, Inc. Fees for other services and special quotations will be provided upon request. Special consideration is given to projects involving protracted periods of time or volume testing. All fees are subject to change without notice.
3. A minimum of four hours per day will be charged for all field services plus travel time to and from the job site. Field services over four hours will be charged at two-hour increments thereafter. A cancellation charge of two hours will be billed in the event the client fails to notify our office of a cancellation at least 24 hours prior to the scheduled inspection.
4. Time Schedule: Basis of sampling, observation, drilling, travel, and other fees:

Rate of Charges Period

**Regular Time** Monday through Friday – eight hours from 8:00 a.m. to 5:00 p.m.

**Time and One-Half** Monday through Friday – after continuous eight hours and Saturdays

**Double Time** Work performed beyond 12 hours, Sundays and Holidays

Shift Differential

**Second (Swing) Shift** Regular hourly rate plus 10% for the first eight hours worked; time in excess of eight hours will be charged at overtime rate

**Third (Graveyard) Shift** Regular hourly rate plus 15% for the first eight hours worked; time in excess of eight hours will be charged at overtime rate

5. Fees reflect per-unit test and only include reporting of laboratory and/or field results not requiring engineering evaluation, recommendations, and/or conclusions.
6. Vehicle mileage, when applicable, is \$0.54 per mile. Drill rig, heavy equipment trucks, and four-wheel drive vehicles are \$1.00 per mile. All vehicle mileage charges (except for drill rigs) are from Moore Twining Associates, Inc.'s nearest office. Drill rigs are from our Drilling office located at 662 R Street in Fresno, California.
7. Work requiring special equipment, machinery rental, outside consultants, etc., will be charged at cost-plus-15% unless otherwise noted. The cost of replacing equipment that is damaged due to client's request and/or negligence will be assessed.
8. For delivery of additional materials and/or equipment to the job site, pick-up of materials requested, and/or equipment ordered but not used, there will be a charge of \$70/hour. There will be a restocking fee of 20% on all materials returned. Any special rental equipment such as air compressors, generators, cement mixers, etc. can be provided at cost-plus-15%, plus pick-up and delivery charges. Other equipment necessary to meet your project's special needs can be obtained upon request. Clients ordering specialized materials will be billed for the full amount of purchase regardless of utilization of only a portion thereof.

9. Staff billing rates will be imposed for requested research into technical files or records.
10. Requests for additional copies of reports are charged at secretarial rate plus photocopying fee of \$0.10 per page.
11. Facsimiles are charged at \$1.00 per page for local calls and \$1.50 for long-distance calls.
12. Public carriers, i.e. overnight mail, FedEx, UPS, Greyhound, etc. will be charged at cost plus secretarial time.
13. Processing of affidavits and certificates are charged at \$50 for each additional insured.
14. Additional insured certificates are charged at \$50 for each additional insured.
15. Certified payroll, \$50 per billing period.
16. The client will be invoiced for all services, equipment, materials, and supplies used on a project. Any invoice under \$100 will be C.O.D. All other invoices are due and payable on the 10<sup>th</sup> of the next succeeding month following date of charge and are past-due thereafter. Past-due balances are subject to a finance charge of 1.5% per month (an annual percentage rate [APR] of 18%). All invoice errors or necessary corrections will be brought to the attention of the company within ten days of receipt of the invoice; thereafter, client acknowledges invoices are correct and valid.
17. The unit rates provided in this fee schedule will be applicable through December 31, 2018.

## Northern California Prevailing Wage Fee Schedule

PROFESSIONAL			
Principal	\$	150.00	Hour
Registered Geotechnical Engineer	\$	125.00	Hour
Registered Civil Engineer	\$	120.00	Hour
Certified Engineering Geologist	\$	110.00	Hour
Project Geologist	\$	90.00	Hour
Project Manager	\$	65.00	Hour
SUPPORT STAFF			
Computer Aided Drafting	\$	45.00	Hour
Secretarial Services	\$	35.00	Hour
FIELD INSPECTION FEES			
ACI Technician – Field Sampling and Testing Concrete	\$	89.50	Hour
Earthwork Observation and Compaction Testing	\$	94.50	Hour
Special Inspection and Observations – Reinforced Concrete	\$	99.50	Hour
Special Inspection and Observations – Structural Masonry	\$	99.50	Hour
Special Inspection and Observations – Structural Steel	\$	99.50	Hour
Non-Destructive Testing Services	\$	105.00	Hour
Spray-Applied Fireproofing	\$	89.50	Hour
Batch Plant Inspection	\$	55.00	Hour
Shop Welding and Steel Fabrication Inspection	\$	55.00	Hour
Sample Pickup (if special trip is required)	\$	50.00	Hour
Vehicle Mileage	\$	0.54	Mile
Vehicle & Equipment Charge	\$	25.00	Day
Per Diem	\$	150.00	Day
MATERIALS TESTING FEES			
AGGREGATES			TEST METHOD
Sieve Analysis without Wash ASTM C136	\$	60.00	Each
Sieve Analysis with Wash ASTM C117	\$	120.00	Each
% Passing #200 Sieve ASTM C117	\$	60.00	Each
Specific Gravity & Absorption (Coarse) ASTM C127	\$	120.00	Each
Specific Gravity & Absorption (Fine) ASTM C128	\$	120.00	Each
Clay Lumps and Friable Particles ASTM C142	\$	150.00	Each
Cleanness Value CT 229	\$	120.00	Each
% of Crushed Particles (Fractured Face) ASTM D5821	\$	130.00	Each
Durability Index CT229	\$	120.00	Each
LA Rattler Abrasion Testing ASTM C535	\$	180.00	Each
Organic Impurities ASTM C40	\$	80.00	Each
Potential Reactivity -Chemical Method ASTM C289	\$	300.00	Each
Magnesium or Sodium Sulfate Soundness ASTM C88	\$	300.00	Each
Sand Equivalent ASTM D2419	\$	90.00	Each

Lightweight Pieces in Concrete Aggregate ASTM C123	\$	225.00	Each
Stone Proctor ASTM C29	\$	50.00	Each
Flat & Elongated Particles in Coarse Aggregate ASTM C4791	\$	120.00	Each
<b>ASPHALT</b>			
Marshall Density- Lab Mix Method ASTM D6926	\$	240.00	Each
Asphalt Extraction (Ignition Method) ASTM C6307	\$	150.00	Each
Asphalt Gradation and Extraction ASTM C5444	\$	120.00	Each
Maximum Theoretical Density/Rice Specific Gravity ASTM D2041	\$	150.00	Each
Hveem Stability ASTM D5160	\$	150.00	Each
Marshall Flow and Stability ASTM C6927	\$	200.00	Each
Bulk Density Testing of Cores ASTM D1188 or ASTM D2726	\$	40.00	Each
Swell CT 305	\$	225.00	Each
Moisture Vapor Susceptibility CT307	\$	150.00	Each
Asphalt Extraction (Solvent Method) ASTM D2172	\$	200.00	Each
Gradation and Oil Extraction Correction	\$	500.00	Each
Asphalt Core Thickness ASTM D3549	\$	20.00	Each
<b>CONCRETE</b>			
Concrete Compressive Strength Tests 6"x12" (Set of 4) ASTM C39	\$	70.00	Set of 4
Concrete Compressive Strength Test 6"x12" ASTM C39	\$	20.00	Each
Concrete Compressive Strength Test 6"x12" ASTM C39, held not tested	\$	10.00	Each
Compressive Strength of Concrete Cores ASTM C42	\$	50.00	Each
Flexural Strength Beam ASTM C78	\$	70.00	Each
Splitting Tensile Strength of Cylindrical Concrete ASTM C496	\$	50.00	Each
Unit Weight of Lightweight Concrete ASTM C567	\$	25.00	Each
Compressive Strength of Lightweight Concrete ASTM C495	\$	25.00	Each
Dry Shrinkage of Concrete ASTM C157	\$	250.00	Each
Gunite/Shotcrete Panels ASTM C1140	\$	250.00	Each
Preparation of Concrete Specimens by Saw Cutting	\$	20.00	Each
Concrete Compressive Strength Test 4"x8" (set of 5) ASTM C39	\$	80.00	Set of 5
Concrete Compressive Strength Test 4"x8" ASTM C39	\$	20.00	Each
Thickness of Drilled Concrete Core ASTM C174	\$	50.00	Each
Moisture Transmission & pH Test Kits	\$	50.00	Each
Concrete Cylinder HOLD (Not Tested)	\$	10.00	Each
Bit Charge	\$	7.00	Inch
<b>SOILS</b>			
Atterberg Limit/Plasticity Index ASTM D4319	\$	150.00	Each
Hydrometer Analysis ASTM D422	\$	120.00	Each
Specific Gravity ASTM D854	\$	90.00	Each
R-Value ASTM D2844	\$	200.00	Each
Consolidation ASTM D2435	\$	300.00	Each

Unconfined Compressive Strength ASTM D2166	\$	100.00	Each
Direct Shear- Consolidated ASTM D3080	\$	200.00	Each
Expansion Index of Soils ASTM D4829	\$	170.00	Each
Moisture Determination of Soil and Rock ASTM D2216	\$	30.00	Each
Permeability Flexible Wall ASTM D5084	\$	335.00	Each
pH of Soils	\$	30.00	Each
Sulphate Content of Soils	\$	30.00	Each
Chloride Content of Soils	\$	30.00	Each
Minimum Resistivity CT643	\$	110.00	Each
CBR, 100% ASTM D1883	\$	350.00	Each
CBR 95%, 3 point method ASTM D1883	\$	700.00	Each
Remold Charge	\$	50.00	Each
Oversized Correction for Moisture Density ASTM D4718	\$	180.00	Each
Crumb Test ASTM D6572	\$	50.00	Each
Atterberg Limit (Liquid Limit) ASTM D4318	\$	75.00	Each
Maximum Density Standard Proctor ASTM D698	\$	135.00	Each
Maximum Density Modified Proctor 4" Mold ASTM D1557	\$	170.00	Each
Maximum Density Modified Proctor 6" Mold ASTM D1557	\$	180.00	Each
Relative Compaction of Soils and Aggregate CT 216	\$	150.00	Each
Unconfined Compressive Strength of Lime Treated Soils CT 373	\$	150.00	Each
<b>MASONRY</b>			
Mortar Cylinder Compressive Strength 2x4 ASTM C780	\$	24.00	Each
Grout Compressive Strength ASTM C1019	\$	24.00	Each
Prism Compressive Strength, 1/2 Size	\$	30.00	Each
Masonry Core Unit Strength ASTM C1314	\$	50.00	Each
Masonry Core Shear Test ASTM C1314	\$	50.00	Each
Masonry Block Compressive Strength ASTM C140	\$	75.00	Each
Absorption, Unit Weight and Moisture Content ASTM C140	\$	75.00	Each
Drying Shrinkage of Block ASTM C426	\$	75.00	Each
Relative Mortar Strength CT 515	\$	250.00	Each
High Strength Grout Cubes ASTM C109	\$	18.00	Each
<b>STEEL</b>			
Rebar Tensile Test ASTM A370	\$	40.00	Each
Rebar Bend Test ASTM A290	\$	40.00	Each
Rebar Tensile and Bend Test ASTM A370 and A290	\$	80.00	Each
7 Strand Wire Cables ASTM A416	\$	150.00	Each
<b>FIREPROOFING</b>			
Fireproofing Dry Density ASTM E605	\$	50.00	Each

**DRILLING DEPARTMENT**

**Northern California Prevailing Wage Drilling Services**

CME-75 Drill Rig with Two Man Crew		
Operating Rate* (add \$5/hour for 10" Auger)	\$	230.00 Hour
Level C1 Add**	\$	35.00 Hour
Travel Time (FOB Fresno Office)	\$	200.00 Hour
Mobilization and Demobilization	\$	110.00 Hour
Standby	\$	175.00 Hour
Mileage (Drill Rig) (From Fresno Office)	\$	1.00 Mile
Flatbed Support Vehicle	\$	1.00 Mile
Truck	\$	.575 Mile
Service Truck Rental	\$	250.00 Day
<b>Equipment and Material Fees</b>		
Steam Cleaner	\$	125.00 Day
Air Compressor	\$	125.00 Day
Hydro Punch II		By Quote
55 Gallon Drums	\$	60.00 Each
Brass Sleeves w/plastic end caps	\$	6.00 Each
Obtaining Drilling Permits	\$	70.00 Hour
Pre-Steamed Clean Auger/Equipment		
50 feet or less	\$	100.00 Each
51 feet to 100 feet	\$	200.00 Each
Well Materials	\$	Cost + 15%
Concrete for Backfill Material	\$	Cost + 15%
Parts Replacement	\$	Cost + 15%

\* Drilling Under Level D Personal Health and Safety Protection - Normal Work Uniform, Coveralls

\*\* Drilling Under Level C Personal Health and Safety Protection - Disposable, Chemically Resistant Clothing; Air-purifying Respirator, Health and Safety Protection - Fully Encapsulated, Including Supplied-air Respirators



September 14, 2018

MTP Number: 1027-18

Mr. Jerry Martinez  
City of Madera  
204 West 4<sup>th</sup> Street  
Madera, California 93637

**Project: Fire Station #58**  
2558 Condor Drive  
Madera, California

**Subject: Special Inspection Services**

Dear Mr. Martinez:

Our firm has performed a preliminary review of the project plans provided by the City of Madera for the new Fire Station #58 project. Based on our review of the project plans prepared by RRM Design Group, dated July 17, 2018. The new Fire Station #58 project is anticipated to require the following materials testing and special inspections:

- Earthwork;
- Reinforcing Steel;
- Structural Concrete;
- Post-Installed Anchors;
- Portland Cement Concrete;
- Structural Masonry;
- Structural Steel;
- Structural Wood; and
- Laboratory Testing of Soils, Concrete, Mortar, and Grout.

Moore Twining Associates, Inc. is certified as a Materials Testing and Special Inspection agency by AMRL, CCRL and DSA (State of California Division of the State Architect). The DSA certification lab number for our Fresno office is LEA #65.

We trust this information meets your needs. If you have any questions regarding this letter, please contact our office at (559) 268-7021.

Sincerely,  
**MOORE TWINING ASSOCIATES, INC.**  
Construction Inspection Division

A handwritten signature in black ink, appearing to be 'TS', with a long horizontal line extending to the right.

**Tyler Street, EIT**  
Project Engineer

**CENTRAL VALLEY**  
2527 Fresno Street  
Fresno, CA 93721  
559-268-7021 • 559-268-7126 Fax

**CENTRAL COAST**  
501 Ortiz Avenue  
Sand City, CA 93955  
831-392-1056 • 831-392-1059 Fax

**NORTHERN CALIFORNIA**  
165 Commerce Circle, Suite D  
Sacramento, CA 95815  
916-381-9477 • 916-381-9478 Fax

**SOUTHERN CALIFORNIA**  
11800 Sterling Avenue, Suite C  
Riverside, CA 92503  
951-898-8932 • 951-898-8974 Fax



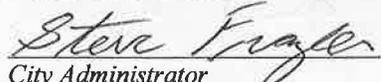
## REPORT TO CITY COUNCIL

Approved By:

  
Department Director

Council Meeting of October 3, 2018

Agenda Item Number B-11

  
City Administrator

**SUBJECT: CONSIDERATION OF A RESOLUTION APPROVING THREE AGREEMENTS FOR PURCHASE AND SALE OF REAL PROPERTY WITH THE PROPERTY OWNERS AND THE ACCEPTANCE OF THREE EASEMENT DEEDS FOR THE OLIVE AVENUE WIDENING AND RECONSTRUCTION PROJECT BETWEEN GATEWAY DRIVE AND KNOX STREET, AUTHORIZING THE MAYOR TO EXECUTE THE AGREEMENTS, AUTHORIZING THE CITY CLERK TO EXECUTE THE CERTIFICATE OF ACCEPTANCE FOR THE EASEMENT DEEDS, AUTHORIZING THE CITY ENGINEER TO OPEN ESCROW SERVICES AND AUTHORIZING THE CITY ADMINISTRATOR TO EXECUTE ALL DOCUMENTS NECESSARY TO EFFECTUATE THE PURCHASE**

### RECOMMENDATION:

That the City Council approves Resolution No. 18 - \_\_\_\_\_:

1. Approving three Agreements for Purchase and Sale of Real Property.
2. Authorizing the Mayor to execute the Agreement.
3. Accepting three Easement Deeds.
4. Authorizing the City Clerk to prepare the Certificate of Acceptance of three Easement Deeds.
5. Authorizing the City Engineer to open Escrow Services to process the purchase and recording of the Easement Deed by the County Clerk/Recorder.
6. Authorizing the City Administrator to sign the escrow documents.

### SUMMARY:

Right of Way acquisition from twelve parcels of land is necessary for the Olive Avenue Widening and Reconstruction Project. Acquisition from four parcels have been previously approved. The three Agreements and Deeds have been executed by the property owners and are recommended for approval. The value of the land, improvements

### Engineering

205 W. Fourth Street • Madera, CA 93637 • TEL (559) 661-5418 • FAX (559) 675-6605

[www.cityofmadera.ca.gov](http://www.cityofmadera.ca.gov)

and severance for the acquisition from the three parcels is \$731,000. Funds for right of way acquisition were included in the City's FY 2017/18 Budget and have been carried forward to the FY 2018/19 Budget.

## **DISCUSSION:**

Right of Way acquisition is necessary from owners of eight parcels and from four parcels owned by the Southern Pacific Railroad (SPRR). An Agreement for Purchase and Sale and Easement Deed has been executed by the property owners of three parcels.

The land acquisition and improvements from the first parcel, APN: 011-300-001, consists of 5,148 square feet for a strip of land along the south side of Olive Avenue and severance for the loss of value of the remainder of the parcel for a combined total amount of \$207,000. The Agreement also requires the City to compensate the owners for the relocation of a Propane Tank with Concrete Foundation and Customer Dispensing Facilities. The owners are in the process selecting a location layout and obtaining a cost estimate for this relocation. The cost value for this relocation was not included in the valuation appraisal for land and improvements.

The acquisition of the second parcel, APN: 011-330-002, is for the entire parcel with a dwelling at the southwest corner of Olive Avenue and Knox Street. Acquisition of the entire parcel is necessary as the street widening will require the demolition of the dwelling. The appraised value of the parcel is \$357,000.

The acquisition of the third parcel, APN: 011-330-003, is for the entire parcel with a dwelling located on the west side of Knox Street. Acquisition of the entire parcel is necessary as the street widening will require the demolition of the dwelling. The appraised value of the parcel is \$167,000.

The project will consist of widening and reconstructing Olive Avenue between Gateway Drive and Roosevelt Street to Arterial Street Standards with four travel lanes with a median and completing the arterial street standard improvements on Olive Avenue between Roosevelt Street and Knox Street. The Project will include a new UPRR crossing protection and signal and installation of traffic signals at the intersections of Roosevelt Street and Knox Street. The project also includes street widening improvements to meet Collector Street Standards on Knox Street between Neplus Way and Olive Avenue.

Land acquisition procedures include appraisals, purchase offers, negotiation, agreements, deeds and escrow services. Offer Letters have been sent to all property owners that we will need to acquire right of way for the project. The offer letters include a Purchase and Sale Agreement and Easement Deed, along with a Valuation/Appraisal Summary for the land and improvements to be acquired. The owner is given at least 30 days to consider the offer and up to 60 days if they choose to obtain their own appraisal before they respond to the City's offer. The property owners and tenants that must be relocated will receive relocation assistance and a minimum of 90 days to relocate.

In April 1996, the City of Madera adopted a Mitigated Negative Declaration for the East Olive Plan Line and Building Setback Project (East Olive Avenue Plan Line) for the widening of Olive Avenue to a 100 foot right of way arterial standard street. The Mitigated Negative Declaration was certified based on an Initial Study in conformance with the California Environmental Quality Act (CEQA). On November 10, 2015, the City of Madera Planning Commission approved an Addendum to the Mitigated Negative Declaration for the Adoption of the East Olive Plan Line to include Olive Avenue between Gateway Drive and Knox Street. The approval of the addendum was based on an analysis of the proposed project within the Environmental Assessment, Initial Study and Mitigated Negative Declaration prepared by staff pursuant to the CEQA Section 15164.

**FISCAL IMPACT:**

There will be no impact to the City's General Fund for the right of way and construction costs for this project. Regional Surface Transportation Program (RSTP) funds will be used for right of way acquisition and these funds are included in the City's 2018/19 Budget, Account No: 41315320-7050.

**CONSISTENCY WITH THE VISION MADERA 2025 PLAN**

**Strategy 126** - This project supports this strategy for providing clean, attractive streets that are safe and aesthetically pleasing.

**Strategy 138** – This project supports this strategy to establish and enforce ADA standards throughout the community.

**RESOLUTION NO. 18-\_\_\_\_\_**

**A RESOLUTION OF THE COUNCIL OF THE CITY OF MADERA, CALIFORNIA, APPROVING THREE AGREEMENTS FOR PURCHASE AND SALE OF REAL PROPERTY WITH THE PROPERTY OWNERS AND THE ACCEPTANCE OF THREE EASEMENT DEEDS FOR THE OLIVE AVENUE WIDENING AND RECONSTRUCTION PROJECT BETWEEN GATEWAY DRIVE AND KNOX STREET, AUTHORIZING THE MAYOR TO EXECUTE THE AGREEMENTS, AUTHORIZING THE CITY CLERK TO EXECUTE THE CERTIFICATE OF ACCEPTANCE FOR THE EASEMENT DEEDS, AUTHORIZING THE CITY ENGINEER TO OPEN ESCROW SERVICES AND AUTHORIZING THE CITY ADMINISTRATOR TO EXECUTE ALL DOCUMENTS NECESSARY TO EFFECTUATE THE PURCHASE**

**WHEREAS**, the City Council of the City of Madera has approved the Olive Avenue Widening and Reconstruction Project between Gateway Drive and Knox Street and Knox Street between Neplus Way and Olive Avenue (the Project); and

**WHEREAS**, the Project requires the acquisition of right of way from twelve parcels of land to widen Olive Avenue for Arterial Street standards and to widen Knox Street for Collector Street standards; and

**WHEREAS**, the three property owners of record, listed in Exhibit A attached hereto, have offered for sale to the City of Madera the interest in real property necessary for the widening and reconstruction of the Project; and

**WHEREAS**, the property to be acquired is more specifically described in the legal description included in the Agreement for Purchase and Sale of Real Property and attached to the Easement Deed; and

**WHEREAS**, the purchase price offered for the properties has been established as just compensation in accordance with the appraised market value of the property; and

**WHEREAS**, in April 1996, the City of Madera adopted a Mitigated Negative Declaration for the East Olive Avenue Plan Line and Building Set Back Project (East Olive Avenue Plan Line) for the widening of Olive Avenue to a 100 foot right of way arterial standard street. The Mitigated Negative Declaration was certified based on an Initial Study in conformance with the California Environmental Quality Act (CEQA). The Addendum to the Mitigated Negative Declaration for the widening of East Olive Avenue to 100 feet right of way arterial standard was approved by the Madera Planning Commission on November 10, 2015; and

**WHEREAS**, the three agreements and three easement deeds recommended for approval and acceptance are on file in the office of the City Clerk.

**NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF MADERA**  
hereby resolves, finds, determines and orders as follows:

1. The above recitals are true and correct.
2. The City Council of the City of Madera approves the three Agreements for Purchase and Sale of Real Property and accepts the three Easement Deeds, copies of which are on file in the Office of the City Clerk and referred to for particulars.
3. The Mayor is authorized to execute the Agreements.
4. The City Clerk is authorized to prepare the Certificate of Acceptance for the Easement Deeds.
5. The Finance Director is authorized to make the payment for the land acquisition in the amounts shown in the attached Exhibit A plus Escrow closing costs.
6. The City Engineer is authorized to initiate Escrow Services for processing the purchase process and recording the Easement Deed by the County of Madera Clerk/Recorder.
7. The City Administrator is authorized to execute any and all documents necessary to effectuate the purchase of the easement.
8. This resolution is effective immediately upon adoption.

\* \* \* \* \*

**EXHIBIT A**  
**PROPERTY OWNER LIST**

RIGHT OF WAY ACQUISITION

For

Olive Avenue Widening & Reconstruction Project

<b><u>APN</u></b>	<b><u>PROPERTY OWNER ADDRESS</u></b>	<b><u>AMOUNT</u></b>
011-300-001	James W. Myers & Karen S. Myers [REDACTED] [REDACTED]	\$207,000.00
011-330-002	Bernabe Castillo & Guillermina Ramirez [REDACTED] [REDACTED]	\$357,000.00
011-330-003	Bernabe Castillo & Guillermina Ramirez [REDACTED] [REDACTED]	\$167,000.00

OWNER: Bernabe Castillo & Guillermina Ramirez

PROJECT: Olive Avenue, Gateway Drive to Knox Street, Widening & Reconstruction Project

ADDRESS: 1280 E. Olive Avenue                      APN: 011-330-002  
Madera, CA 93638

SITUS: 1280 E. Olive Avenue  
Madera, CA 93638

**AGREEMENT FOR PURCHASE AND SALE OF REAL PROPERTY  
AND ESCROW INSTRUCTIONS**

**Bernabe Castillo and Guillermina Ramirez**, hereinafter called the "Seller", without regard to number or gender, hereby offers to sell to the CITY OF MADERA, a municipal corporation, hereinafter called the "CITY", the hereinafter described real property on the following terms and conditions:

1. The real property which is the subject of this Agreement, and which is hereunder for convenience referred to as the "Offered Property", is all that real property situated in the City of Madera, County of Madera, State of California, more particularly described in Exhibit 'A' for APN/Parcel ID: 011-330-002 attached hereto.

2. The purchase price for the Offered Property shall be the sum of Three Hundred and Fifty-Seven Thousand Dollars and No Cents (\$357,000.00) as just compensation therefor for land, improvements and dwelling.

3. Seller warrants that the Offered Property is being acquired under threat of condemnation.

4. Seller represents and warrants that it has the authority to make the offer herein made, and that it holds fee title to the Offered Property.

5. The sale shall be completed by and through this Agreement upon the following terms and conditions, and Seller and City by their signature to this Agreement make this paragraph their purchase instructions:

a. City shall pay the sums specified in Paragraph 2 of this Agreement upon receipt and recording of the Grant Deed.

b. There shall be no proration of taxes and insurance.

c. Disbursements to be in the amounts, at the times, and in all respects in accordance with the terms and conditions and subject to the limitations of this Agreement.

6. Seller warrants that there will be no tenants on the Offered Property pursuant to any lease agreement.

7. It is agreed and confirmed by the parties hereto that, notwithstanding other provisions in this contract, the right of possession and use of the subject property by the City (including, but not limited to, the right to construct and install new improvements and to replace, repair, restore, remove, and/or dispose of existing improvements) shall commence upon execution of this agreement, and that the amount shown in Clause 2 herein includes, but is not limited to, full payment for such possession and use, including damages if any, from said date.

8. Grantor grants to the City, its permittees, contractors, agents or assigns, a right to enter upon, over, across, and under Grantor's property during the period of construction for the purpose of removal and replacement of existing owner improvements on the remaining parcel and for the purpose of facilitating the construction of the public improvement and accomplishing all necessary incidence thereto, including, but not limited to, the repair, replacement, restoration, removal, and/or disposal of existing improvements. Any actual damage of substantial interference with the possession of use of the adjacent land caused by City, its permittees, contractors, agents, or assigns shall be cured by same.

9. The obligation of the City to purchase the Offered Property is contingent upon the finding by City that there is no evidence that there may be hazardous or toxic materials located on the Offered Property. The cost of this determination is the sole expense of the City.

10. Time is of the essence of each and every term, condition, and covenant hereof.

11. It is understood and agreed that this Agreement shall become a contract for the purchase and sale of real property and improvements on the remaining parcel binding upon Seller and City, their heirs, executors, administrators, successors in interest, and assigns.

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12. This Agreement is executed by the City of Madera, by and through Mayor of the City of Madera pursuant to authority granted by the Council of the City of Madera on \_\_\_\_\_.

CITY OF MADERA,  
A municipal corporation

By: \_\_\_\_\_  
Andrew J. Medellin, Mayor

APPROVED AS TO FORM:  
By: \_\_\_\_\_  
Brent Richardson, City Attorney

ATTEST:  
By: \_\_\_\_\_  
Sonia Alvarez, City Clerk

SELLER

Bernabe Castillo  
Bernabe Castillo  
\_\_\_\_\_  
Tax I.D. (Soc. Sec. #) \_\_\_\_\_

Guillermina Ramirez  
Guillermina Ramirez  
\_\_\_\_\_  
Tax I.D. (Soc. Sec. #) \_\_\_\_\_

**EXHIBIT "A"**  
Legal Description

**For APN/Parcel ID(s): 011-330-002-000**

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THE LAND REFERRED TO HEREIN BELOW IS SITUATED IN THE CITY OF MADERA, COUNTY OF MADERA, STATE OF CALIFORNIA AND IS DESCRIBED AS FOLLOWS:

ALL THAT PORTION OF LOT 6 OF ANNADALE TRACT, ACCORDING TO MAP ENTITLED, "MAP OF ANNADALE TRACT", FILED AND RECORDED IN THE OFFICE OF THE COUNTY RECORDER OF THE COUNTY OF MADERA, STATE OF CALIFORNIA, DECEMBER 12, 1904 IN BOOK 2 OF MAPS, AT PAGE 59, AND OF THE ABANDONED WESTERLY 20 FEET OF THE 60 FOOT COUNTY ROAD ADJOINING SAID LOT 6 ON THE EAST, MORE PARTICULARLY BOUNDED AND DESCRIBED AS FOLLOWS:

BEGINNING AT THE NORTHEAST CORNER OF SAID LOT 6, THENCE EAST ALONG THE SOUTH LINE OF A 50 FOOT COUNTY ROAD A DISTANCE OF 20 FEET TO THE WEST LINE OF THE PRESENT EXISTING 40 FOOT COUNTY ROAD; THENCE SOUTH AND PARALLEL WITH THE EAST LINE OF SAID LOT 6 A DISTANCE OF 150 FEET; THENCE WEST AND PARALLEL WITH THE SOUTH LINE OF SAID 50 FOOT ROAD AND THE NORTH LINE OF SAID LOT 6, A DISTANCE OF 100 FEET TO A POINT IN SAID LOT 6; THENCE NORTH AND PARALLEL WITH THE EAST LINE OF SAID LOT A DISTANCE OF 150 FEET TO A POINT ON THE NORTH LINE OF SAID LOT 6 AND THE SOUTH LINE OF SAID 50 FOOT ROAD; THENCE EAST ALONG SAID NORTH LINE OF LOT AND SAID SOUTH LINE OF ROAD A DISTANCE OF 80 FEET TO THE POINT OF BEGINNING.

RECORDING REQUESTED BY:  
City of Madera  
AFTER RECORDING RETURN TO:  
City of Madera  
205 W. 4th Street  
Madera, CA 93637  
Attn: City Clerk

Fee waived per Section 27383 of the Government Code      No Fee Due \_\_\_\_\_  
APN: 011-330-002      No Doc Tax Due R&T 11922 \_\_\_\_\_  
Fee Waived Per Sections 27383 & 27388.1(a)(2)(D) of the Government Code

GRANT DEED

FOR A VALUABLE CONSIDERATION, RECEIPT OF WHICH IS HEREBY ACKNOWLEDGED, **BERNABE CASTILLO, A SINGLE MAN AND GUILLERMINA RAMIREZ, A SINGLE WOMEN, as joint tenants** DOES HEREBY GRANT TO **THE CITY OF MADERA, A MUNICIPAL CORPORATION OF THE STATE OF CALIFORNIA**

The following described real property in the City of Madera, County of Madera, State of California, for Assessor Parcel Number 011-330-002-000 described as follows in EXHIBIT "A" - **LEGAL DESCRIPTION**, attached hereto and made a part hereof:

Date: 8-31-18

Date: 8-31-18

By: Bernabe Castillo  
Bernabe Castillo

By: Guillermina Ramirez  
Guillermina Ramirez

CALIFORNIA ALL-PURPOSE ACKNOWLEDGEMENT      CIVIL CODE #1189

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certification is attached, and not the truthfulness, accuracy, or validity of the document.

State of California)  
County of Madera)

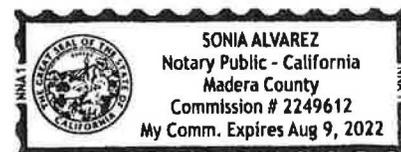
On 8/31/18 before me, Sonia Alvarez, Notary Public, personally appeared Bernabe Castillo and Guillermina Ramirez

who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) ~~is/are~~ subscribed to the within instrument and acknowledged to me that ~~he/she/they~~ executed the same in ~~his/her/their~~ authorized capacity(ies), and that by ~~his/her/their~~ signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify, under PENALTY OF PERJURY, under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS MY HAND AND OFFICIAL SEAL

Signature: Sonia Alvarez (Seal)



**EXHIBIT "A"**  
Legal Description

**For APN/Parcel ID(s): 011-330-002-000**

---

THE LAND REFERRED TO HEREIN BELOW IS SITUATED IN THE CITY OF MADERA, COUNTY OF MADERA, STATE OF CALIFORNIA AND IS DESCRIBED AS FOLLOWS:

ALL THAT PORTION OF LOT 6 OF ANNADALE TRACT, ACCORDING TO MAP ENTITLED, "MAP OF ANNADALE TRACT", FILED AND RECORDED IN THE OFFICE OF THE COUNTY RECORDER OF THE COUNTY OF MADERA, STATE OF CALIFORNIA, DECEMBER 12, 1904 IN BOOK 2 OF MAPS, AT PAGE 59, AND OF THE ABANDONED WESTERLY 20 FEET OF THE 60 FOOT COUNTY ROAD ADJOINING SAID LOT 6 ON THE EAST, MORE PARTICULARLY BOUNDED AND DESCRIBED AS FOLLOWS:

BEGINNING AT THE NORTHEAST CORNER OF SAID LOT 6, THENCE EAST ALONG THE SOUTH LINE OF A 50 FOOT COUNTY ROAD A DISTANCE OF 20 FEET TO THE WEST LINE OF THE PRESENT EXISTING 40 FOOT COUNTY ROAD; THENCE SOUTH AND PARALLEL WITH THE EAST LINE OF SAID LOT 6 A DISTANCE OF 150 FEET; THENCE WEST AND PARALLEL WITH THE SOUTH LINE OF SAID 50 FOOT ROAD AND THE NORTH LINE OF SAID LOT 6, A DISTANCE OF 100 FEET TO A POINT IN SAID LOT 6; THENCE NORTH AND PARALLEL WITH THE EAST LINE OF SAID LOT A DISTANCE OF 150 FEET TO A POINT ON THE NORTH LINE OF SAID LOT 6 AND THE SOUTH LINE OF SAID 50 FOOT ROAD; THENCE EAST ALONG SAID NORTH LINE OF LOT AND SAID SOUTH LINE OF ROAD A DISTANCE OF 80 FEET TO THE POINT OF BEGINNING.

OWNER: Bernabe Castillo & Guillermina Ramirez

PROJECT: Olive Avenue, Gateway Drive to Knox Street, Widening & Reconstruction Project

ADDRESS: 62 S. Knox Street  
Madera, CA 93638

APN: 011-330-003

SITUS: 

**AGREEMENT FOR PURCHASE AND SALE OF REAL PROPERTY  
AND ESCROW INSTRUCTIONS**

**Bernabe Castillo and Guillermina Ramirez, as Joint Tenants**, hereinafter called the "Seller", without regard to number or gender, hereby offers to sell to the CITY OF MADERA, a municipal corporation, hereinafter called the "CITY", the hereinafter described real property on the following terms and conditions:

1. The real property which is the subject of this Agreement, and which is hereunder for convenience referred to as the "Offered Property", is all that real property situated in the City of Madera, County of Madera, State of California, more particularly described in Exhibit 'A' for APN/Parcel ID: 011-330-003 attached hereto.

2. The purchase price for the Offered Property shall be the sum of One Hundred and Sixty-Seven Thousand Dollars and No Cents (\$167,000.00) as just compensation therefor for land, improvements and dwelling.

3. Seller warrants that the Offered Property is being acquired under threat of condemnation.

4. Seller represents and warrants that it has the authority to make the offer herein made, and that it holds fee title to the Offered Property.

5. The sale shall be completed by and through this Agreement upon the following terms and conditions, and Seller and City by their signature to this Agreement make this paragraph their purchase instructions:

a. City shall pay the sums specified in Paragraph 2 of this Agreement upon receipt and recording of the Grant Deed.

b. There shall be no proration of taxes and insurance.

c. Disbursements to be in the amounts, at the times, and in all respects in accordance with the terms and conditions and subject to the limitations of this Agreement.

6. Seller warrants that there will be no tenants on the Offered Property pursuant to any lease agreement.

7. It is agreed and confirmed by the parties hereto that, notwithstanding other provisions in this contract, the right of possession and use of the subject property by the City (including, but not limited to, the right to construct and install new improvements and to replace, repair, restore, remove, and/or dispose of existing improvements) shall commence upon execution of this agreement, and that the amount shown in Clause 2 herein includes, but is not limited to, full payment for such possession and use, including damages if any, from said date.

8. Grantor grants to the City, its permittees, contractors, agents or assigns, a right to enter upon, over, across, and under Grantor's property during the period of construction for the purpose of removal and replacement of existing owner improvements on the remaining parcel and for the purpose of facilitating the construction of the public improvement and accomplishing all necessary incidence thereto, including, but not limited to, the repair, replacement, restoration, removal, and/or disposal of existing improvements. Any actual damage of substantial interference with the possession of use of the adjacent land caused by City, its permittees, contractors, agents, or assigns shall be cured by same.

9. The obligation of the City to purchase the Offered Property is contingent upon the finding by City that there is no evidence that there may be hazardous or toxic materials located on the Offered Property. The cost of this determination is the sole expense of the City.

10. Time is of the essence of each and every term, condition, and covenant hereof.

11. It is understood and agreed that this Agreement shall become a contract for the purchase and sale of real property and improvements on the remaining parcel binding upon Seller and City, their heirs, executors, administrators, successors in interest, and assigns.

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////////////////////////////////////

12. This Agreement is executed by the City of Madera, by and through Mayor of the City of Madera pursuant to authority granted by the Council of the City of Madera on \_\_\_\_\_.

CITY OF MADERA,  
A municipal corporation

By: \_\_\_\_\_  
Andrew J. Medellin, Mayor

APPROVED AS TO FORM:  
By: \_\_\_\_\_  
Brent Richardson, City Attorney

ATTEST:  
By: \_\_\_\_\_  
Sonia Alvarez, City Clerk

SELLER

Bernabe Castillo  
Bernabe Castillo  
\_\_\_\_\_

Tax I.D. (Soc. Sec. #)  
\_\_\_\_\_

Guillermina Ramirez  
Guillermina Ramirez  
\_\_\_\_\_

Tax I.D. (Soc. Sec. #)  
\_\_\_\_\_

**EXHIBIT "A"**  
Legal Description

**For APN/Parcel ID(s): 011-330-003**

---

THE LAND REFERRED TO HEREIN BELOW IS SITUATED IN THE CITY OF MADERA, COUNTY OF MADERA, STATE OF CALIFORNIA AND IS DESCRIBED AS FOLLOWS:

THE EASTERLY 100 FEET OF ALL THAT PORTION OF LOT 6 OF ANNANDALE TRACT, ACCORDING TO MAP ENTITLED, "MAP OF ANNANDALE TRACT", FILED AND RECORDED IN THE OFFICE OF THE COUNTY RECORDER OF THE COUNTY OF MADERA, STATE OF CALIFORNIA, DECEMBER 12, 1904 IN VOLUME 2 OF MAPS, AT PAGE 59, AND OF THE ABANDONED WESTERLY 20 FEET OF THE 60 FOOT COUNTY ROAD ADJOINING SAID LOT 6 ON THE EAST, MORE PARTICULARLY BOUNDED AND DESCRIBED AS FOLLOWS:

BEGINNING AT A POINT ON THE EAST LINE OF SAID LOT 6 WHICH IS DISTANT SOUTHERLY 150 FEET FROM THE NORTHEAST CORNER OF SAID LOT; THENCE WESTERLY AND PARALLEL TO THE NORTH LINE OF SAID LOT A DISTANCE OF 105 FEET; THENCE SOUTHERLY AND PARALLEL TO THE EAST LINE OF SAID LOT A DISTANCE OF 150 FEET, THENCE EASTERLY AND PARALLEL TO SAID NORTH LINE OF SAID LOT A DISTANCE OF 125 FEET TO A POINT ON THE EAST LINE OF SAID ABANDONED WESTERLY 20 FEET OF 60 FOOT COUNTY ROAD; THENCE NORTHERLY ALONG SAID EAST LINE A DISTANCE OF 150 FEET; THENCE WESTERLY PARALLEL TO THE EASTERLY EXTENSION OF THE NORTH LINE OF SAID LOT 6 TO A DISTANCE OF 20 FEET TO THE POINT OF BEGINNING.

RECORDING REQUESTED BY:

City of Madera

AFTER RECORDING RETURN TO:

City of Madera

205 W. 4th Street

Madera, CA 93637

Attn: City Clerk

Fee waived per Section 27383 of the Government Code

No Fee Due

APN: 011-330-003

No Doc Tax Due R&T 11922

Fee Waived Per Sections 27383 & 27388.1(a)(2)(D) of the Government Code

GRANT DEED

FOR A VALUABLE CONSIDERATION, RECEIPT OF WHICH IS HEREBY ACKNOWLEDGED, **BERNABE CASTILLO, A SINGLE MAN; AND GUILLERMINA RAMIREZ, A SINGLE WOMAN, AS JOINT TENANTS**, DOES HEREBY GRANT TO **THE CITY OF MADERA, A MUNICIPAL CORPORATION OF THE STATE OF CALIFORNIA**

The following described real property in the City of Madera, County of Madera, State of California, for Assessor Parcel Number 011-330-003-000 described as follows in EXHIBIT "A" - **LEGAL DESCRIPTION** attached hereto and made a part hereof:

By: Guillermina Ramirez  
Guillermina Ramirez

Date: 8-31-18

By: Bernabe Castillo  
Bernabe Castillo

Date: 8-31-18

CALIFORNIA ALL-PURPOSE ACKNOWLEDGEMENT CIVIL CODE #1189

A notary public or other officer completing this certificate verifies only the identity of the individual who signed this document to which this certification is attached, and not the truthfulness, accuracy, or validity of the document.

State of California)

County of Madera)

On 8/31/18 before me, Sonia Alvarez, Notary Public, personally appeared Bernabe Castillo and Guillermina Ramirez

who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify, under PENALTY OF PERJURY, under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS MY HAND AND OFFICIAL SEAL

Signature: Sonia Alvarez (Seal)



**EXHIBIT "A"**  
Legal Description

For APN/Parcel ID(s): 011-330-003

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THE LAND REFERRED TO HEREIN BELOW IS SITUATED IN THE CITY OF MADERA, COUNTY OF MADERA, STATE OF CALIFORNIA AND IS DESCRIBED AS FOLLOWS:

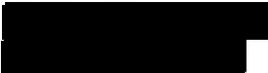
THE EASTERLY 100 FEET OF ALL THAT PORTION OF LOT 6 OF ANNANDALE TRACT, ACCORDING TO MAP ENTITLED, "MAP OF ANNANDALE TRACT", FILED AND RECORDED IN THE OFFICE OF THE COUNTY RECORDER OF THE COUNTY OF MADERA, STATE OF CALIFORNIA, DECEMBER 12, 1904 IN VOLUME 2 OF MAPS, AT PAGE 59, AND OF THE ABANDONED WESTERLY 20 FEET OF THE 60 FOOT COUNTY ROAD ADJOINING SAID LOT 6 ON THE EAST, MORE PARTICULARLY BOUNDED AND DESCRIBED AS FOLLOWS:

BEGINNING AT A POINT ON THE EAST LINE OF SAID LOT 6 WHICH IS DISTANT SOUTHERLY 150 FEET FROM THE NORTHEAST CORNER OF SAID LOT; THENCE WESTERLY AND PARALLEL TO THE NORTH LINE OF SAID LOT A DISTANCE OF 105 FEET; THENCE SOUTHERLY AND PARALLEL TO THE EAST LINE OF SAID LOT A DISTANCE OF 150 FEET, THENCE EASTERLY AND PARALLEL TO SAID NORTH LINE OF SAID LOT A DISTANCE OF 125 FEET TO A POINT ON THE EAST LINE OF SAID ABANDONED WESTERLY 20 FEET OF 60 FOOT COUNTY ROAD; THENCE NORTHERLY ALONG SAID EAST LINE A DISTANCE OF 150 FEET; THENCE WESTERLY PARALLEL TO THE EASTERLY EXTENSION OF THE NORTH LINE OF SAID LOT 6 TO A DISTANCE OF 20 FEET TO THE POINT OF BEGINNING.

OWNER: J. W. Myers, Inc., a California Corporation included in the James W. Myers and Karen S. Myers Family Trust of 1992

PROJECT: Olive Avenue, Gateway Drive to Knox Street, Widening & Reconstruction Project

ADDRESS: PO BOX 809 APN: 011-203-005  
Madera, CA 93639

SITUS: 

**AGREEMENT FOR PURCHASE AND SALE OF REAL PROPERTY  
AND ESCROW INSTRUCTIONS**

The title to the estate or interest in the land is vested in **J. W. Myers, Inc., a California Corporation**, hereinafter called the "Seller", without regard to number or gender, hereby offers to sell to the CITY OF MADERA, a municipal corporation, hereinafter called the "CITY", the hereinafter described real property on the following terms and conditions:

1. The real property which is the subject of this Agreement, and which is hereunder for convenience referred to as the "Offered Property", is all that real property situated in the City of Madera, County of Madera, State of California, more particularly described in the Legal Description and Drawing attached hereto.

2. The purchase price for the Offered Property shall be the sum of Two Hundred Seven Thousand Dollars and No Cents (\$207,000.00) as just compensation therefor for land, improvements and severance.

3. Seller warrants that the Offered Property is being acquired under threat of condemnation.

4. Seller represents and warrants that it has the authority to make the offer herein made, and that it holds fee title to the Offered Property.

5. The sale shall be completed by and through this Agreement upon the following terms and conditions, and Seller and City by their signature to this Agreement make this paragraph their purchase instructions:

a. City shall pay the sums specified in Clause 2 of this Agreement upon receipt and recording of the Easement Deed.

b. There shall be no proration of taxes and insurance.

c. Disbursements to be in the amounts, at the times, and in all respects in accordance with the terms and conditions and subject to the limitations of this Agreement.

6. Seller warrants that there will be no tenants on the Offered Property pursuant to any lease agreement.

7. It is agreed and confirmed by the parties hereto that, notwithstanding other provisions in this contract, the right of possession and use of the subject property by the City (including, but not limited to, the right to construct and install new improvements and to replace, repair, restore, remove, and/or dispose of existing improvements) shall commence upon execution of this agreement, and that the amount shown in Clause 2 herein includes, but is not limited to, full payment for such possession and use, including damages if any, from said date.

8. Grantor grants to the City, its permittees, contractors, agents or assigns, a right to enter upon, over, across, and under Grantor's property during the period of construction for the purpose of removal and replacement of existing owner improvements on the remaining parcel and for the purpose of facilitating the construction of the public improvement and accomplishing all necessary incidence thereto, including, but not limited to, the repair, replacement, restoration, removal, and/or disposal of existing improvements. It is agreed the City shall compensate owner for the additional cost to relocate the Propane Tank and dispensing facilities. Any actual damage or substantial interference with the possession or use of the adjacent land caused by City, its permittees, contractors, agents, or assigns shall be cured by same.

9. The obligation of the City to purchase the Offered Property is contingent upon the finding by City that there is no evidence that there may be hazardous or toxic materials located on the Offered Property. The cost of this determination is the sole expense of the City.

10. Time is of the essence of each and every term, condition, and covenant hereof.

11. It is understood and agreed that this Agreement shall become a contract for the purchase and sale of real property and improvements on the remaining parcel binding upon Seller and City, their heirs, executors, administrators, successors in interest, and assigns.

12. It is understood and agreed that the cost to relocate the propane tank and service island will be accomplished under a separate agreement.

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13. This Agreement is executed by the City of Madera, by and through Mayor of the City of Madera pursuant to authority granted by the Council of the City of Madera on \_\_\_\_\_.

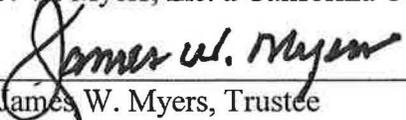
CITY OF MADERA,  
A municipal corporation

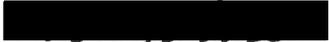
By: \_\_\_\_\_  
Andrew J. Medellin, Mayor

APPROVED AS TO FORM:  
By: \_\_\_\_\_  
Brent Richardson, City Attorney

ATTEST:  
By: \_\_\_\_\_  
Sonia Alvarez, City Clerk

SELLER  
J. W. Myers, Inc. a California Corporation

  
\_\_\_\_\_  
James W. Myers, Trustee

  
\_\_\_\_\_  
Tax I.D. (Soc. Sec. #)

  
\_\_\_\_\_  
Karen S. Myers, Trustee

  
\_\_\_\_\_  
Tax I.D. (Soc. Sec. #)

## Right-of-Way Acquisition

### Olive Avenue

# Legal Description

APN 011-300-001, Owner J. W. Myers, Inc.

All that portion of the northeast quarter of the northwest quarter of Section 30, Township 11 South, Range 18 East, Mount Diablo Base and Meridian, in the City of Madera, County of Madera, State of California, according to Record of Survey, recorded April 17, 1986, in Book 32, Page 20, Madera County Records, being more particularly described as follows:

Commencing at the north quarter corner of said Section 30; thence  $N89^{\circ} 05' 19'' W$ , along the north line of said Section 30, a distance of 1078.57 feet; thence  $S 0^{\circ} 54' 41'' W$ , at a right angle to said section line, a distance of 15.00 feet, to the point of intersection of the south right-of-way line of Olive Avenue with the northeasterly right-of-way line of the Union Pacific Railroad, being THE TRUE POINT OF BEGINNING;

Thence  $S 89^{\circ} 05' 19'' E$ , along said Olive Avenue right-of-way line, a distance of 200.00 feet to a point on the east boundary of the westerly parcel shown on said Record of Survey, APN 011-300-001; thence  $S 39^{\circ} 53' 19'' E$ , along said east boundary, a distance of 20.69 feet; thence  $S 89^{\circ} 54' 37'' W$ , a distance of 43.63 feet; thence  $S 0^{\circ} 18' 10'' E$ , a distance of 6.20 feet to a point of non-tangency

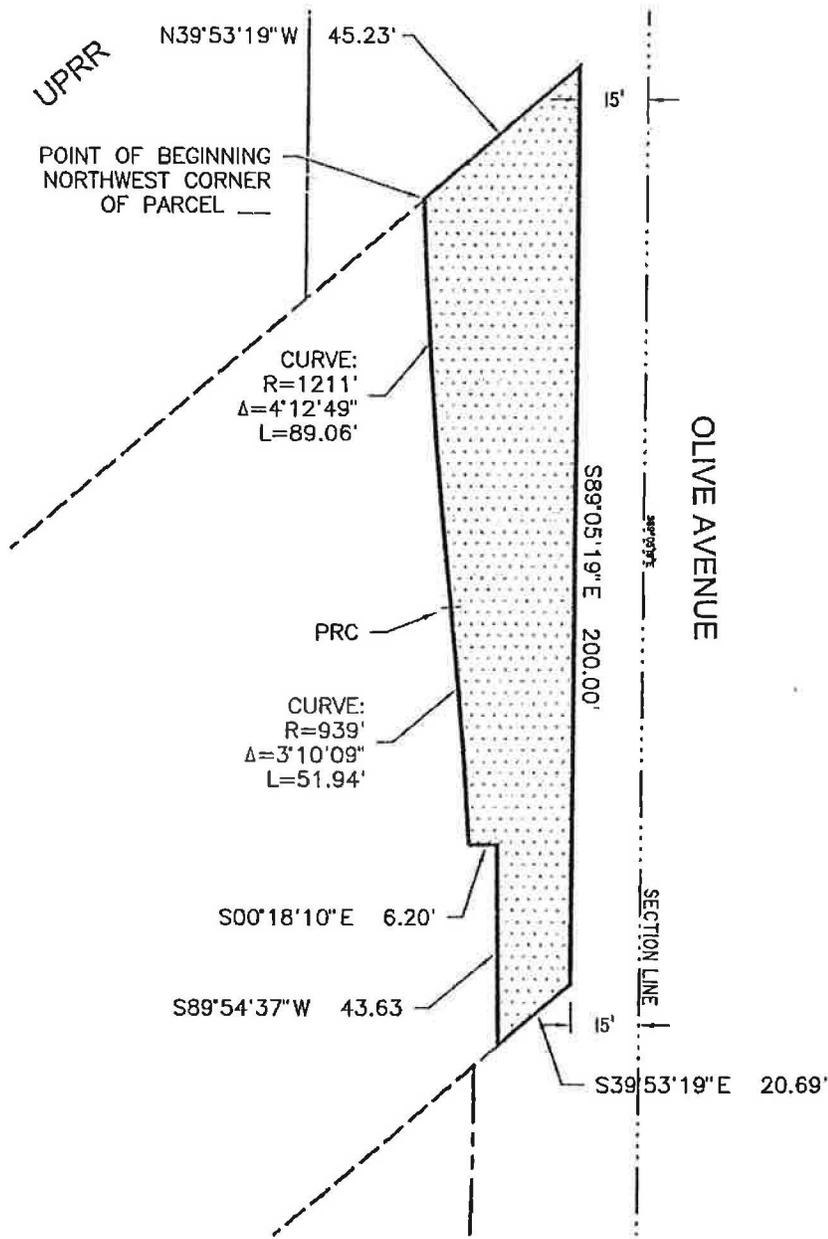
on a curve; thence along said curve, concave to the south, with a radius of 939.00 feet, and a central angle of  $3^{\circ} 10' 09''$ , through an arc length of 51.94 feet to a point of reverse curvature; thence along the reverse curve, concave to the north, with a radius of 1211.00 feet, and a central angle of  $4^{\circ} 12' 49''$ , through an arc length of 89.06 feet, to a point of non-tangency on the northeasterly right-of-way line for the Union Pacific Railroad; thence  $N 39^{\circ} 53' 19'' W$ , along said railroad right-of-way line, a distance of 45.23 feet to THE TRUE POINT OF BEGINNING.

Containing 5148 square feet, more or less.

APN 011-300-001



EXHIBIT "F"



APN:  
011-300-001  
ADDRESS:  
  
OWNER:  
J W MYERS INC.



SCALE: 1"=40'

 INDICATES EASEMENT AREA TO BE GRANTED TO THE CITY OF MADERA CONTAINING ±5148 SQ. FT.



CITY OF MADERA - ENGINEERING DEPARTMENT

CITY: CITY OF MADERA  
ADDRESS: 205 W. 4TH STREET  
MADERA, CA 93637  
SURVEYOR: CHRISTIAN M. BACH  
R.C.E. NO. 18715  
TELEPHONE: (559) 661-5418

REAL PROPERTY TO BE GRANTED TO THE CITY OF MADERA BEING A PORTION OF...

F.B. NO \_\_\_\_\_  
Dr. By: \_\_\_\_\_  
Ch. By: \_\_\_\_\_  
Date: \_\_\_\_\_  
SCALE 1" = 40'

RECORDING REQUESTED BY:

City of Madera

AFTER RECORDING RETURN TO:

City of Madera  
205 W. 4th Street  
Madera, CA 93637

Attn: City Clerk

Fee waived per Section 27383 of the Government Code  
APN: 011-300-001

No Fee Due

No Doc Tax Due R&T 11922

EASEMENT DEED

FOR A VALUABLE CONSIDERATION, RECEIPT OF WHICH IS HEREBY  
ACKNOWLEDGED, **J. W. MYERS, INC., A CALIFORNIA CORPORATION,**  
DOES HEREBY GRANT TO **THE CITY OF MADERA,** A MUNICIPAL  
CORPORATION OF THE STATE OF CALIFORNIA

An easement for street, sewer, water, storm drain, public utility and any and all other  
municipal purposes over, under, through and across, on and in the following described  
real property in the City of Madera, County of Madera, State of California, being more  
particularly described in the **LEGAL DESCRIPTION** attached hereto and made a part  
hereof:

Date: 9/6/2018

Date: 9/6/2018

By: James W. Myers  
James W. Myers

By: Karen S. Myers  
Karen S. Myers

CALIFORNIA ALL-PURPOSE ACKNOWLEDGEMENT CIVIL CODE #1189

A notary public or other office completing this certificate verifies only the identity of the  
individual who signed the document to which this certification is attached, and not the  
truthfulness, accuracy, or validity of that document.

State of California)  
County of ~~Madera~~ Fresno

On September 6, 2018 before me, Anna G Guerra, Notary Public,  
personally appeared James W. Myers and  
Karen S. Myers

who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s)  
~~is~~ are subscribed to the within instrument and acknowledged to me that ~~he~~/she/they  
executed the same in ~~his~~/her/their authorized capacity(ies), and that by ~~his~~/her/their  
signature(s) on the instrument the person(s), or the entity upon behalf of which the  
person(s) acted, executed the instrument.

I certify, under PENALTY OF PERJURY, under the laws of the State of California that  
the foregoing paragraph is true and correct.

WITNESS MY HAND AND OFFICIAL SEAL

Signature: [Handwritten Signature]



(Seal)

**Right-of-Way Acquisition**

**Olive Avenue**

**Legal Description**

**APN 011-300-001, Owner J. W. Myers, Inc.**

All that portion of the northeast quarter of the northwest quarter of Section 30, Township 11 South, Range 18 East, Mount Diablo Base and Meridian, in the City of Madera, County of Madera, State of California, according to Record of Survey, recorded April 17, 1986, in Book 32, Page 20, Madera County Records, being more particularly described as follows:

Commencing at the north quarter corner of said Section 30; thence  $N89^{\circ} 05' 19'' W$ , along the north line of said Section 30, a distance of 1078.57 feet; thence  $S 0^{\circ} 54' 41'' W$ , at a right angle to said section line, a distance of 15.00 feet, to the point of intersection of the south right-of-way line of Olive Avenue with the northeasterly right-of-way line of the Union Pacific Railroad, being THE TRUE POINT OF BEGINNING;

Thence  $S 89^{\circ} 05' 19'' E$ , along said Olive Avenue right-of-way line, a distance of 200.00 feet to a point on the east boundary of the westerly parcel shown on said Record of Survey, APN 011-300-001; thence  $S 39^{\circ} 53' 19'' E$ , along said east boundary, a distance of 20.69 feet; thence  $S 89^{\circ} 54' 37'' W$ , a distance of 43.63 feet; thence  $S 0^{\circ} 18' 10'' E$ , a distance of 6.20 feet to a point of non-tangency

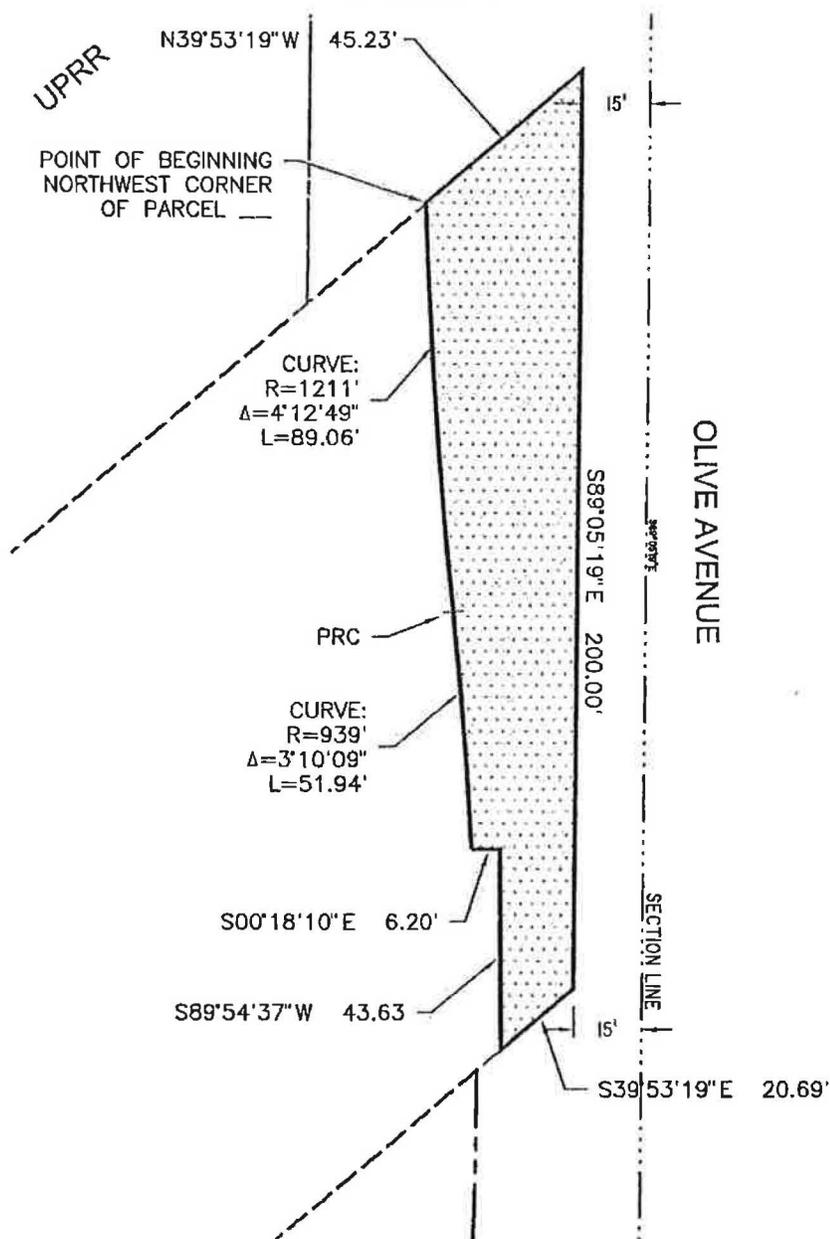
on a curve; thence along said curve, concave to the south, with a radius of 939.00 feet, and a central angle of  $3^{\circ} 10' 09''$ , through an arc length of 51.94 feet to a point of reverse curvature; thence along the reverse curve, concave to the north, with a radius of 1211.00 feet, and a central angle of  $4^{\circ} 12' 49''$ , through an arc length of 89.06 feet, to a point of non-tangency on the northeasterly right-of-way line for the Union Pacific Railroad; thence  $N 39^{\circ} 53' 19'' W$ , along said railroad right-of-way line, a distance of 45.23 feet to THE TRUE POINT OF BEGINNING.

Containing 5148 square feet, more or less.

APN 011-300-001

  
*Christian M. Bach*, 4-16-18

EXHIBIT "F"



APN:  
011-300-001  
ADDRESS:

OWNER:  
J W MYERS INC.



SCALE: 1"=40'



INDICATES EASEMENT AREA TO BE GRANTED TO THE CITY OF MADERA CONTAINING ±5148 SQ. FT.



CITY OF MADERA - ENGINEERING DEPARTMENT

CITY: CITY OF MADERA  
ADDRESS: 205 W. 4TH STREET  
MADERA, CA 93637  
SURVEYOR: CHRISTIAN M. BACH  
R.C.E. NO. 18715  
TELEPHONE: (559) 661-5418

REAL PROPERTY TO BE GRANTED TO THE CITY OF MADERA BEING A PORTION OF...

F.B. NO \_\_\_\_\_  
Dr. By: \_\_\_\_\_  
Ch. By: \_\_\_\_\_  
Date: \_\_\_\_\_

SCALE 1" = 40'

SHEET 1 OF 1

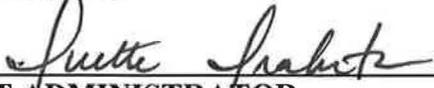


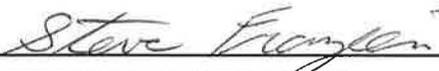
**REPORT TO THE CITY COUNCIL**

**COUNCIL MEETING OF October 3, 2018**

**AGENDA ITEM NUMBER B-12**

**APPROVED BY**

  
\_\_\_\_\_  
**GRANT ADMINISTRATOR**

  
\_\_\_\_\_  
**CITY ADMINISTRATOR**

**SUBJECT: CONSIDERATION OF A RESOLUTION BY THE CITY COUNCIL, OF THE CITY OF MADERA, CALIFORNIA, DECLARING A SHELTER CRISIS PURSUANT TO CALIFORNIA SENATE BILL 850 (CHAPTER 48, STATUTES OF 2018 AND GOVERNMENT CODE SECTION 8698.2)**

**RECOMMENDATION:** Staff recommends Council adopt the resolution.

**SUMMARY:** California Senate Bill (SB) 850 approved by the Governor and filed with the Secretary of State June 27, 2018, established the Homeless Emergency Aid Program (HEAP) for the purpose of providing localities with one-time flexible block grant funds to address their immediate homelessness challenges. SB 850 designates the Business, Consumer Services and Housing Agency as the Agency to administer the program in consultation with the Homeless Coordinating and Financing Council. Also, SB 850 defines applicants as an Administrative Entity (AE). An AE coordinates the collaboration of city, county or nonprofit partners. Upon approval by the Agency, a city, county or city that is also a county shall be eligible to receive program funds through the AE. The Fresno County Department of Social Services is the AE. In order to be eligible for program funds, an AE shall demonstrate its representative jurisdictions have, at the time of the award, declared a shelter crisis pursuant to Chapter 7.8 (Commencing with Section 8698) of Division 1 of Title 2 of the Government Code.

The City of Madera with the Community Action Partnership of Madera County (CAPMC) participates in the Fresno/Madera Continuum of Care (FMCoC). The FMCoC was formed according to the Department of Housing and Urban Development's Continuum of Care (CoC) Interim Rule. Staff recommends adoption of the Resolution because it is important for the City of Madera to speak loudly to the FMCoC and AE about Madera's homeless crisis and lack of services and facilities. This is one-time funding, and it allows for programs, as well as facility concept/construction, including in collaboration with a developer, to be carried out. Therefore, this resolution would allow City to pursue this funding if City so chooses. The CoC Program is designed to assist individuals, unaccompanied youth and families experiencing homelessness as follows:

- Providing services needed to help such individuals move into transitional and permanent housing, with the goal of long-term stability.
- Promote community-wide planning and strategic use of resources to address homelessness
- Improve coordination and integration with mainstream resources and other programs targeted to people experiencing homelessness
- Improve data collection and performance measurement
- Allow each community to tailor its programs to the particular strengths and challenges in assisting homeless individuals and families within that community.

Allocations:

- \$250 million to Continuums of Care based on 2017 homeless point in time counts.
- \$150 million direct allocation to a city or county that is also a county with a population of 330,000 or more as of January 1, 2018; and
- \$100 million to Continuums of Care based on their percentage of statewide 2017 homeless population.

Requirements:

- City, county or joint power must declare an emergency shelter crisis (waiver process for smaller cities and counties that do not declare a shelter emergency).
- Continuum of Care must demonstrate collaboration with other city, county or nonprofit partners.

Eligible Activities: (Please see the attached comprehensive list Attachment A (CESH and HEAP Notes):

- Emergency housing vouchers
- Rapid rehousing
- Emergency shelter construction
- Use of armories to provide temporary shelters, among other activities
- Criminal justice diversion programs

The 2018 Homeless Point-in-Time count for Madera cities and county identified 310 sheltered and unsheltered homeless people. Persons counted in shelters are considered homeless because they leave and return on a daily basis. The thousands of dollars spent on law (police and sheriff), fire, code enforcement, outreach and the constant cleanup efforts of the riverbeds supports approval of a Resolution declaring a shelter crisis. In addition, unreimbursed expenses attributed to hospital emergency visits, ambulance calls and animal control support the declaration. The Resolution will allow the City of Madera to directly apply for funding. Without the Resolution, the City will not be able to apply. The Resolution also helps support that there has been discussion about the funding in a community-based meeting.

The FMCoC established a sub-committee to establish the priorities for how the FMCoC determines the best strategies to meet the needs of Fresno and areas of Madera. Entities' applications must support the strategies identified by the FMCoC and will need to line up with

one of the recommendations that are found within the Four Pillars. Please see Attachment B: Four pillars – building on our foundation of success.

**FINANCIAL IMPACT:** No financial impact to City budgets. Funds are directly allocated to the Fresno Community Department of Social Services and are distributed to successful applicants. Between Fresno City and County and Madera City and County, the total homeless Point-in-Time Count was 2,016. This is 1.5% of the total State homeless count of 134,278. The formula funding estimate for the FMCoC is \$9,501,362 with an additional \$475,068 Youth Set-aside.

**VISION MADERA 2025 ACTION PLAN CONSISTENCY:**

**Strategy 136: Transitional Housing: Promote transitional housing to ensure the homeless have safe shelter.**

**Action 136.1: Expand and enhance the Rescue Mission programs.**

**Action 136.2: Promote and support existing Housing Authority programs.**

**Action 136.3: Provide educational materials to churches and social service providers pertaining to the above programs.**

**Strategy 426: Substance Abuse Recovery: Facilitate substance-abuse recovery by developing programs and facilities.**

**RESOLUTION NO: 18-\_\_\_\_**

**A RESOLUTION OF THE CITY COUNCIL, OF THE CITY OF MADERA,  
CALIFORNIA, DECLARING A SHELTER CRISIS PURSUANT TO CALIFORNIA  
SB 850 (CHAPTER 48, Statutes of 2018 and Government Code §8698.2)**

**The City Council Finds:**

***WHEREAS***, California's Governor Edmund G. Brown, Jr. and the members of the California Legislature have recognized the urgent and immediate need for funding at the local level to combat homelessness;

***WHEREAS***, The Governor and Legislature have provided funding to local governments under the Homeless Emergency Aid Program as part of SB 850 and the 2018-19 Budget Act (Chapter 48, Statutes of 2018);

***WHEREAS***, The Governor and Legislature require jurisdictions seeking an allocation through the Homeless Emergency Aid Program to declare a Shelter Crisis pursuant to Government Code §8698.2;

***WHEREAS***, the City of Madera has developed a homelessness plan and undertaken multiple efforts at the local level to combat homelessness;

***WHEREAS***, the City of Madera finds that 310 persons within the City of Madera are homeless and living without permanent shelter;

***WHEREAS***, the City of Madera finds that the number of homeless is significant, and these persons are without the ability to obtain shelter;

***WHEREAS***, the City of Madera finds that the health and safety of unsheltered persons in the City of Madera is threatened by a lack of shelter;

***WHEREAS***, the City of Madera affirms the City's commitment to combatting homelessness and creating or augmenting a continuum of shelter and service options for those living without shelter in our community.

***NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF MADERA, CALIFORNIA***, that a shelter crisis pursuant to Government Code §8698.2 exists in the City of Madera and authorizes the City of Madera's participation in the Homeless Emergency Aid Program.

## **CESH (California Emergency Solutions Housing Funds)**

- **Funding**
  - The Fresno Madera Continuum of Care will receive \$1,563,085
  - An Administrative Entity will to oversee the funding. The Fresno Department of Social Services will serve as the administrative entity.
- **Administration Cost**

There is a 5% cap on administration cost \$78,154. The Administrative Entity will use some of this funding and the remainder will be available for entities that apply for funding.

Indirect cost expenses are not allowed.
- **Rental Assistance, Housing Relocation, & Stabilization Services**
  - To individuals experiencing homelessness or who are at risk of homelessness
  - Rental assistance provided pursuant to this paragraph shall not exceed 48 months for each assisted household and rent payments shall not exceed two times the current HUD fair market rent for the local area
- **Operating Subsidies**
  - 15-year capitalized operating reserves for new and existing affordable permanent housing units for homeless individuals and/or families
- **Flexible Housing Subsidy Funds**
  - rental assistance, bridge subsidies to property owners waiting for approval from another permanent rental subsidy source, vacancy payments, or project-based rent or operating reserves
- **Operating Support for Emergency Housing Interventions (40% Limit)**
  - Navigation centers that provide temporary room and board and case managers who work to connect homeless individuals and families to income, public benefits, health services, permanent housing, or other shelter
  - Street outreach services to connect unsheltered homeless individuals and families to temporary or permanent housing.
  - Shelter diversion, including, but not limited to, homelessness prevention activities such those described in 24 CFR 576.103, and other necessary service integration activities such as those described in 24 CFR 576.105, to connect individuals and families to alternate housing arrangements, services, and financial assistance
- **Systems Support**
  - activities necessary to maintain a comprehensive homeless services and housing delivery system, Coordinated Entry System (CES) data, and
  - Homeless Management Information System (HMIS) reporting, and homelessness planning activities
- **Develop/Update Coordinated Entry**
- **Development of a Homeless Plan**
- **Match**
  - There is no match required.
- **Project Timeline**
  - Plan outline will be finalized at the October 11, 2018 FMCoC meeting
  - Applications are due for the first round of funding – October 15, 2018

- The administrative entity will submit the application on behalf of the FMCoC.
- Award notifications will be in November or December 2018
- Funding will be distributed around January 2019
- A request for Bid Proposals will be issued by the administrative entity and agencies from Madera will be eligible to apply.
- Expenditure Deadline – Funds allow for a 5-year spending plan.

### **HEAP (Homeless Emergency Aid Program)**

- **Funding**
  - The Fresno Madera Continuum of Care will receive \$9,501,363.
  - An Administrative Entity will to oversee the funding. The Fresno Department of Social Services will serve as the administrative entity.
- **Youth Set Aside**
  - There is a mandatory minimum of 5% needs to be spent serving homeless youth. \$483,744.
  - Consistent with other state and federal definitions, HCFC considers “homeless youth” to mean an unaccompanied homeless individual who is not older than 24, for purposes of HEAP. Homeless individuals not older than 24 who are parents are included in this definition.
- **Administration Cost**

There is a 5% cap on administration cost \$483,744. The Administrative Entity will use some of this funding and the remainder will be available for entities that apply for funding.

Indirect cost expenses are not allowed.
- **Uses of the Funding - Immediate Emergency Assistance**
  - The parameters of the program are intentionally broad to allow local communities to be creative and craft programs that meet the specific needs that have been identified.
  - Applicants will include in their proposals how the proposed activity is directly related to providing immediate emergency assistance to people experiencing homelessness or at imminent risk of homelessness.
  - The uses must align with California’s Housing First policy.

Examples include, but are not limited to:

  - **Services:** Street outreach, health and safety education, criminal justice diversion programs, homelessness prevention activities, and other service activities.
  - **Rental assistance or subsidies:** Housing vouchers, rapid re-housing programs, flexible housing subsidy funds, and eviction prevention strategies.
  - **Capital improvements:** Emergency shelter, navigation centers, transitional housing, permanent supportive housing, small/tiny houses, and improvements to current structures that serve homeless individuals and families. Some communities are discussing solutions to address homelessness and the public health crisis by using funds for handwashing stations or public toilet and shower facilities.
- **Match**
  - There is no match required.

- **Project Timeline**

- Plan outline will be finalized in the fall 2018.
- Applications are due for the first round of funding – December 31, 2018
- The administrative entity will submit the application on behalf of the FMCoC.
- Award notifications will be in January 2019
- Funding will be distributed by April 2019
- A request for Bid Proposals will be issued by the administrative entity and agencies from Madera will be eligible to apply.
- Expenditure Deadline - June 30, 2021

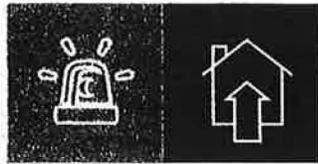
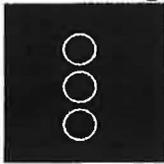
**CESH: Possible Uses Discussed by FMCoC Adhoc Committee**

- Bi-County Homeless Plan
- Enhance CES
- Prevention/Diversion
- Landlord Mitigation Fund
- Shallow Subsidies
- Access Centers/Navigation Center

**HEAP: Possible Uses Discussed by FMCoC Adhoc Committee**

- Prevention/Diversion
- Youth Services
- Landlord Mitigation Fund
- Shallow Subsidies
- Access Centers/Navigation Center/Bridge Housing
- Peer Supports/Navigation Services
- Operating Support/Capital Investments for New Interim Housing

Four pillars —  
building on our foundation of success



**Engage  
Community  
and Align  
Leadership**

**Reduce  
Inflow into  
Homelessness**

**Improve  
Crisis  
Response**

**Expand  
Permanent  
Housing  
Options**

## 13 recommendations



1. Adopt Collective Impact approach and engage cross-sector community leaders

2. Engage the entire community in solutions

3. Strengthen the data foundation—what gets measured, gets done

4. Scale up diversion and make consistent across community; enhance points of access

5. Preserve affordable rental housing

6. Build a path forward for collaborative community solution to reduce homelessness among domestic violence survivors



7. Align community programs to create a comprehensive crisis response network that provides person-centered and housing focused service

8. Create new low-barrier crisis housing options

9. Enhance and expand all type of housing placement options and supports

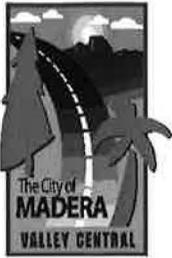


10. Scale up rapid rehousing

11. Increase permanent supportive housing

12. Aggressively expand non-traditional permanent housing options

13. Design a cross-sector demonstration for people who experience street homelessness and are frequent users



# REPORT TO THE CITY COUNCIL

COUNCIL MEETING OF October 3, 2018

AGENDA ITEM NUMBER B-13

APPROVED BY

  
\_\_\_\_\_  
GRANTS ADMINISTRATOR

  
\_\_\_\_\_  
CITY ADMINISTRATOR

**SUBJECT:** CONSIDERATION OF A RESOLUTION APPROVING CALIFORNIA STATE DEPARTMENT OF HEALTH AND HUMAN SERVICES VENDOR APPLICATION FOR TRANSPORTATION SERVICES TO CENTRAL VALLEY REGIONAL CENTER AND AUTHORIZING THE MAYOR TO EXECUTE THE APPLICATION AND ALL RELATED DOCUMENTS ON BEHALF OF THE CITY.

**RECOMMENDATION:**

Staff recommends Council approve the submission of a vendor application to the California State Department of Health and Human Services in order to provide public transportation tickets and passes to Central Valley Regional Center.

**DISCUSSION:**

The Central Valley Regional Center (CVRC) is a private nonprofit funded by the State of California to help individuals with developmental disabilities, and children at risk reach their goals through coordinating resources with other agencies to develop the best services for clients and families. As a State of California funded agency, CVRC, has a requirement to only purchase public transit tickets and passes from approved vendors in each of the communities with which they operate. This includes the City of Madera. To this end, CVRC has provided the necessary vendor application forms (Attachment A, 11 pages) for the City to sign and approve to complete the vendor application process. Forms presented include: Vendor Application and Disclosure Statement, Conflict of Interest Statement, HIPAA Compliance Provision, Services Provider Agreement, Email Authorization, Form W-9, E-Billing Form, and Direct Deposit Form. Once completed, there is no expiration on being a recognized vendor with the State for CVRC.

**FINANCIAL IMPACT:**

There is no impact to the general fund.

**VISION MADERA 2025 ACTION PLAN CONSISTENCY:**

The projects and programs discussed in this report advance Vision Plan objective in Strategy 121.4 Continue to provide discount fares for seniors and people with disabilities as part of a city-wide multi-modal transportation plan.

RESOLUTION NO. 18 - \_\_\_\_\_

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MADERA CALIFORNIA APPROVING THE CALIFORNIA STATE DEPARTMENT OF HEALTH AND HUMAN SERVICES VENDOR APPLICATION FOR TRANSPORTATION SERVICES TO CENTRAL VALLEY REGIONAL CENTER AND AUTHORIZING THE MAYOR TO EXECUTE THE APPLICATION AND ALL RELATED DOCUMENTS ON BEHALF OF THE CITY.**

**Whereas**, City of Madera provides public transit services of fixed-route and demand response services to City and County residents and visitors; and

**Whereas**, Central Valley Regional Center requires public transportation tickets and passes for its clients and families; and

Whereas California Department of Health and Human Services requires CVRC to only purchase public transportation services from recognized vendor.

**THE COUNCIL, OF THE CITY OF MADERA, CALIFORNIA, HEREBY FINDS, RESOLVES AND ORDERS AS FOLLOWS:**

1. The above recitals are true and correct.
2. All California Department of Health and Human Services and CVRC vendor application documents required to be a recognized vendor are hereby approved.
3. The Mayor is authorized to execute all vendor application documents on behalf of the City.
4. This resolution is effective immediately.

.....

**VENDOR APPLICATION**

DS 1890 (Rev. 07/2011) (Electronic Version)

Applicant Name <b>City of Madera, Transit Division</b>					Federal Tax ID or SSN *
Name of Governing Body or Management Organization <b>City of Madera</b>					
Mailing Address	(Street)	(City)	(State)	(Zip)	(County)
<b>205 W. 4th Street Madera, CA 93637 USA</b>					
Service Address	(Street)	(City)	(State)	(Zip)	(County)
<i>(If different than mailing address)</i>					
Applicant (owner or executive director) <b>Mayor Andrew Medellin</b>				Telephone number <b>( 559) 661-5400</b>	
Type of Service to be Provided				Facility Capacity	

Identification of the type of consultants, subcontractors and community resources to be used by the vendor as part of its service

**CERTIFICATION**

I hereby certify to the best of my knowledge and belief, this information is true, correct, and complies with Title 17, Section 54310(a).

Applicant's Signature 	Date
--	------

**INSTRUCTIONS**

*Please read the Department of Developmental Services California Code of Regulations, available from the regional centers, prior to completing this form. Type or print this form. Mail to the regional center serving your area.*

*Attach applicable information outlined in Title 17, Section 54310(a)(10)*

- (A) Any license, credential, registration or permit required for the performance of the service or operation of the program, or proof of application for such document;*
- (B) Any academic degree required for performance or operation of the service;*
- (C) Any waiver from licensure, registration, certification, credential, or permit from the responsible controlling agency;*
- (D) The proposed or existing program design as required in Section 56712 and Section 56762, if applicable, for applicants seeking vendorization as community-based day programs;*
- (E) The proposed or existing staff qualifications and duty statements as required in Sections 56722 and 56724 for applicants seeking vendorization as community-based day programs;*
- (F) The proposed or existing design as required in Section 56780 for applicants seeking vendorization as in-home respite services agencies;*
- (G) The proposed or existing staff qualifications and duty statements as required in Section 56792 for applicants seeking vendorization as in-home respite services agencies;*
- (H) The signed Home and Community-Based Services Provider Agreement with the Department of Health Services, if required.*

\* "Except for the Federal Tax ID or Social Security Number, all information provided by you on this form may be released to a member of the public pursuant to the Public Records Act, Section 6250 et seq. of the California Government Code."

## **APPLICANT/VENDOR DISCLOSURE STATEMENT**

### **GENERAL INSTRUCTIONS**

Every applicant or vendor must complete and submit a current Applicant/Vendor Disclosure Statement, DS 1891 (disclosure statement) as part of a complete application packet for vendorization or upon request of the vendoring regional center. The following instructions are designed to clarify certain questions on the form. Instructions are listed in order of question for easy reference. See 42 CFR 455.101 for additional definitions.

**Overall Authority: Code of Federal Regulations (CFR), Title 42, Part 455; California Code of Regulations, Title 17, Section 54311. Welfare and Institutions Code, Section 4648.12.**

#### **Important:**

- **IT IS ESSENTIAL THAT ALL APPLICABLE QUESTIONS BE ANSWERED ACCURATELY AND THAT ALL INFORMATION BE CURRENT.**
- **Parents and consumers of Vouchers, Participant-Directed Services, or Purchase Reimbursements:** Complete Part 1 on page 2 and Part 3 on page 3, then proceed to **Applicant/Vendor Signature** on page 4 to sign and date.
- Failure to disclose complete and accurate information will result in a denial of enrollment and/or may be cause for termination of vendorization.
- Read **ALL** instructions when completing the disclosure statement.
- Type or print clearly in ink.
- If applicant or vendor must make corrections, please line through, date, and initial in ink. Do not use correction fluid.
- Answer all questions as of the current date.
- If additional space is needed, attach a sheet referencing the part and question being completed.
- Return this completed statement with the complete application package to the regional center to which you are applying.

### **Part 1: Identifying Information**

- A. Specify name of the applicant or vendor, agency, facility or organization, vendor number and service code, business address, and telephone number of applicant or vendor submitting the vendor application.
- B. Specify in what capacity the applicant or vendor is doing business. For example: The name of the corporation under which they are doing business. This name must match the license name, if applicable.
- C. List the National Provider Identifier, of the applicant or vendor, if any.
- D. List the Social Security Number, Date of Birth, and/or the Federal Employer Identification Number (EIN) of the applicant or vendor, if any. Enter Vendor's nine-digit EIN assigned by the IRS in the following format: XX-XXXXXXX.
  - An EIN is used to identify the accounts of employers and certain others who have no employees.
  - For more information about an EIN, please check <http://www.irs.gov> for "Employer Identification Numbers" or "EIN". Whenever this Disclosure Statement requests an EIN about an individual or entity, it has the same meaning.
- E. Check the entity type that best describes the structure of your organization.

### **Part 2: Ownership and Control Interests. Use the following definitions to identify the individuals you should enter in A, B and C of this section. See 42 CFR 455.101 for additional definitions.**

- "Indirect Ownership Interest" means an ownership interest in an entity that has an ownership interest in the applicant or vendor. This term includes an ownership interest in any entity that has an indirect ownership interest in the applicant or vendor;
- "Managing Employee" means a general manager, business manager, administrator, director, or other individual who exercises operational or managerial control over, or who directly or indirectly conducts the day-to-day operation of an institution, organization, agency or business entity;
- "Ownership Interest" means the possession of equity in the capital, the stock, or the profits of the applicant or vendor.
- "Person with an Ownership or Control Interest" means a person or corporation that:
  - A) Has an ownership interest totaling 5 percent or more in an applicant or vendor;
  - B) Has an indirect ownership interest equal to 5 percent or more of an applicant or vendor;
  - C) Has a combination of direct or indirect ownership interests equal to 5 percent or more in an applicant or vendor;
  - D) Owns an interest of 5 percent or more in any mortgage, deed of trust, note, or other obligation secured by the applicant or vendor if that interest equals at least 5 percent of the value of the property or assets of the applicant or vendor;
  - E) Is an officer or director of an applicant or vendor that is organized as a corporation; or
  - F) Is a partner in an applicant or vendor that is organized as a partnership.
- "Significant Business Transaction" means any business transaction or series of transactions that, during any one fiscal year, exceed the lesser of \$25,000 and 5 percent of an applicant or vendor's total operating expenses.



**Part 2. Ownership, indirect ownership, and managing employee interests (If not applicable, please indicate.)**

**A.** List the name(s), title(s), address(es), SSNs, and DOBs of individuals for organizations having direct or indirect ownership interests, and/or managing employees in the applicant/vendor (see instructions for definitions). Also list all members of a group practice. Attach additional pages as necessary to list all officers, owners, management and ownership individuals and entities.

Name	Title	Address	SSN	DOB

**B.** List those persons named in 'A' above or 'Part 4. A' below, that are related to each other as spouse, parent, child, or sibling.

Name	Relationship	Address

**C.** List the name, address, vendor number and service code, SSN, NPI and/or EIN of any other applicant or vendor in which a person with an ownership or controlling interest in the applicant or vendor also has an ownership or control interest of at least 5 percent or more. For example: Are any owners of the applicant or vendor also owners of Medicare or Medicaid facilities? (Example: sole proprietor, partnership or members of Board of Directors.)

Name	Address	Vendor Number and Service Code	SSN, NPI and/or EIN

**Part 3. Excluded Individuals or Entities (If not applicable, please indicate.)**

List the name, title, and address of any person, as applicant or vendor, or entity with an ownership or control interest, any agent, director, officer, or managing employee of the applicant or vendor who is an excluded individual or entity, as defined on page 2.

Name	Title	Address

**Part 4. Subcontractor (If not applicable, please indicate.)**

**A.** List the name, title, address, SSN, NPI and/or EIN of each person or entity with an ownership or control interest in any **subcontractor** in which the applicant or vendor has direct or indirect ownership of 5 percent or more. State percentage.

Name	Title	Address	Percentage	SSN, NPI and/or EIN

**B.** List the name, title, address, SSN, NPI and/or EIN of each **subcontractor or wholly owned supplier** in which the applicant or vendor has had any significant business transactions within 5 years of the application or request.

Name	Title	Address	SSN, NPI, and/or EIN

**APPLICANT/VENDOR SIGNATURE**

Knowingly and willfully failing to fully and accurately disclose the information requested may result in denial of a request to become vendored, or if the service provider already is vendored, a termination of its vendorization.

By signing this disclosure statement, you hereby certify and swear under penalty of perjury that (a) you have knowledge concerning the information above, and (b) the information above is true and accurate. You agree to inform the vendoring Regional Center, in writing, within 30 days of any changes or if additional information becomes available.

---

**Name of Applicant/Vendor or Authorized Representative** **Title**

---

**Signature** **Date**

**Recordkeeping and Access to Records**

Subject to the provisions of Title 17, California Code of Regulations, Section 54311 and Code of Federal Regulations, Title 42, Part 455.105, an applicant or vendored provider agrees to provide access for the review of any and all ownership disclosure information and/or documentation upon written request by the vendoring regional center, the Department of Developmental Services, the State Medicaid Agency, Department of Health Care Services, any State survey team, the Secretary of the United States Department of Health and Human Services, or any duly authorized representatives of the above named entities.

**Privacy Statement**

All information requested on the application and the disclosure statement is mandatory with the exception of the social security number for any person other than the person or entity for whom an IRS Form 1099 must be provided by the Department of Developmental Services pursuant to 26 USC 6041. This information is required by the authority of Welfare and Institutions Code, Section 4648.12 and Title 17, California Code of Regulations, Section 54311. The consequences of not supplying the mandatory information requested are denial of vendorization as a regional center vendor or termination of vendorization. Any information may also be provided to the State Controller's Office, the California Department of Justice, the Department of Consumer Affairs, other state or local agencies as appropriate, fiscal intermediaries, managed care plans, the Federal Bureau of Investigation, the Internal Revenue Service, Medicare Fiscal Intermediaries, Centers for Medicare and Medicaid Services, Office of the Inspector General, Medicaid, or licensing programs in other states.

Department of Developmental Services

**RE: Vendor Electronic Billing (e-Billing) – Requirement effective 07/01/2012**

“Electronic billing is defined as the Regional Center e-Billing System web application provided by the Department of Developmental Services (Department) mandates the following:

**All providers, vendors and contracted providers of services provided or purchased through a Regional Center must submit all billings electronically for services provided on or after July1, 2012, with the exception of the following:**

- A provider or vendor whose services are paid for by vouchers, as that term is defined in section 4512(j).
- A provider or vendor who demonstrates that submitting billings electronically for services presents a **substantial financial hardship for the provider.**

If you meet the requirements for a **financial hardship** please explain below. Sign, date and return this form with your application paperwork.

Explanation: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_  
Applicant Signature

\_\_\_\_\_  
Date

**CENTRAL VALLEY REGIONAL CENTER, INC.**

4615 N. Marty Ave. Fresno, California 93722

**VENDOR QUESTIONNAIRE  
CONFLICT OF INTEREST STATEMENT**

\*Form must be filled out were high-lighted

Your Name/Name of Worker/or Business Owner, responsible for client(s) services: \_\_\_\_\_

Mailing Address: \_\_\_\_\_

Other Location: \_\_\_\_\_

Telephone Number: \_\_\_\_\_ Hours to be reached: \_\_\_\_\_

Director and/or Contact Person: \_\_\_\_\_

Have you ever been vendored by the Department of Developmental Services through this or any other regional center?

	Date	Regional Center
___ Yes, under the name _____	_____	_____
___ Yes, under the classification _____	Vendor number(s) _____	
___ No		

Are you, or your spouse employed by or on leave of absence from:

	State Agency or Department	Self or Spouse
___ Department of Developmental Services _____		_____
___ Other Department of State Government _____		_____
___ Regional Center or CCS _____		_____
___ State Hospital or Developmental Center _____		_____
___ Board of Directors of a Regional Center _____		_____

Do you feel there would be a conflict of interest in your provision of service to regional center clients.

\_\_\_ Yes \_\_\_\_\_  
\_\_\_ No \_\_\_\_\_

Under penalty of perjury I certify that the information provided on this form is true, correct and complete.

Signature of Applicant: \_\_\_\_\_ Date: \_\_\_\_\_

\*\*\*\*\*  
**FOR OFFICE USE ONLY**

Rater: Does a potential exist for conflict of interest?    YES \_\_\_\_\_    NO \_\_\_\_\_

If a potential conflict exists, how will Central Valley Center, Inc. mitigate the situation?



# Central Valley Regional Center, Inc. Direct Deposit Authorization Agreement

## DIRECT DEPOSIT AUTHORIZATION AGREEMENT

Business Account

Check one box only:

Checking

Savings

Bank or Credit Union Name: \_\_\_\_\_

Routing Number: \_\_\_\_\_ Account Number: \_\_\_\_\_

Please attach a voided check or deposit slip (for checking account only) with your direct deposit form.

## DIRECT DEPOSIT AUTHORIZATION AGREEMENT

P&I Account

Check one box only:

Checking

Savings

Bank or Credit Union Name: \_\_\_\_\_

Routing Number: \_\_\_\_\_ Account Number: \_\_\_\_\_

Please attach a voided check or deposit slip (for checking account only) with your direct deposit form.

I authorize CVRC to make deposits into my accounts as indicated above. This election will remain in effect until I provide written notification to change this agreement.

Vendor Name: \_\_\_\_\_  
(Please print name)

Vendor Number: \_\_\_\_\_

\_\_\_\_\_  
(Signature)

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

# Central Valley Regional Center, Inc.

## **HIPAA Compliance Provisions for Regional Center Service Providers Effective 07/01/2017 – Mandate from Department of Developmental Services**

HIPAA regulations as set forth in 45 C.F.R. Parts 160 and 164 (aka the HIPAA Privacy Rule) <https://www.hhs.gov/hipaa/for-professionals/index.html>, and regulations on Standards for Privacy of Individually Identifiable Health Information are applicable. All parties shall at all times remain in compliance with the mandatory provisions of HIPAA, including but not limited to the HIPAA Privacy Rule. Vendor(s) may have access to “protected health information,” including but not limited to “individually identifiable health information,” and is therefore a **Business Associate** as those terms are defined in HIPAA.

**“Business Associate”** shall have the meaning given to such term under HIPAA (45 CFR 160.013). It includes a third party that performs functions for or on behalf of Covered Entity or another Business Associate and has access to Covered Entity’s **Protected Health Information** and uses such **Protected Health Information** in the performance of its functions.

**“Protected Health Information”** (“PHI”) shall have the meaning given to such term under HIPAA (45 CFR 160.103). It includes any individually identifiable health information, whether oral or recorded in any form or medium, limited to the information created or received by vendor from or on behalf of **Business Associate** or Covered Entity (i) that relates to the past, present or future physical or mental health condition of the Individual, (ii) the provision of health care to Individual, (iii) or past, present or future payment for the provision of health care to Individual.

**“HIPAA”** shall mean the Health Insurance Portability and Accountability Act of 1996, Public Law 104-191, Title XIII of the American Recovery and Reinvestment Act of 2009, Public Law 111-005, and regulations promulgated thereunder by the U. S. Department of Health & Human Services, as amended for time to time, including the Final Omnibus Rule of 2013.

By signing this form I acknowledge this new regulation.

\_\_\_\_\_  
Vendor Signature

\_\_\_\_\_  
Date

## HOME AND COMMUNITY BASED-SERVICES PROVIDER AGREEMENT

Name of Service Provider *(Please type or print)*

Address

Telephone

Vendor Number \*

Service Code\*

\*(DO NOT FILL OUT REGIONAL CENTER ONLY)

### CERTIFICATION STATEMENT

The Provider agrees and shall certify under penalty of perjury that all claims for services provided to regional center clients have been provided to the clients by the Provider. The services were, to the best of the Provider's knowledge, provided in accordance with the client's written Individual Program Plan. The Provider shall also certify that all information submitted to the regional center is accurate and complete. The Provider understands that payment of these claims will be from federal and/or state funds, and any falsification or concealment of a material fact may be prosecuted under federal and/or state laws. The Provider agrees to keep for a minimum period of five years from the date of service a printed representation of all records which are necessary to disclose fully the extent of services furnished to the client. The Provider agrees to furnish these records and any information regarding payments claimed for providing the services, on request, within the state of California, to the California Department of Health Services; the Medi-Cal Fraud Unit; California Department of Developmental Services; California Department of Justice; Office of the State Controller; U.S. Department of Health and Human Services, or their duly authorized representatives. The Provider also agrees that services are offered and provided without discrimination based on race, religion, color, national or ethnic origin, sex, age, or physical or mental disability.

**THE PROVIDER AGREES TO INCLUDE WITH EACH CLAIM SUBMITTED TO THE REGIONAL CENTER A CERTIFICATION STATEMENT TO THE ABOVE TERMS AND CONDITIONS WHICH SHALL BE PRINTED ON THE REVERSE SIDE OF EACH PROVIDER OF CARE CLAIM FORM.**

*I certify that the undersigned will be A PARTICIPATING provider of Medi-Cal home and community-based services upon SUBMISSION OF THIS AGREEMENT TO THE REGIONAL CENTER and satisfaction of all vendorization requirements pursuant to Title 17, California Code of Regulations, and compliance with the requirements for providers of service set out in Welfare and Institutions Code, Division 9, Part 3, and in California Code of Regulations, Title 22.*

Department of Health Services

Signature of Service Provider

Date

# Request for Taxpayer Identification Number and Certification

Give Form to the requester. Do not send to the IRS.

► Go to [www.irs.gov/FormW9](http://www.irs.gov/FormW9) for instructions and the latest information.

Print or type.  
See Specific Instructions on page 3.

**1** Name (as shown on your income tax return). Name is required on this line; do not leave this line blank.

**2** Business name/disregarded entity name, if different from above

**3** Check appropriate box for federal tax classification of the person whose name is entered on line 1. Check only **one** of the following seven boxes.

Individual/sole proprietor or single-member LLC

Limited liability company. Enter the tax classification (C=C corporation, S=S corporation, P=Partnership) ► \_\_\_\_\_

**Note:** Check the appropriate box in the line above for the tax classification of the single-member owner. Do not check LLC if the LLC is classified as a single-member LLC that is disregarded from the owner unless the owner of the LLC is another LLC that is **not** disregarded from the owner for U.S. federal tax purposes. Otherwise, a single-member LLC that is disregarded from the owner should check the appropriate box for the tax classification of its owner.

Other (see instructions) ►

C Corporation

S Corporation

Partnership

Trust/estate

**4** Exemptions (codes apply only to certain entities, not individuals; see instructions on page 3):

Exempt payee code (if any) \_\_\_\_\_

Exemption from FATCA reporting code (if any) \_\_\_\_\_

(Applies to accounts maintained outside the U.S.)

**5** Address (number, street, and apt. or suite no.) See instructions.

**6** City, state, and ZIP code

**7** List account number(s) here (optional)

Requester's name and address (optional)

## Part I Taxpayer Identification Number (TIN)

Enter your TIN in the appropriate box. The TIN provided must match the name given on line 1 to avoid backup withholding. For individuals, this is generally your social security number (SSN). However, for a resident alien, sole proprietor, or disregarded entity, see the instructions for Part I, later. For other entities, it is your employer identification number (EIN). If you do not have a number, see *How to get a TIN*, later.

**Note:** If the account is in more than one name, see the instructions for line 1. Also see *What Name and Number To Give the Requester* for guidelines on whose number to enter.

**Social security number**

				-			-				
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or

**Employer identification number**

				-							
--	--	--	--	---	--	--	--	--	--	--	--

## Part II Certification

Under penalties of perjury, I certify that:

- The number shown on this form is my correct taxpayer identification number (or I am waiting for a number to be issued to me); and
- I am not subject to backup withholding because: (a) I am exempt from backup withholding, or (b) I have not been notified by the Internal Revenue Service (IRS) that I am subject to backup withholding as a result of a failure to report all interest or dividends, or (c) the IRS has notified me that I am no longer subject to backup withholding; and
- I am a U.S. citizen or other U.S. person (defined below); and
- The FATCA code(s) entered on this form (if any) indicating that I am exempt from FATCA reporting is correct.

**Certification instructions.** You must cross out item 2 above if you have been notified by the IRS that you are currently subject to backup withholding because you have failed to report all interest and dividends on your tax return. For real estate transactions, item 2 does not apply. For mortgage interest paid, acquisition or abandonment of secured property, cancellation of debt, contributions to an individual retirement arrangement (IRA), and generally, payments other than interest and dividends, you are not required to sign the certification, but you must provide your correct TIN. See the instructions for Part II, later.

**Sign Here**      Signature of U.S. person ►      Date ►

## General Instructions

Section references are to the Internal Revenue Code unless otherwise noted.

**Future developments.** For the latest information about developments related to Form W-9 and its instructions, such as legislation enacted after they were published, go to [www.irs.gov/FormW9](http://www.irs.gov/FormW9).

## Purpose of Form

An individual or entity (Form W-9 requester) who is required to file an information return with the IRS must obtain your correct taxpayer identification number (TIN) which may be your social security number (SSN), individual taxpayer identification number (ITIN), adoption taxpayer identification number (ATIN), or employer identification number (EIN), to report on an information return the amount paid to you, or other amount reportable on an information return. Examples of information returns include, but are not limited to, the following.

- Form 1099-INT (interest earned or paid)

- Form 1099-DIV (dividends, including those from stocks or mutual funds)
- Form 1099-MISC (various types of income, prizes, awards, or gross proceeds)
- Form 1099-B (stock or mutual fund sales and certain other transactions by brokers)
- Form 1099-S (proceeds from real estate transactions)
- Form 1099-K (merchant card and third party network transactions)
- Form 1098 (home mortgage interest), 1098-E (student loan interest), 1098-T (tuition)
- Form 1099-C (canceled debt)
- Form 1099-A (acquisition or abandonment of secured property)

Use Form W-9 only if you are a U.S. person (including a resident alien), to provide your correct TIN.

If you do not return Form W-9 to the requester with a TIN, you might be subject to backup withholding. See What is backup withholding, later.

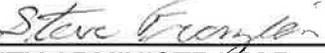
COUNCIL MEETING OF:  
October 3, 2018

AGENDA ITEM NUMBER:  
C-1

# REPORT TO THE CITY COUNCIL

Approved By:

  
PLANNING MANAGER

  
CITY ADMINISTRATOR

## SUBJECT:

Second Reading and Consideration of Adoption of an Ordinance Rezoning Four Parcels Located in Proximity to the Intersection of North C Street and East 5th Street (121, 125, 200 and 204 North C Street) from the PF (Public Facilities) and the C1 (Light Commercial) Zone Districts to the PD-1500 (Planned Development) Zone District.

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## RECOMMENDATION:

It is recommended that the Council adopt the ordinance rezoning the subject property.

## DISCUSSION:

### Background

The City of Madera, Successor Agency to the Redevelopment Agency and the Housing Authority have engaged in an effort to submit for grant funding through the Affordable Housing & Sustainable Communities (AHSC) Program. Administered by the Strategic Growth Council and implemented by the State of California Department of Housing and Community Development (HCD), the AHSC Program funds land-use, housing, transportation, and land preservation projects to support infill and compact development that reduce greenhouse gas (GHG) emissions. The lands proposed for rezoning may be included within one or more multifamily housing project proposals for funding through the AHSC Program.

### Rezoning

The project site is currently within the PF (Public Facilities) and the C1 (Light Commercial) Zone Districts. The project site is proposed to be rezoned into the PD-1500 (Planned Development) Zone District. The PD-1500 Zone District is designed to provide land for the development of a broad range of residential construction, including condominiums, townhomes, apartments and the other multifamily projects. The PD-1500 (Planned Development) Zone District is consistent with the HD (High Density) General Plan land use designation approved by resolution of the City Council on September 19, 2018,

The City Council introduced the rezoning ordinance at its September 19, 2018 meeting. The second reading and adoption of the rezoning ordinance would complete the rezoning process.

## **CONSISTENCY WITH THE VISION MADERA 2025 PLAN**

The project supports one of the four core vision statements in the Vision Plan, "A Well-Planned City," which envisions "providing efficient services" as a "significant concern for a rapidly growing community," and "open communications between the community and City/County government and within those governments [as] vital to a healthy city." Zoning and General Plan conformance directly supports this core vision statement.

### **FISCAL IMPACT:**

None.

### **REFERENCE MATERIALS:**

Aerial Map

Ordinance

Exhibit A - Zoning Map

Aerial Photo



**ORDINANCE NO. \_\_\_\_\_**

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MADERA AMENDING THE OFFICIAL CITY OF MADERA ZONING MAP REZONING APPROXIMATELY .86-ACRE OF LAND LOCATED ON THE NORTHWEST AND SOUTHEAST CORNERS OF THE INTERSECTION OF NORTH C STREET AND EAST 5<sup>TH</sup> STREET FROM THE PF (PUBLIC FACILITIES) AND THE C1 (LIGHT COMMERCIAL) ZONE DISTRICTS TO THE PD-1500 (PLANNED DEVELOPMENT) ZONE DISTRICT AS IDENTIFIED WITHIN EXHIBIT "A"

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF MADERA AS FOLLOWS:

SECTION 1. The Planning Commission of the City of Madera and this Council have held public hearings upon the rezoning of this property and have determined that the proposed rezoning is consistent with the General Plan as amended and subsequent development will be in conformance with all standards and regulations of the Municipal Code.

SECTION 2. The City of Madera Zoning Map as provided for in Chapter 3 of Title 10 of the Madera Municipal Code is hereby amended as illustrated in the hereto attached Exhibit "A" which indicates the segment of the City of Madera Zoning Map to be amended. Unless the adoption of this amendment to the Zoning Map is lawfully stayed, thirty-one (31) days after adoption of this amendment, the Planning Director and City Clerk shall cause these revisions to be made to the City of Madera Zoning Map which shall also indicate the date of adoption of this revision and be signed by the Planning Director and City Clerk.

SECTION 3. Based upon the testimony and information presented at the hearing, the adoption of the proposed rezoning is in the best interest of the City of Madera, and the Council hereby approves the rezoning based on the following findings:

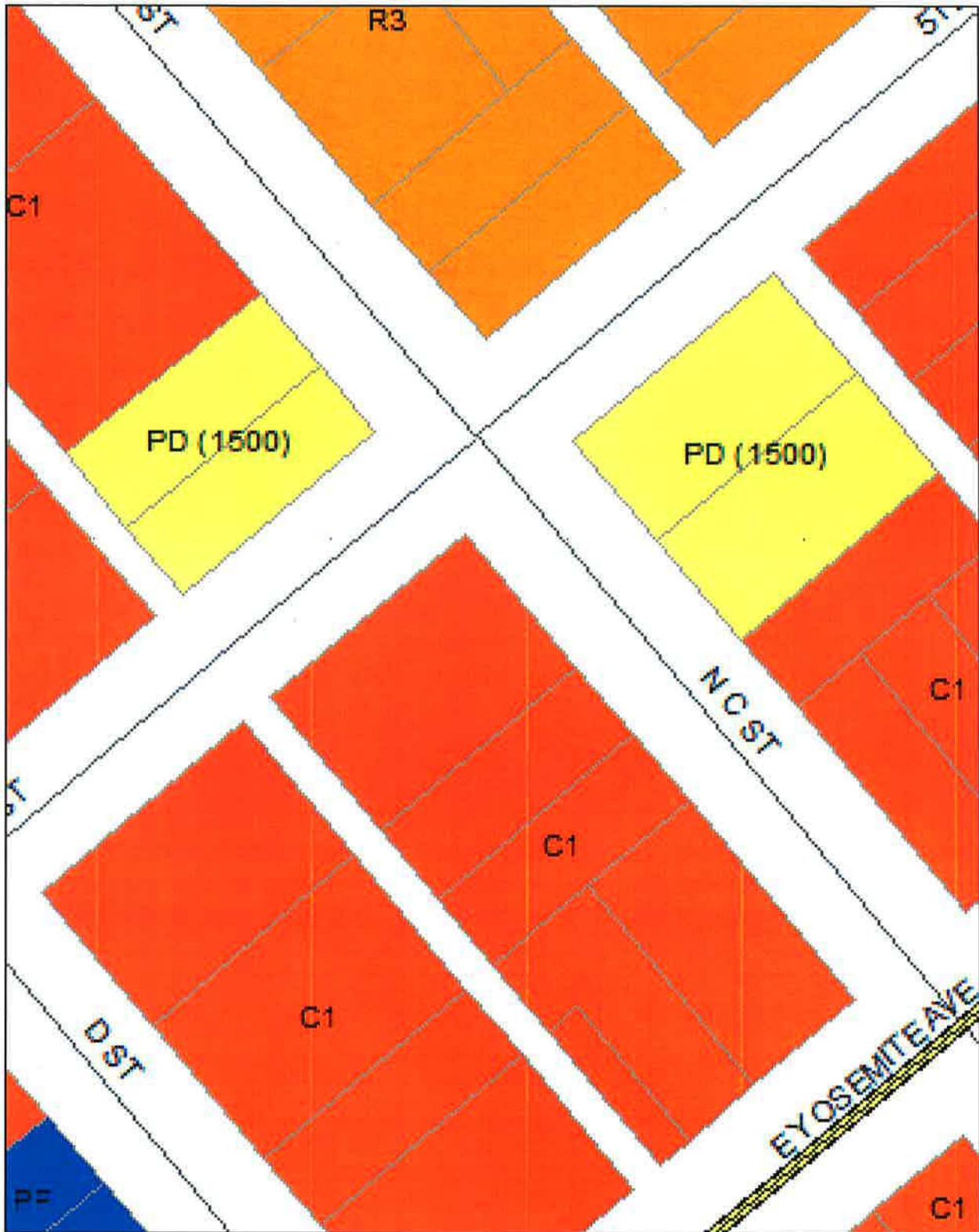
FINDINGS:

1. THE PROPOSED REZONE WILL PROVIDE THE REQUIRED CONSISTENCY BETWEEN THE GENERAL PLAN AMENDMENT AND ZONING.
2. THE REZONE IS NOT EXPECTED TO BE DETRIMENTAL TO THE HEALTH, SAFETY, PEACE, COMFORT OR GENERAL WELFARE OF THE NEIGHBORHOOD OR THE CITY.
3. CITY SERVICES AND UTILITIES ARE AVAILABLE OR CAN BE EXTENDED TO SERVE THE AREA.

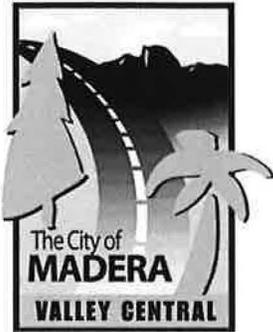
SECTION 4. This Ordinance shall be effective and of full force and effect at 12:01 a.m. on the thirty-first day after its passage.

\* \* \* \* \*

EXHIBIT A

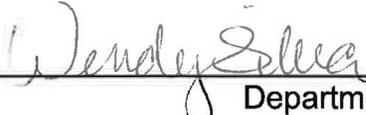


## Report to City Council



Council Meeting of October 3, 2018  
Agenda Item Number C-2

Approved by:

  
\_\_\_\_\_  
Department Director

  
\_\_\_\_\_  
City Administrator

**Consideration of a Resolution Approving Employment Agreements with the Grant Administrator, Director of Community Development, City Engineer, Director of Parks & Community Services, Chief of Police, Chief Building Official, Information Services Manager, Director of Financial Services, and Director of Human Resources**

### RECOMMENDATION

The City Administrator recommends Council adopt the resolution approving employment agreements with department head staff and authorizing the City Administrator to sign the agreements.

Pursuant to Government Code § 54953 (c) (3), prior to taking action on this item, the Council must publicly announce a summary of the action being considered.

**Announcement** - *If approved, the proposed Employment Agreements for the listed positions will modify the offered benefit package, most notably as it relates to the type and amount of paid leave available, reduce the annual leave cash-out provision, eliminate management incentive pay, reduce sick leave cash-out at separation and eliminate City-paid medical insurance in retirement for individuals who do not already have more than ten years of City service.*

### HISTORY

Department head employees have individual at-will employment agreements that outline their respective terms and conditions of employment. Existing agreements with the Director of Community Development, City Engineer, Director of Parks & Community Services, Chief Building Official, Director of Financial Services, and Director of Human Resources are currently due for renewal. Agreements with the Information Services Manager, Grant Administrator and Chief of Police are mid-term but are being renewed/modified at this time to reflect the new reduced fringe benefits package.

### SITUATION

After review of the information provided by both the Koff & Associates compensation study and information and recommendations presented by

consultant Ron Manfredi, Council provided direction on modification and reduction of the benefits available to department head employees. City Administrator Steve Frazier has negotiated new agreements that follow the direction provided by Council. The terms of the agreements and benefit package offered are summarized as follows:

- Term: 3 years
- Severance: 3 months
- Eliminate current Annual Leave program and replace with leave program equal to mid-management employees that includes Vacation, Sick, Administrative Leave, Floating Holiday and Paid Holidays. Current employees will be provided the option of cashing out up to 80 hours of vacation each year. For any new management contracts for new hires or internal promotions going forward, vacation cash-out will be 40 hours/year for 0-9 years of City service and 80 hours/year for 10+ years of City service.

The following table shows the difference in the maximum available cash-out under the Annual Leave Program and the maximum (80 hour) cash-out of vacation should the employee elect to cash-out vacation under the new agreement. It should be noted that under the Annual Leave Program, the annual cash-out was mandatory but under the new leave structure annual cash-out of vacation will be optional and it is expected that not all employees will utilize this option.

<b>Position</b>	<b>Max Cash-Out Current Contract</b>	<b>80-hour Cash- out New Contract (if elected by EE)</b>
Chief Building Official	\$10,868.38	\$4,347.35
Director of Human Resources	\$15,930.63	\$5,689.51
Director of Community Development	\$18,269.48	\$7,307.79
City Engineer	\$12,633.80	\$5,053.52
Director of Parks & Community Services	\$10,296.31	\$5,720.17
Director of Financial Services	\$10,628.40	\$5,904.66
Grant Administrator	\$9,261.66	\$3,704.66
Information Services Manager	\$9,868.68	\$3,947.47
Chief of Police	\$15,819.26	\$6,327.70
<b>Totals</b>	<b>\$113,576.60</b>	<b>\$48,002.85</b>

Additionally as it relates to leave, the sick leave cash-out upon retirement or positive separation from the City has been reduced from a maximum of 50% of the sick leave balance available for cash-out to a maximum of 30% of the sick leave balance available for cash-out.

- No change to health insurance contribution for existing management employees at this time due to compaction issues that exist between some management positions and their mid-management direct reports. Any new management employees going forward (including internal promotions) will be expected to pay 10% of the dependent cost of insurance in the current year, increasing to 15%, 20% and then 25% in subsequent years. If this creates a compaction issue for a specific hire, the City Manager can take it to Council for further consideration at that time.
- No change to longevity pay benefit for existing management employees due to compaction issues that exist between some management positions and their mid-management direct reports. The benefit will not be offered to any new hires or promotions into management.
- Currently all agreements provide that if an employee retires from City service with at least 20 years total service to the City, 3 of which are in management, the retiree will receive City-paid health insurance. Existing management employees will only continue to be offered City paid retiree medical if employee has already accrued at least 10 years of City service as of the date of the new contract. The benefit itself will remain the same for those who meet this threshold. The benefit will be eliminated from contracts of employees who do not meet the 10-year threshold at this time and will not be offered going forward to new hires. For internal promotions going forward, if the individual has accrued at least 15 years of City service as of 1/1/2019, they will be offered the benefit. It will not be offered to any internal promotions who do not meet this threshold.

The below table shows current department head length of service with the City:

<b>Position</b>	<b>Current Years of City Service</b>
Chief of Police	23.1
Chief Building Official	16.6
Director of Human Resources	15.8
Director of Community Development	12.8
City Engineer	12.8
Director of Parks & Community Services	11.2
Director of Financial Services	4.9
Grant Administrator	2.4
Information Services Manager	1.5

- Employees who previously made the irrevocable election to convert leave to 2.7% Management Incentive Pay will no longer receive Management Incentive Pay after the effective date of the contract. Management Incentive Pay will not be offered going forward. Currently the following Department Heads have Management Incentive Pay that would be eliminated going forward. The annual value of this pay is shown for each:

<b>Position</b>	<b>Current Annual Incentive Pay</b>
Director of Parks & Community Services	\$3,726.39
Director of Financial Services	\$4,036.10
<b>Total</b>	<b>\$7,762.49</b>

- No change to choice of technology allowance or city-issued cell phone.
- No change to existing auto allowances.
- Continue compensation reduction to pay for Employer Contribution to CalPERS (2.375%). However, the option to achieve this through leave reduction will no longer exist and the employee must opt for either a salary reduction or post-tax payroll deduction. Currently all department heads have this reduction taken through the salary reduction option or the payroll deduction; this will only eliminate the leave reduction option going forward for new hires and internal promotions.

**FISCAL IMPACT**

For the specific employment agreements contemplated by this report, the proposed changes will reduce the annual budgeted leave cash-out by approximately \$65,570 for department head positions and the elimination of management incentive pay will equal a savings of \$7,762.49 per year. The fiscal impact of the reduction of sick leave available for cash-out at retirement or positive separation will depend on the employee's sick leave balance at the time of separation. The modification of longevity pay, health contributions, and retiree medical benefits will have longer term effects as new employees and new agreements cycle into the mix.

**CONSISTENCY WITH THE VISION MADERA 2025 PLAN**

Pay and benefits for City employees are not addressed in the vision or action plan; the requested action is also not in conflict with any of the actions or goals contained in that plan.

RESOLUTION NO. \_\_\_\_\_

A RESOLUTION APPROVING EMPLOYMENT AGREEMENTS WITH THE GRANT ADMINISTRATOR, DIRECTOR OF COMMUNITY DEVELOPMENT, CITY ENGINEER, DIRECTOR OF PARKS & COMMUNITY SERVICES, CHIEF OF POLICE, CHIEF BUILDING OFFICIAL, INFORMATION SERVICES MANAGER, DIRECTOR OF FINANCIAL SERVICES, AND DIRECTOR OF HUMAN RESOURCES AND AUTHORIZING THE CITY ADMINISTRATOR TO EXECUTE THE AGREEMENTS

WHEREAS, the City of Madera wishes to establish reasonable rules, regulations and compensation for its staff within the financial limits of the organization; and

WHEREAS, Employment Amendments have been prepared for the following at-will positions:

- Grant Administrator
- Director of Community Development
- City Engineer
- Director of Parks & Community Services
- Chief of Police
- Chief Building Official
- Information Services Manager
- Director of Financial Services
- Director of Human Resources

NOW, THEREFORE, THE COUNCIL OF THE CITY OF MADERA hereby resolves, finds, and orders as follows:

1. The above recitals are true and correct.
2. The At-Will Employment Agreements between the City and the individual currently employed with the City in each listed position, copies of which are on file with the City Clerk and referred to for more particulars, are approved.
3. The City Administrator is authorized to execute the Agreements with the Grant Administrator, Director of Community Development, City Engineer, Director of Parks & Community Services, Chief of Police, Chief Building Official, Information Services Manager, Director of Financial Services, and Director of Human Resources.
4. This resolution is effective immediately upon adoption.

\*\*\*\*\*

**GRANT ADMINISTRATOR**  
**AT-WILL EMPLOYMENT AGREEMENT**

THIS AGREEMENT, entered into this 3<sup>rd</sup> day of October, 2018, by and between the CITY OF MADERA, State of California, a municipal corporation (hereinafter referred to as "Employer" or "City"), and Evelyn Iraheta (hereinafter referred to as "Employee"), both of whom understand as follows:

**Recitals**

WHEREAS, Employer desires to continue to employ the services of Evelyn Iraheta as Grant Administrator for the City of Madera; and

WHEREAS, it is the desire of the City Administrator of the Employer, hereinafter called "Administrator", to provide certain benefits, to establish certain conditions of employment, and to set working conditions of said Grant Administrator; and

WHEREAS, Evelyn Iraheta desires to be employed as Grant Administrator for said City of Madera.

NOW THEREFORE, in consideration of the mutual covenants herein contained, the parties agree as follows:

**Agreement**

Section 1: TERM

- A. The term of this Agreement shall be 3 years commencing on October 3, 2018. The Employer will provide written notice to the Employee on or before July 3, 2021 of its intent to offer to extend, renew, or otherwise not renew this contract for an additional term. If the Employer chooses to extend the Agreement, the Employer will inform the Employee of the newly proposed term at the time of its offer to renew. The Employee must respond to an offer to extend or renew the Agreement within 45 days of the offered extension or renewal.
- B. The Grant Administrator shall at all times serve at the pleasure of the Administrator. This means that the Employee is an at-will employee. Nothing in this Agreement shall prevent, limit or otherwise interfere with the right of the Employer to suspend or terminate the services of the Employee at any time.
- C. Nothing in this Agreement shall prevent, limit or otherwise interfere with the right of the Employee to resign at any time, after October 3, 2018, from her position with Employer, upon thirty (30) calendar days advanced written notice to Employer.

## Section 2: TERMINATION AND SEVERANCE PAY

- A. In the event Employee is terminated by the Administrator before expiration of the aforesaid term of employment and during such time that Employee is willing and able to perform her duties under this Agreement, then in that event, Employer agrees to pay Employee a lump sum cash payment equal to the maximum amount of pay permitted by law under Government Code sections 53260 and 53261, up to a lump sum cash payment equal to three (3) months' aggregate salary and health benefits. Upon such termination, Employee shall also be compensated for all earned paid leave and other accrued benefits to date of termination. This shall not include the payout of accumulated sick leave other than as authorized pursuant to this Agreement.

In the event Employee is terminated for cause or for conviction, then, in that event, Employer shall have no obligation to pay the aggregate severance sum designated in the above paragraph.

- B. In the event Employer at any time during the term of this Agreement reduces the salary or other financial benefits of Employee in a greater percentage than an applicable across-the-board reduction for all Employees of Employer, or in the event Employer refuses, following written notice, to comply with any other provision benefiting Employee herein, or the Employee resigns following a suggestion, whether formal or informal, by the Administrator that she resign, then, in that event, Employee may, at her option, be deemed to be "terminated" at the date of such reduction, such refusal to comply or such suggestion within the meaning and context of the herein severance pay provisions.

## Section 3: DUTIES

- A. Employer hereby agrees to employ the Employee to perform the functions and duties of such office as set forth in the Grant Administrator Job Description on file with the Office of the City Clerk and referred to for more particulars, and to perform such other duties as the Administrator may from time to time assign.
- B. The Grant Administrator is exempt from the overtime provisions of the Fair Labor and Standards Act, as amended, but is expected to engage in those hours of work that are necessary to fulfill the obligations of the Grant Administrator.
- C. Employee may engage in up to five (5) hours per week for teaching without prior written approval of the Employer. Employee shall not be involved in any other outside employment without written prior approval from the Employer. This includes, but is not limited to, consultant work, speaking engagements, entering an independent contract relationship, or any other activities unrelated to the Employee's employment with the City.

- D. Employee will maintain on file with the Employer her current place of residence and telephone number(s), and shall notify the Employer of any changes within twenty-four (24) hours.
- E. In the event the Employee becomes mentally or physically incapable of performing the Grant Administrator job duties, the Employer will comply with the law in regard to separating the Grant Administrator from employment.

#### Section 4: PERFORMANCE EVALUATION

The Administrator shall review and evaluate the performance of the Employee on an ongoing basis and shall, at least once annually on the employment anniversary date established, complete a written performance review and/or evaluation. The review and/or evaluation shall be in accordance with specific criteria developed by the Administrator. Specific criterion may be added or deleted as the Administrator may determine.

#### Section 5: SALARY

Employer agrees to pay the Grant Administrator for her services rendered pursuant hereto a base salary of \$3,889.75 bi-weekly (City of Madera Salary Schedule Range 476, Step C) payable in installments at the same time as the majority of the Employer's employees. The Administrator may review and adjust said base salary in such amounts and to such extent as the Administrator determines, consistent with the published City of Madera Salary Schedule adopted by the City Council of the City of Madera.

Employee desires to take a reduction in her compensation package equivalent to the salary contribution Miscellaneous employees are making towards the CalPERS Employee Contribution, however, employee already pays the full Employee Contribution per Section 6.C. of the Agreement. Therefore, employee desires to contribute an equivalent amount of salary towards the Employer Contribution to CalPERS. These contributions toward the CalPERS Employer Contribution shall be made as an after tax payroll deduction and be equivalent to 2.375% of salary.

#### Section 6: OTHER TERMS AND CONDITIONS OF EMPLOYMENT

##### A. Paid Leave

Effective the first whole pay period following adoption of this Agreement by the City Council or the effective date of this Agreement, whichever is later, Employee will no longer receive an Annual Leave bank, but will instead receive leave banks/types as outlined below. To transition from the existing Annual Leave program to the revised separate leave types of Vacation, Sick, Administrative and Holiday, Employee's existing Annual Leave will be redistributed and the new leave banks credited as outlined in Exhibit 1.

1. Vacation

Employee will earn vacation credits, dependent upon the number of years of service with the City, for each pay period Employee is in a paid status at least 50% or more of the period. All accrued vacation is paid to Employee upon retirement, resignation or termination.

COMPLETED YEARS = NUMBER OF HOURS RECEIVED PER PAY PERIOD

0 through 4 yrs.	3.6923 hrs. per pay period
5 through 9 yrs.	4.6156 hrs. per pay period
10 through 14 yrs.	5.5384 hrs. per pay period
15 through 19 yrs.	6.1538 hrs. per pay period
20 plus yrs.	6.4615 hrs. per pay period

The maximum vacation Employee is allowed to accumulate is 360 hours.

Each employee shall receive the date known as the "employee anniversary date" as a vacation day. This day shall be added to vacation time at a straight time rate. Credit for the day will not be given until the employee's anniversary date has passed during the current fiscal year and is in addition to the above accrual schedule. Because this Agreement is being executed mid-fiscal year, Employee will not receive an anniversary date credit until the first anniversary date occurring on or after July 1, 2019.

Employee may request to cash out up to 80 hours of vacation once each fiscal year. To be eligible for such cash out provision, employees must have a vacation balance of at least 160 hours at the time of request. Requests must be made in writing to the Payroll Specialist at least 15 days in advance and such requests will be paid on a regular pay date of the City.

2. Sick Leave

Sick leave, with pay, accrues at the rate of 3.6923 hours per pay period an employee is in a paid status at least 50% or more of the period. Rules governing sick leave use and eligibility are noted in the City of Madera Personnel Rules and Regulations.

In addition to the reasons for use of Sick Leave as stated in the Personnel Rules & Regulations, an employee may utilize accrued Sick Leave hours for any absence designated by the City as being covered by the Federal Family Medical Leave Act (FMLA) and/or the California Family Rights Act (CFRA), regardless of the reason for the leave. It will be the employee's responsibility to complete the required paperwork to certify the need for leave and he/she must provide timely notification of the need for leave in compliance with FMLA/CFRA regulations. Use of Sick Leave for this purpose will not commence until such requirements have been met. Use of Sick Leave for family members when the

leave has been designated as FMLA/CFRA will not count against the employee's annual limit of Family Sick Leave as provided in this Agreement.

Employee may cash out sick leave upon retirement or positive separation from the City based on the below table. To be eligible, employees must be employed with the City on a full time basis for a minimum of five years. Negative terminations (discharge) are not eligible for cash out of sick leave. An employee has the option to convert 100% of the remaining sick leave upon retirement to CalPERS service credit.

<u>Years of Service</u>	<u>Sick Leave Cash-Out</u>
5	7.5%
7	10.5%
10	15.0%
15	22.0%
20	30.0%

### 3. Family Sick Leave

Sick Leave may be used up to the limit of seventy-two hours each calendar year:

3.1. For the diagnosis, care, or treatment of an existing health condition or preventative care for an employee's family member, including:

3.1.1. Child (including a biological, adopted, or foster child, stepchild, legal ward, or a child to whom the employee stands in loco parentis.)

3.1.2. Spouse or Registered Domestic Partner

3.1.3. Parent (including biological, adoptive, or foster parent, stepparent, or legal guardian of an employee or the employee's spouse or registered domestic partner, or a person who stood in loco parentis when the employee was a minor child.)

3.1.4. Grandparent

3.1.5. Grandchild.

3.1.6. Sibling.

3.2. To obtain any relief or services related to being a victim of domestic violence, sexual assault, or stalking including the following with appropriate certification of the need for such services:

3.2.1. A temporary restraining order or restraining order.

- 3.2.2. Other injunctive relief to help ensure the health, safety or welfare of themselves or their children.
- 3.2.3. To seek medical attention for injuries caused by domestic violence, sexual assault, or stalking.
- 3.2.4. To obtain services from a domestic violence shelter, program, or rape crisis center as a result of domestic violence, sexual assault, or stalking.
- 3.2.5. To obtain psychological counseling related to an experience of domestic violence, sexual assault, or stalking.
- 3.2.6. To participate in safety planning and take other actions to increase safety from future domestic violence, sexual assault, or stalking, including temporary or permanent relocation.

Such leave is a part of Sick Leave accrual, not in addition to, the 12 days (96 hours) of Sick Leave earned per year. All conditions and restrictions placed by the City upon the use by an employee of sick leave for himself or herself shall apply to the use by an employee of sick leave to attend to an illness of his or her identified family member.

All other provisions for use of Sick Leave by the employee also apply to Family Sick Leave use. This includes, but is not limited to, the Sick Leave section of the Personnel Rules and Regulations.

#### 4. Administrative Leave

In recognition of the fact that Employee is expected to work all reasonable hours necessary to accomplish assigned tasks he will be credited with five days (40 hours) of Administrative Leave at the beginning of each fiscal year. This leave may not be carried over or cashed out and shall be taken under the same conditions as vacation leave. It is recognized that such time is not intended to provide an hour for hour or greater leave for actual hours worked over those scheduled, but is a benefit in recognition of duty requirements.

#### 5. Holidays

The following (8) hour days are established as holidays with pay: New Year's Day, Martin Luther King's Birthday, President's Day, Memorial Day: Independence Day, Labor Day, Columbus Day, Veteran's Day, Thanksgiving Day, Day After Thanksgiving, and Christmas Day.

The parties agree that the following half days (4 hours) are established as partial holidays with pay: Good Friday and the last work day prior to Christmas or New Year's Day.

The parties agree that to be eligible to receive a paid holiday, the employee must be in a paid status on the scheduled work day either immediately preceding the identified holiday or on the scheduled work day immediately following the identified holiday.

In addition to the City observed holidays outlined above, Employee will receive floating holiday leave hours. Said leave hours shall be credited to the employee on July 1 of each fiscal year, may not be carried over or cashed out, and shall be taken under the same conditions as vacation leave. Employees with 5-9 years of full time continuous service with the City of Madera as of July 1 of each year shall be credited with 20 hours of floating holiday leave. Employees with 10 or more years of full time continuous service with the City of Madera as of July 1 of each year shall be credited with 40 hours of floating holiday leave.

**B. Disability, Health, and Life Insurance**

Employer will provide term life insurance for Employee in the amount of \$50,000 which includes accidental death and dismemberment (AD&D) coverage. Employer also will provide dependent life in the amount of \$5,000 and Long Term Disability Insurance, which provides salary replacement benefits.

Employer agrees to provide a monthly health benefit allowance for the employee to purchase health insurance (including medical, dental and vision coverage of the Employee and family) through an IRS Section 125 Cafeteria Plan.

For the 2018/19 Plan Year, the monthly allowance will be as follows:

<b>Enrollment Level</b>	<b>Monthly Allowance</b>
Waiver of Coverage	\$300.00
EE Only	\$740.16
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Employer will continue offering Teledoc services for the July 1, 2018-June 30, 2019 plan year. The teledoc services are captured in the medical plan premiums and monthly benefit allowance as indicated above and no contribution beyond the above monthly benefit allowance will be made by Employer.

Medicare - 1.45% Employer's contribution matched by an Employee contribution of 1.45% of Employee's salary for mandated Medicare coverage.

**C. Retirement**

The City participates in the CalPERS retirement system. Employee will be placed on the appropriate miscellaneous plan consistent with CalPERS membership requirements. The Employee will pay all of the Employee Contribution for the plan in pre-tax dollars under IRS Code 414(h)(2). The Employee will also be responsible for the Employee's Contribution for the 1959 Survivor's Benefit.

#### D. Longevity Pay

In addition to the established base salary, Employee is eligible for longevity pay at the rate of 2 ½% for each five years of service as a management employee to a maximum of 10%.

#### E. Bereavement Leave

Employee is allowed an additional three (3) days leave per fiscal year in the event of death of any of the following members of the employee's family: spouse, child, parent or grandparent.

#### F. Retiree Paid Health Insurance

The City will allow Employee to continue to participate in the City health plan offerings (medical, dental, and vision) at the retiree's expense until age 65 or when eligible for Medicare, whichever comes first. Both retiree and dependent coverage are available under this program. An administrative fee in an amount equal to two percent (2%) of the insurance premiums will be charged to the retiree for the City to process the benefit. In the event the administrative fee increases, retiree shall pay the higher fee. If, in the future, the City no longer offers the same insurance carrier/plan the retiree and his or her spouse will be eligible to purchase insurance coverage under the new plan. Coverage must be selected upon retirement; no lapse in coverage will be allowed under this provision. If retiree chooses not to participate or chooses to terminate participation, retiree may not seek coverage under the City health plan at a later date.

#### G. Automobile Allowance

Employee will be provided with a \$50 per month automobile allowance for use of her personal vehicle while conducting City business. Employee will not be eligible for any additional mileage or vehicle reimbursement for use of her personal vehicle.

#### H. Technology Allowance

Employee will receive a monthly technology allowance of \$75. Employee will not receive a City-issued cell phone or be provided with any type of wireless or data plan for a cell phone through the City's wireless carrier and will be expected to

utilize her personal cell phone for City business. Employee's personal cell phone number must be available to the public.

#### I. Other

The Administrator shall fix any such other terms and conditions of employment, as s/he may determine from time to time, relating to the performance of the Grant Administrator, provided such terms and conditions are not inconsistent with or in conflict with the provisions of this Agreement, the City of Madera Municipal Code or any other law.

#### Section 7: TERMINATION

The Grant Administrator is an at-will employee and serves at the will and pleasure of the Administrator and may be terminated at any time.

#### Section 8: DUES AND SUBSCRIPTIONS

Employer agrees, to the extent it is financially able, to budget for and to pay for professional dues and subscriptions of Employee necessary for her continuation and full participation in national, regional, state, and local associations and organizations necessary and desirable for her continued professional participation, growth, and advancement, and for the good of the Employer.

#### Section 9: PROFESSIONAL DEVELOPMENT

- A. Employer hereby agrees, to the extent it is financially able, to budget for and to pay for travel and subsistence expenses of Employee for professional and official travel, meetings, and occasions adequate to continue the professional development of Employee and to adequately pursue necessary official functions for Employer, including but not limited to such other national, regional, state and local governmental groups and committees thereof which Employee serves as member.
- B. Employer also agrees, to the extent it is financially able, to budget for and to pay for travel and subsistence expenses of Employee for short courses, institutes and seminars that are necessary for her professional development and for the good of the Employer.

#### Section 10: INDEMNIFICATION

In addition to that required under state and local law, Employer shall defend, hold harmless and indemnify Employee against any tort, professional liability claim or demand or other legal action, whether groundless or otherwise, arising out of an alleged act or omission occurring in the performance of Employee's duties as Grant

Administrator. Employer will compromise and settle any such claim or suit and pay the amount of any settlement or judgment rendered thereon.

#### Section 11: BONDING

Employer shall bear the full cost of any fidelity or other bonds required of the Employee under any law or ordinance.

#### Section 12: CONFLICT OF INTEREST

- A. Employee shall not engage in any business or transaction or have a financial or other personal interest or association, direct or indirect, which is in conflict with the proper discharge of official duties or would tend to impair independence of judgment or action in the performance of official duties. Personal interests, distinguished from financial interests, include an interest as arising from blood or marriage relationships or close business, and personal or political affiliations.
- B. Employee shall also comply with the conflict of interest provisions of the California Government Code and any conflict of interest code applicable to the Grant Administrator's employment.
- C. Employee is responsible for submitting to the City Clerk the appropriate Conflict of Interest Statements (including Form 700) at the time of appointment, annually thereafter, and at the time of separation from position.

#### Section 13: NOTICES

Notices pursuant to this Agreement shall be given by deposit in the custody of the United States Postal Service, postage prepaid, addressed as follows:

Employer: City Administrator, City of Madera, 205 West Fourth Street, Madera CA 93637

Employee: [REDACTED]

Alternately, notices required pursuant to this Agreement may be personally served in the same manner as is applicable to civil judicial practice. Notice shall be deemed given as of the date of personal service or as of the date of deposit of such written notice in the course of transmission in the United States Postal Service.

#### Section 14: REDUCTION OF BENEFITS

Employer shall not at any time during the term of this Agreement reduce the salary, compensation or other financial benefits of Employee, except to the degree of such reduction across-the-board for all Employees of the Employer.

Section 15: GENERAL PROVISIONS

- A. The text herein shall constitute the entire and fully integrated Agreement between the parties and no promise, representation, warranty or covenant not included in this Agreement has been relied upon by any party hereto.
- B. This Agreement shall be binding upon and inure to the benefit of the heirs at law and executors of the Employee; however, this Agreement is not assignable by either party.
- C. This Agreement shall become effective commencing October 3, 2018.
- D. This Agreement replaces and supersedes any previous Employment Agreements or Agreement Amendments between Employer and Employee.
- E. If any provision, or any portion thereof, contained in this Agreement is held unconstitutional, invalid or unenforceable by a court of law, the remainder of this Agreement, or portion thereof, shall be deemed severable, shall not be affected, and shall remain in full force and effect. This Agreement shall be construed under California law. No waiver of any term or condition of the Agreement shall be considered a continuing waiver thereof.

IN WITNESS WHEREOF, the City of Madera has caused this Agreement to be signed and executed on its behalf by its City Administrator, and duly attested by its City Clerk, and the Grant Administrator has signed and executed this Agreement, both in duplicate, the day and year first above written.

EMPLOYEE

CITY OF MADERA

By:   
Evelyn Iraheta

By: \_\_\_\_\_  
Steve Frazier, City Administrator

ATTEST

APPROVED AS TO LEGAL FORM

By: \_\_\_\_\_  
Sonia Alvarez, City Clerk

By: \_\_\_\_\_  
Brent Richardson, City Attorney

## Exhibit 1

### Plan for Transition of Existing Annual Leave to New Leave Banks

Using Employee's remaining Annual Leave balance at the start of the first whole pay period following adoption of this Agreement or the effective date of the Agreement, whichever comes later, hours will be subtracted first from the additional hours credited bank and then from the front-end bank in the following order. If Employee does not have sufficient leave credits to move to the next step in the order, then they do not receive a beginning credit in that bank.

1. Subtract off remaining City-recognized holidays in the current fiscal year from the additional hours credited bank. These now become observed holidays with pay as opposed to leave time on the books.
2. Subtract off 5 days from the additional hours credited bank and credit to Administrative Leave balance.
3. Any remaining hours in the additional hours credited bank will be credited to the employee's new sick leave bank balance.
4. Any remaining leave in the front-end bank will be credited to the employee's new vacation bank balance (this is inclusive of the Employee Anniversary Date credited to vacation and no anniversary date will be credited pursuant to the new language until after 6/30/19).
  - a. For employees who previously accepted the option of reducing Annual Leave by 7 days in exchange for Management Incentive Pay, Management Incentive Pay will cease and employees will be credited back a pro-rated number of days toward the vacation bank based on the length of time between the effective date of the leave transition and the end of the fiscal year.
5. Employees will be credited with Floating Holiday based on years of service.
6. Effective the pay period when the employee is transitioned to these new leave banks, employees will accrue vacation and sick leave on a per pay period basis consistent with the accrual schedules as stated in this Agreement.

**DIRECTOR OF COMMUNITY DEVELOPMENT**  
**AT-WILL EMPLOYMENT AGREEMENT**

THIS AGREEMENT, entered into this 3<sup>rd</sup> day of October, 2018, by and between the CITY OF MADERA, State of California, a municipal corporation (hereinafter referred to as "Employer" or "City"), and David Merchen (hereinafter referred to as "Employee"), both of whom understand as follows:

**Recitals**

WHEREAS, Employer desires to continue to employ the services of David Merchen as Director of Community Development for the City of Madera; and

WHEREAS, it is the desire of the City Administrator of the Employer, hereinafter called "Administrator", to provide certain benefits, to establish certain conditions of employment, and to set working conditions of said Director of Community Development; and

WHEREAS, David Merchen desires to be employed as Director of Community Development for said City of Madera.

NOW THEREFORE, in consideration of the mutual covenants herein contained, the parties agree as follows:

**Agreement**

**Section 1: TERM**

- A. The term of this Agreement shall be 3 years commencing on October 3, 2018. The Employer will provide written notice to the Employee on or before July 3, 2021 of its intent to offer to extend, renew, or otherwise not renew this contract for an additional term. If the Employer chooses to extend the Agreement, the Employer will inform the Employee of the newly proposed term at the time of its offer to renew. The Employee must respond to an offer to extend or renew the Agreement within 45 days of the offered extension or renewal.
- B. The Director of Community Development shall at all times serve at the pleasure of the Administrator. This means that the Employee is an at-will employee. Nothing in this Agreement shall prevent, limit or otherwise interfere with the right of the Employer to suspend or terminate the services of the Employee at any time.

- C. Nothing in this Agreement shall prevent, limit or otherwise interfere with the right of the Employee to resign at any time, after October 3, 2018, from his position with Employer, upon thirty (30) calendar days advanced written notice to Employer.

## Section 2: TERMINATION AND SEVERANCE PAY

- A. In the event Employee is terminated by the Administrator before expiration of the aforesaid term of employment and during such time that Employee is willing and able to perform his duties under this Agreement, then in that event, Employer agrees to pay Employee a lump sum cash payment equal to the maximum amount of pay permitted by law under Government Code sections 53260 and 53261, up to a lump sum cash payment equal to three (3) months' aggregate salary and health benefits. Upon such termination, Employee shall also be compensated for all earned paid leave and other accrued benefits to date of termination. This shall not include the payout of accumulated sick leave other than as authorized pursuant to this Agreement.

In the event Employee is terminated for cause or for conviction, then, in that event, Employer shall have no obligation to pay the aggregate severance sum designated in the above paragraph.

- B. In the event Employer at any time during the term of this Agreement reduces the salary or other financial benefits of Employee in a greater percentage than an applicable across-the-board reduction for all Employees of Employer, or in the event Employer refuses, following written notice, to comply with any other provision benefiting Employee herein, or the Employee resigns following a suggestion, whether formal or informal, by the Administrator that he resign, then, in that event, Employee may, at his option, be deemed to be "terminated" at the date of such reduction, such refusal to comply or such suggestion within the meaning and context of the herein severance pay provisions.

## Section 3: DUTIES

- A. Employer hereby agrees to employ the Employee to perform the functions and duties of such office as set forth in the Director of Community Development Job Description on file with the Office of the City Clerk and referred to for more particulars, and to perform such other duties as the Administrator may from time to time assign.
- B. The Director of Community Development is exempt from the overtime provisions of the Fair Labor and Standards Act, as amended, but is expected to engage in those hours of work that are necessary to fulfill the obligations of the Director of Community Development.

- C. Employee may engage in up to five (5) hours per week for teaching without prior written approval of the Employer. Employee shall not be involved in any other outside employment without written prior approval from the Employer. This includes, but is not limited to, consultant work, speaking engagements, entering an independent contract relationship, or any other activities unrelated to the Employee's employment with the City.
- D. Employee will maintain on file with the Employer his current place of residence and telephone number(s), and shall notify the Employer of any changes within twenty-four (24) hours.
- E. In the event the Employee becomes mentally or physically incapable of performing the Director of Community Development job duties, the Employer will comply with the law in regard to separating the Director of Community Development from employment.

#### Section 4: PERFORMANCE EVALUATION

The Administrator shall review and evaluate the performance of the Employee on an ongoing basis and shall, at least once annually on the employment anniversary date established, complete a written performance review and/or evaluation. The review and/or evaluation shall be in accordance with specific criteria developed by the Administrator. Specific criterion may be added or deleted as the Administrator may determine.

#### Section 5: SALARY

Employer agrees to pay the Director of Community Development for his services rendered pursuant hereto a base salary of \$7,124.84 bi-weekly (City of Madera Salary Schedule Range 568, Step F), payable in installments at the same time as the majority of the Employer's employees. The Administrator may review and adjust said annual base salary in such amounts and to such extent as the Administrator determines, consistent with the published City of Madera Salary Schedule adopted by the City Council of the City of Madera.

Employee desires to take a reduction in his compensation package equivalent to the salary contribution Miscellaneous employees are making towards the CalPERS Employee Contribution, however, employee already pays the full 8% Employee Contribution per Section 6.C. of the Agreement. Therefore, employee desires to reduce his salary in an equivalent amount. Employee's salary as set pursuant to the terms of this Agreement shall be reduced by 2.375% for reasons stated above.

## Section 6: OTHER TERMS AND CONDITIONS OF EMPLOYMENT

### A. Paid Leave

Effective the first whole pay period following adoption of this Agreement by the City Council or the effective date of this Agreement, whichever is later, Employee will no longer receive an Annual Leave bank, but will instead receive leave banks/types as outlined below. To transition from the existing Annual Leave program to the revised separate leave types of Vacation, Sick, Administrative and Holiday, Employee's existing Annual Leave will be redistributed and the new leave banks credited as outlined in Exhibit 1.

#### 1. Vacation

Employee will earn vacation credits, dependent upon the number of years of service with the City, for each pay period Employee is in a paid status at least 50% or more of the period. All accrued vacation is paid to Employee upon retirement, resignation or termination.

COMPLETED YEARS = NUMBER OF HOURS RECEIVED PER PAY PERIOD

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sick leave use and eligibility are noted in the City of Madera Personnel Rules and Regulations.

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3.2.1. A temporary restraining order or restraining order.

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3.2.3. To seek medical attention for injuries caused by domestic violence, sexual assault, or stalking.

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The parties agree that to be eligible to receive a paid holiday, the employee must be in a paid status on the scheduled work day either immediately preceding the identified holiday or on the scheduled work day immediately following the identified holiday.

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In addition to the established base salary, Employee is eligible for longevity pay at the rate of 2 ½% for each five years of service as a management employee to a maximum of 10%.

E. City Provided Automobile

Employee will be provided with a \$350 per month automobile allowance for use of his personal vehicle while conducting City business. Employee will not be eligible for any additional mileage or vehicle reimbursement for use of his personal vehicle.

F. Bereavement Leave

Employee is allowed an additional three (3) days leave per fiscal year in the event of death of any of the following members of the employee's family: spouse, child, parent or grandparent.

G. City Paid Health Insurance Upon Retirement

Upon retirement, if Employee has twenty years of service with the City, at least three (3) of which are in a department head management position, and Employee is eligible for CalPERS retirement at the time of retirement, Employee is eligible for the health benefits noted below.

a) City pays 100% of the premium for medical coverage for employee (retiree) only with City plan through age 64. Employee pays dental and vision coverage if desired. Coverage for a spouse is available at the expense of retired Employee.

b) At age 65, or when eligible for Medicare if earlier, the City will pay or provide a health insurance benefits program which will be supplemental to Medicare. The program will cover only the retired Employee. The retired Employee must first obtain both parts A & B of Medicare.

If Employee qualifies for employer paid health insurance in retirement as outlined in paragraph one of this section, he has the opportunity to make an irrevocable election to receive a monthly payment, equivalent to the premium charged by the carrier/plan the employee is enrolled in at the time of retirement, in lieu of participation in the City medical plan. The monthly payment would be equal to the premium amount charged to cover one person. The payment will continue until the retiree reaches age 65 or becomes eligible for Medicare, whichever comes first. At age 65, or when eligible for Medicare if earlier, the City will provide a monthly payment equivalent to the premium charged by the Medicare supplement carrier/plan selected by the retiree from those available through the City at the time provided the retiree has subscribed to or enrolled in parts A & B of Medicare. The monthly payment will be equal to the premium amount charged to cover one person.

If, in the future, the City no longer offers the carrier/plan, the premium for the replacement plan would be used to determine the amount of monthly payment in lieu of participation in the health plan.

When making an election to receive the cash equivalent of the medical insurance premium, the retiring employee waives the right to participate in the City's medical insurance plan for themselves and any dependents except for the rights provided by COBRA continuation coverage.

An employee electing to exercise the option to receive the cash equivalent of the retiree medical insurance premium will only be able to cash out sick leave using Option #1 provided in Section 6.B. of this agreement.

#### H. Retiree Paid Health Insurance

If Employee does not qualify for City Paid Health Insurance Upon Retirement as outlined in Section 6.G. of this agreement, the City will allow Employee to continue to participate in the City health plan offerings (medical, dental, and vision) at the retiree's expense until age 65 or when eligible for Medicare, whichever comes first. Both retiree and dependent coverage are available under this program. An administrative fee in an amount equal to two percent (2%) of the insurance premiums will be charged to the retiree for the City to process the benefit. In the event the administrative fee increases, retiree shall pay the higher fee. If, in the future, the City no longer offers the same insurance carrier/plan the retiree and his or her spouse will be eligible to purchase insurance coverage under the new plan.

Coverage must be selected upon retirement; no lapse in coverage will be allowed under this provision. If retiree chooses not to participate or chooses to terminate participation, retiree may not seek coverage under the City health plan at a later date.

I. Technology Allowance

Employee will receive a monthly technology allowance of \$75. Employee will not receive a City-issued cell phone or be provided with any type of wireless or data plan through the City's wireless carrier and will be expected to utilize his personal cell phone for City business. Employee's personal cell phone number must be available to the public.

J. Other

The Administrator shall fix any such other terms and conditions of employment, as s/he may determine from time to time, relating to the performance of the Director of Community Development, provided such terms and conditions are not inconsistent with or in conflict with the provisions of this Agreement, the City of Madera Municipal Code or any other law.

Section 7: TERMINATION

The Director of Community Development is an at-will employee and serves at the will and pleasure of the Administrator and may be terminated at any time.

Section 8: DUES AND SUBSCRIPTIONS

Employer agrees, to the extent it is financially able, to budget for and to pay for professional dues and subscriptions of Employee necessary for his continuation and full participation in national, regional, state, and local associations and organizations necessary and desirable for his continued professional participation, growth, and advancement, and for the good of the Employer.

Section 9: PROFESSIONAL DEVELOPMENT

A. Employer hereby agrees, to the extent it is financially able, to budget for and to pay for travel and subsistence expenses of Employee for professional and official travel, meetings, and occasions adequate to continue the professional development of Employee and to adequately pursue necessary official functions for Employer, including but not limited to such other national, regional, state and local governmental groups and committees thereof which Employee serves as member.

Employer also agrees, to the extent it is financially able, to budget for and to pay for travel and subsistence expenses of Employee for short courses, institutes and seminars that are necessary for his professional development and for the good of the Employer.

#### Section 10: INDEMNIFICATION

In addition to that required under state and local law, Employer shall defend, hold harmless and indemnify Employee against any tort, professional liability claim or demand or other legal action, whether groundless or otherwise, arising out of an alleged act or omission occurring in the performance of Employee's duties as Director of Community Development. Employer will compromise and settle any such claim or suit and pay the amount of any settlement or judgment rendered thereon.

#### Section 11: BONDING

Employer shall bear the full cost of any fidelity or other bonds required of the Employee under any law or ordinance.

#### Section 12: CONFLICT OF INTEREST

- A. Employee shall not engage in any business or transaction or have a financial or other personal interest or association, direct or indirect, which is in conflict with the proper discharge of official duties or would tend to impair independence of judgment or action in the performance of official duties. Personal interests, distinguished from financial interests, include an interest as arising from blood or marriage relationships or close business, and personal or political affiliations.
- B. Employee shall also comply with the conflict of interest provisions of the California Government Code and any conflict of interest code applicable to the Director of Community Development's employment.
- C. Employee is responsible for submitting to the City Clerk the appropriate Conflict of Interest Statements (including Form 700) at the time of appointment, annually thereafter, and at the time of separation from position.

#### Section 13: NOTICES

Notices pursuant to this Agreement shall be given by deposit in the custody of the United States Postal Service, postage prepaid, addressed as follows:

Employer: City Administrator, City of Madera, 205 West Fourth Street, Madera CA 93637

Employee: [REDACTED]

Alternately, notices required pursuant to this Agreement may be personally served in the same manner as is applicable to civil judicial practice. Notice shall be deemed given as of the date of personal service or as of the date of deposit of such written notice in the course of transmission in the United States Postal Service.

#### Section 14: REDUCTION OF BENEFITS

Employer shall not at any time during the term of this Agreement reduce the salary, compensation or other financial benefits of Employee, except to the degree of such reduction across-the-board for all Employees of the Employer.

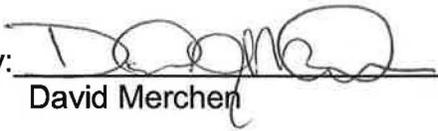
#### Section 15: GENERAL PROVISIONS

- A. The text herein shall constitute the entire and fully integrated Agreement between the parties and no promise, representation, warranty or covenant not included in this Agreement has been relied upon by any party hereto.
- B. This Agreement shall be binding upon and inure to the benefit of the heirs at law and executors of the Employee; however, this Agreement is not assignable by either party.
- C. This Agreement shall become effective commencing October 3, 2018.
- D. This Agreement replaces and supersedes any previous Employment Agreements or Agreement Amendments between Employer and Employee.
- E. If any provision, or any portion thereof, contained in this Agreement is held unconstitutional, invalid or unenforceable by a court of law, the remainder of this Agreement, or portion thereof, shall be deemed severable, shall not be affected, and shall remain in full force and effect. This Agreement shall be construed under California law. No waiver of any term or condition of the Agreement shall be considered a continuing waiver thereof.

IN WITNESS WHEREOF, the City of Madera has caused this Agreement to be signed and executed on its behalf by its City Administrator, and duly attested by its City Clerk, and the Director of Community Development has signed and executed this Agreement, both in duplicate, the day and year first above written.

EMPLOYEE

CITY OF MADERA

By:  \_\_\_\_\_  
David Merchen

By: \_\_\_\_\_  
Steve Frazier, City Administrator

ATTEST

APPROVED AS TO LEGAL FORM

By: \_\_\_\_\_  
Sonia Alvarez, City Clerk

By: \_\_\_\_\_  
Brent Richardson, City Attorney

## Exhibit 1

### Plan for Transition of Existing Annual Leave to New Leave Banks

Using Employee's remaining Annual Leave balance at the start of the first whole pay period following adoption of this Agreement or the effective date of the Agreement, whichever comes later, hours will be subtracted first from the additional hours credited bank and then from the front-end bank in the following order. If Employee does not have sufficient leave credits to move to the next step in the order, then they do not receive a beginning credit in that bank.

1. Subtract off remaining City-recognized holidays in the current fiscal year from the additional hours credited bank. These now become observed holidays with pay as opposed to leave time on the books.
2. Subtract off 5 days from the additional hours credited bank and credit to Administrative Leave balance.
3. Any remaining hours in the additional hours credited bank will be credited to the employee's new sick leave bank balance.
4. Any remaining leave in the front-end bank will be credited to the employee's new vacation bank balance (this is inclusive of the Employee Anniversary Date credited to vacation and no anniversary date will be credited pursuant to the new language until after 6/30/19).
  - a. For employees who previously accepted the option of reducing Annual Leave by 7 days in exchange for Management Incentive Pay, Management Incentive Pay will cease and employees will be credited back a pro-rated number of days toward the vacation bank based on the length of time between the effective date of the leave transition and the end of the fiscal year.
5. Employees will be credited with Floating Holiday based on years of service.
6. Effective the pay period when the employee is transitioned to these new leave banks, employees will accrue vacation and sick leave on a per pay period basis consistent with the accrual schedules as stated in this Agreement.

## **CITY ENGINEER AT-WILL EMPLOYMENT AGREEMENT**

THIS AGREEMENT, entered into this 3<sup>rd</sup> day of October, 2018, by and between the CITY OF MADERA, State of California, a municipal corporation (hereinafter referred to as "Employer" or "City"), and Keith Helmuth (hereinafter referred to as "Employee"), both of whom understand as follows:

### **Recitals**

WHEREAS, Employer desires to continue to employ the services of Keith Helmuth as City Engineer for the City of Madera; and

WHEREAS, it is the desire of the City Administrator of the Employer, hereinafter called "Administrator", to provide certain benefits, to establish certain conditions of employment, and to set working conditions of said City Engineer; and

WHEREAS, Keith Helmuth desires to be employed as City Engineer for said City of Madera.

NOW THEREFORE, in consideration of the mutual covenants herein contained, the parties agree as follows:

### **Agreement**

#### **Section 1: TERM**

- A. The term of this Agreement shall be 3 years commencing on October 3, 2018. The Employer will provide written notice to the Employee on or before July 3, 2021 of its intent to offer to extend, renew, or otherwise not renew this contract for an additional term. If the Employer chooses to extend the Agreement, the Employer will inform the Employee of the newly proposed term at the time of its offer to renew. The Employee must respond to an offer to extend or renew the Agreement within 45 days of the offered extension or renewal.
- B. The City Engineer shall at all times serve at the pleasure of the Administrator. This means that the Employee is an at-will employee. Nothing in this Agreement shall prevent, limit or otherwise interfere with the right of the Employer to suspend or terminate the services of the Employee at any time.
- C. Nothing in this Agreement shall prevent, limit or otherwise interfere with the right of the Employee to resign at any time, after October 3, 2018, from his position with Employer, upon thirty (30) calendar days advanced written notice to Employer.

## Section 2: TERMINATION AND SEVERANCE PAY

- A. In the event Employee is terminated by the Administrator before expiration of the aforesaid term of employment and during such time that Employee is willing and able to perform his duties under this Agreement, then in that event, Employer agrees to pay Employee a lump sum cash payment equal to the maximum amount of pay permitted by law under Government Code sections 53260 and 53261, up to a lump sum cash payment equal to three (3) months' aggregate salary and health benefits. Upon such termination, Employee shall also be compensated for all earned paid leave and other accrued benefits to date of termination.

In the event Employee is terminated for cause or for conviction, then, in that event, Employer shall have no obligation to pay the aggregate severance sum designated in the above paragraph.

- B. In the event Employer at any time during the term of this Agreement reduces the salary or other financial benefits of Employee in a greater percentage than an applicable across-the-board reduction for all Employees of Employer, or in the event Employer refuses, following written notice, to comply with any other provision benefiting Employee herein, or the Employee resigns following a suggestion, whether formal or informal, by the Administrator that he resign, then, in that event, Employee may, at his option, be deemed to be "terminated" at the date of such reduction, such refusal to comply or such suggestion within the meaning and context of the herein severance pay provisions.

## Section 3: DUTIES

- A. Employer hereby agrees to employ the Employee to perform the functions and duties of such office as set forth in the City Engineer Job Description on file with the Office of the City Clerk and referred to for more particulars, and to perform such other duties as the Administrator may from time to time assign.
- B. The City Engineer is exempt from the overtime provisions of the Fair Labor and Standards Act, as amended, but is expected to engage in those hours of work that are necessary to fulfill the obligations of the City Engineer.
- C. Employee may engage in up to five (5) hours per week for teaching without prior written approval of the Employer. Employee shall not be involved in any other outside employment without written prior approval from the Employer. This includes, but is not limited to, consultant work, speaking engagements, entering an independent contract relationship, or any other activities unrelated to the Employee's employment with the City.
- D. Employee will maintain on file with the Employer his current place of residence and telephone number(s), and shall notify the Employer of any changes within twenty-four (24) hours.

- E. In the event the Employee becomes mentally or physically incapable of performing the City Engineer job duties, the Employer will comply with the law in regard to separating the City Engineer from employment.

#### Section 4: PERFORMANCE EVALUATION

The Administrator shall review and evaluate the performance of the Employee on an ongoing basis and shall, at least once annually on the employment anniversary date established, complete a written performance review and/or evaluation. The review and/or evaluation shall be in accordance with specific criteria developed by the Administrator. Specific criterion may be added or deleted as the Administrator may determine.

#### Section 5: SALARY

Employer agrees to pay the City Engineer for his services rendered pursuant hereto a base salary of \$5,050.21 bi-weekly (City of Madera Salary Schedule Range 499, Step F), payable in installments at the same time as the majority of the Employer's employees. The Administrator may review and adjust said annual base salary in such amounts and to such extent as the Administrator determines, consistent with the published City of Madera Salary Schedule adopted by the City Council of the City of Madera.

Employee desires to take a reduction in his compensation package equivalent to the salary contribution Miscellaneous employees are making towards the CalPERS Employee Contribution, however, employee already pays the full 8% Employee Contribution per Section 6.C. of the Agreement. Therefore, employee desires to reduce his salary in an equivalent amount. Employee's salary as set pursuant to the terms of this Agreement shall be reduced by 2.375% for reasons stated above.

#### Section 6: OTHER TERMS AND CONDITIONS OF EMPLOYMENT

##### A. Paid Leave

Effective the first whole pay period following adoption of this Agreement by the City Council or the effective date of this Agreement, whichever is later, Employee will no longer receive an Annual Leave bank, but will instead receive leave banks/types as outlined below. To transition from the existing Annual Leave program to the revised separate leave types of Vacation, Sick, Administrative and Holiday, Employee's existing Annual Leave will be redistributed and the new leave banks credited as outlined in Exhibit 1.

1. Vacation

Employee will earn vacation credits, dependent upon the number of years of service with the City, for each pay period Employee is in a paid status at least 50% or more of the period. All accrued vacation is paid to Employee upon retirement, resignation or termination.

COMPLETED YEARS = NUMBER OF HOURS RECEIVED PER PAY PERIOD

0 through 4 yrs.	3.6923 hrs. per pay period
5 through 9 yrs.	4.6156 hrs. per pay period
10 through 14 yrs.	5.5384 hrs. per pay period
15 through 19 yrs.	6.1538 hrs. per pay period
20 plus yrs.	6.4615 hrs. per pay period

The maximum vacation Employee is allowed to accumulate is 360 hours.

Each employee shall receive the date known as the "employee anniversary date" as a vacation day. This day shall be added to vacation time at a straight time rate. Credit for the day will not be given until the employee's anniversary date has passed during the current fiscal year and is in addition to the above accrual schedule. Because this Agreement is being executed mid-fiscal year, Employee will not receive an anniversary date credit until the first anniversary date occurring on or after July 1, 2019.

Employee may request to cash out up to 80 hours of vacation once each fiscal year. To be eligible for such cash out provision, employees must have a vacation balance of at least 160 hours at the time of request. Requests must be made in writing to the Payroll Specialist at least 15 days in advance and such requests will be paid on a regular pay date of the City.

2. Sick Leave

Sick leave, with pay, accrues at the rate of 3.6923 hours per pay period an employee is in a paid status at least 50% or more of the period. Rules governing sick leave use and eligibility are noted in the City of Madera Personnel Rules and Regulations.

In addition to the reasons for use of Sick Leave as stated in the Personnel Rules & Regulations, an employee may utilize accrued Sick Leave hours for any absence designated by the City as being covered by the Federal Family Medical Leave Act (FMLA) and/or the California Family Rights Act (CFRA), regardless of the reason for the leave. It will be the employee's responsibility to complete the required paperwork to certify the need for leave and he/she must provide timely notification of the need for leave in compliance with FMLA/CFRA regulations. Use of Sick Leave for this purpose will not commence until such requirements have been met. Use of Sick Leave for family members when the

leave has been designated as FMLA/CFRA will not count against the employee's annual limit of Family Sick Leave as provided in this Agreement.

Employee may cash out sick leave upon retirement or positive separation from the City based on the below table. To be eligible, employees must be employed with the City on a full time basis for a minimum of five years. Negative terminations (discharge) are not eligible for cash out of sick leave. An employee has the option to convert 100% of the remaining sick leave upon retirement to CalPERS service credit.

<u>Years of Service</u>	<u>Sick Leave Cash-Out</u>
5	7.5%
7	10.5%
10	15.0%
15	22.0%
20	30.0%

3. Family Sick Leave

Sick Leave may be used up to the limit of seventy-two hours each calendar year:

3.1. For the diagnosis, care, or treatment of an existing health condition or preventative care for an employee's family member, including:

3.1.1. Child (including a biological, adopted, or foster child, stepchild, legal ward, or a child to whom the employee stands in loco parentis.)

3.1.2. Spouse or Registered Domestic Partner

3.1.3. Parent (including biological, adoptive, or foster parent, stepparent, or legal guardian of an employee or the employee's spouse or registered domestic partner, or a person who stood in loco parentis when the employee was a minor child.)

3.1.4. Grandparent

3.1.5. Grandchild.

3.1.6. Sibling.

3.2. To obtain any relief or services related to being a victim of domestic violence, sexual assault, or stalking including the following with appropriate certification of the need for such services:

3.2.1. A temporary restraining order or restraining order.

- 3.2.2. Other injunctive relief to help ensure the health, safety or welfare of themselves or their children.
- 3.2.3. To seek medical attention for injuries caused by domestic violence, sexual assault, or stalking.
- 3.2.4. To obtain services from a domestic violence shelter, program, or rape crisis center as a result of domestic violence, sexual assault, or stalking.
- 3.2.5. To obtain psychological counseling related to an experience of domestic violence, sexual assault, or stalking.
- 3.2.6. To participate in safety planning and take other actions to increase safety from future domestic violence, sexual assault, or stalking, including temporary or permanent relocation.

Such leave is a part of Sick Leave accrual, not in addition to, the 12 days (96 hours) of Sick Leave earned per year. All conditions and restrictions placed by the City upon the use by an employee of sick leave for himself or herself shall apply to the use by an employee of sick leave to attend to an illness of his or her identified family member.

All other provisions for use of Sick Leave by the employee also apply to Family Sick Leave use. This includes, but is not limited to, the Sick Leave section of the Personnel Rules and Regulations.

#### 4. Administrative Leave

In recognition of the fact that Employee is expected to work all reasonable hours necessary to accomplish assigned tasks he will be credited with five days (40 hours) of Administrative Leave at the beginning of each fiscal year. This leave may not be carried over or cashed out and shall be taken under the same conditions as vacation leave. It is recognized that such time is not intended to provide an hour for hour or greater leave for actual hours worked over those scheduled, but is a benefit in recognition of duty requirements.

#### 5. Holidays

The following (8) hour days are established as holidays with pay: New Year's Day, Martin Luther King's Birthday, President's Day, Memorial Day: Independence Day, Labor Day, Columbus Day, Veteran's Day, Thanksgiving Day, Day After Thanksgiving, and Christmas Day.

The parties agree that the following half days (4 hours) are established as partial holidays with pay: Good Friday and the last work day prior to Christmas or New Year's Day.

The parties agree that to be eligible to receive a paid holiday, the employee must be in a paid status on the scheduled work day either immediately preceding the identified holiday or on the scheduled work day immediately following the identified holiday.

In addition to the City observed holidays outlined above, Employee will receive floating holiday leave hours. Said leave hours shall be credited to the employee on July 1 of each fiscal year, may not be carried over or cashed out, and shall be taken under the same conditions as vacation leave. Employees with 5-9 years of full time continuous service with the City of Madera as of July 1 of each year shall be credited with 20 hours of floating holiday leave. Employees with 10 or more years of full time continuous service with the City of Madera as of July 1 of each year shall be credited with 40 hours of floating holiday leave.

**B. Disability, Health, and Life Insurance**

Employer will provide term life insurance for Employee in the amount of \$50,000 which includes accidental death and dismemberment (AD&D) coverage. Employer also will provide dependent life in the amount of \$5,000 and Long Term Disability Insurance, which provides salary replacement benefits.

Employer agrees to provide a monthly health benefit allowance for the employee to purchase health insurance (including medical, dental and vision coverage of the Employee and family) through an IRS Section 125 Cafeteria Plan. For the 2018/19 Plan Year, the monthly allowance will be as follows:

<b>Enrollment Level</b>	<b>Monthly Allowance</b>
Waiver of Coverage	\$300.00
EE Only	\$740.16
EE+1	\$1,354.83
EE+Family	\$1,971.79

Employer will continue offering Teledoc services for the July 1, 2018-June 30, 2019 plan year. The teledoc services are captured in the medical plan premiums and monthly benefit allowance as indicated above and no contribution beyond the above monthly benefit allowance will be made by Employer.

Medicare - 1.45% Employer's contribution matched by an Employee contribution of 1.45% of Employee's salary for mandated Medicare coverage.

**C. Retirement**

The City participates in the CalPERS retirement system. Employee will be placed on the appropriate miscellaneous plan consistent with CalPERS membership

requirements. The Employee will pay all of the Employee Contribution for the plan in pre-tax dollars under IRS Code 414(h)(2). The Employee will also be responsible for the Employee's Contribution for the 1959 Survivor's Benefit.

#### D. Longevity Pay

In addition to the established base salary, Employee is eligible for longevity pay at the rate of 2 ½% for each five years of service as a management employee to a maximum of 10%.

#### E. Automobile Allowance

Employee will be provided with a \$350 per month automobile allowance for use of his personal vehicle while conducting City business. Employee will not be eligible for any additional mileage or vehicle reimbursement for use of his personal vehicle.

#### F. Bereavement Leave

Employee is allowed an additional three (3) days leave per fiscal year in the event of death of any of the following members of the employee's family: spouse, child, parent or grandparent.

#### G. City Paid Health Insurance Upon Retirement

Upon retirement, if Employee has twenty years of service with the City, at least three (3) of which are in a department head management position, and Employee is eligible for CalPERS retirement at the time of retirement, Employee is eligible for the health benefits noted below.

a) City pays 100% of the premium for medical coverage for employee (retiree) only with City plan through age 64. Employee pays dental and vision coverage if desired. Coverage for a spouse is available at the expense of retired Employee.

b) At age 65, or when eligible for Medicare if earlier, the City will pay or provide a health insurance benefits program which will be supplemental to Medicare. The program will cover only the retired Employee. The retired Employee must first obtain both parts A & B of Medicare.

If Employee qualifies for employer paid health insurance in retirement as outlined in paragraph one of this section, he has the opportunity to make an irrevocable election to receive a monthly payment, equivalent to the premium charged by the carrier/plan the employee is enrolled in at the time of retirement, in lieu of participation in the City medical plan. The monthly payment would be equal to the premium amount charged to cover one person. The payment will continue until the

retiree reaches age 65 or becomes eligible for Medicare, whichever comes first. At age 65, or when eligible for Medicare if earlier, the City will provide a monthly payment equivalent to the premium charged by the Medicare supplement carrier/plan selected by the retiree from those available through the City at the time provided the retiree has subscribed to or enrolled in parts A & B of Medicare. The monthly payment will be equal to the premium amount charged to cover one person.

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When making an election to receive the cash equivalent of the medical insurance premium, the retiring employee waives the right to participate in the City's medical insurance plan for themselves and any dependents except for the rights provided by COBRA continuation coverage.

An employee electing to exercise the option to receive the cash equivalent of the retiree medical insurance premium will only be able to cash out sick leave using Option #1 provided in Section 6.B. of this agreement.

#### H. Retiree Paid Health Insurance

If Employee does not qualify for City Paid Health Insurance Upon Retirement as outlined in Section 6.G. of this agreement, the City will allow Employee to continue to participate in the City health plan offerings (medical, dental, and vision) at the retiree's expense until age 65 or when eligible for Medicare, whichever comes first. Both retiree and dependent coverage are available under this program. An administrative fee in an amount equal to two percent (2%) of the insurance premiums will be charged to the retiree for the City to process the benefit. In the event the administrative fee increases, retiree shall pay the higher fee. If, in the future, the City no longer offers the same insurance carrier/plan the retiree and his or her spouse will be eligible to purchase insurance coverage under the new plan. Coverage must be selected upon retirement; no lapse in coverage will be allowed under this provision. If retiree chooses not to participate or chooses to terminate participation, retiree may not seek coverage under the City health plan at a later date.

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Employee will receive a monthly technology allowance of \$75. Employee will not receive a City-issued cell phone or be provided with any type of wireless or data plan through the City's wireless carrier and will be expected to utilize his personal cell phone for City business. Employee's personal cell phone number must be available to the public.

## J. Other

The Administrator shall fix any such other terms and conditions of employment, as s/he may determine from time to time, relating to the performance of the City Engineer, provided such terms and conditions are not inconsistent with or in conflict with the provisions of this Agreement, the City of Madera Municipal Code or any other law.

### Section 7: TERMINATION

The City Engineer is an at-will employee and serves at the will and pleasure of the Administrator and may be terminated at any time.

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Employer agrees, to the extent it is financially able, to budget for and to pay for professional dues and subscriptions of Employee necessary for his continuation and full participation in national, regional, state, and local associations and organizations necessary and desirable for his continued professional participation, growth, and advancement, and for the good of the Employer.

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- B. Employer also agrees, to the extent it is financially able, to budget for and to pay for travel and subsistence expenses of Employee for short courses, institutes and seminars that are necessary for his professional development and for the good of the Employer.

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In addition to that required under state and local law, Employer shall defend, hold harmless and indemnify Employee against any tort, professional liability claim or demand or other legal action, whether groundless or otherwise, arising out of an alleged act or omission occurring in the performance of Employee's duties as City Engineer. Employer will compromise and settle any such claim or suit and pay the amount of any settlement or judgment rendered thereon.

## Section 11: BONDING

Employer shall bear the full cost of any fidelity or other bonds required of the Employee under any law or ordinance.

## Section 12: CONFLICT OF INTEREST

- A. Employee shall not engage in any business or transaction or have a financial or other personal interest or association, direct or indirect, which is in conflict with the proper discharge of official duties or would tend to impair independence of judgment or action in the performance of official duties. Personal interests, distinguished from financial interests, include an interest as arising from blood or marriage relationships or close business, and personal or political affiliations.
- B. Employee shall also comply with the conflict of interest provisions of the California Government Code and any conflict of interest code applicable to the City Engineer's employment.
- C. Employee is responsible for submitting to the City Clerk the appropriate Conflict of Interest Statements (including Form 700) at the time of appointment, annually thereafter, and at the time of separation from position.

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Alternately, notices required pursuant to this Agreement may be personally served in the same manner as is applicable to civil judicial practice. Notice shall be deemed given as of the date of personal service or as of the date of deposit of such written notice in the course of transmission in the United States Postal Service.

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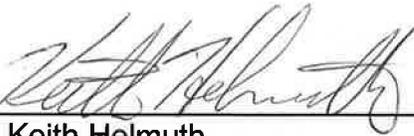
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- A. The text herein shall constitute the entire and fully integrated Agreement between the parties and no promise, representation, warranty or covenant not included in this Agreement has been relied upon by any party hereto.
- B. This Agreement shall be binding upon and inure to the benefit of the heirs at law and executors of the Employee; however, this Agreement is not assignable by either party.
- C. This Agreement shall become effective commencing October 3, 2018.
- D. This Agreement replaces and supersedes any previous Employment Agreements or Agreement Amendments between Employer and Employee.
- E. If any provision, or any portion thereof, contained in this Agreement is held unconstitutional, invalid or unenforceable by a court of law, the remainder of this Agreement, or portion thereof, shall be deemed severable, shall not be affected, and shall remain in full force and effect. This Agreement shall be construed under California law. No waiver of any term or condition of the Agreement shall be considered a continuing waiver thereof.

IN WITNESS WHEREOF, the City of Madera has caused this Agreement to be signed and executed on its behalf by its City Administrator, and duly attested by its City Clerk, and the City Engineer has signed and executed this Agreement, both in duplicate, the day and year first above written.

EMPLOYEE

CITY OF MADERA

By:   
Keith Helmuth

By: \_\_\_\_\_  
Steve Frazier, City Administrator

ATTEST

APPROVED AS TO LEGAL FORM

By: \_\_\_\_\_  
Sonia Alvarez, City Clerk

By: \_\_\_\_\_  
Brent Richardson, City Attorney

## **Exhibit 1**

### **Plan for Transition of Existing Annual Leave to New Leave Banks**

Using Employee's remaining Annual Leave balance at the start of the first whole pay period following adoption of this Agreement or the effective date of the Agreement, whichever comes later, hours will be subtracted first from the additional hours credited bank and then from the front-end bank in the following order. If Employee does not have sufficient leave credits to move to the next step in the order, then they do not receive a beginning credit in that bank.

1. Subtract off remaining City-recognized holidays in the current fiscal year from the additional hours credited bank. These now become observed holidays with pay as opposed to leave time on the books.
2. Subtract off 5 days from the additional hours credited bank and credit to Administrative Leave balance.
3. Any remaining hours in the additional hours credited bank will be credited to the employee's new sick leave bank balance.
4. Any remaining leave in the front-end bank will be credited to the employee's new vacation bank balance (this is inclusive of the Employee Anniversary Date credited to vacation and no anniversary date will be credited pursuant to the new language until after 6/30/19).
  - a. For employees who previously accepted the option of reducing Annual Leave by 7 days in exchange for Management Incentive Pay, Management Incentive Pay will cease and employees will be credited back a pro-rated number of days toward the vacation bank based on the length of time between the effective date of the leave transition and the end of the fiscal year.
5. Employees will be credited with Floating Holiday based on years of service.
6. Effective the pay period when the employee is transitioned to these new leave banks, employees will accrue vacation and sick leave on a per pay period basis consistent with the accrual schedules as stated in this Agreement.

**DIRECTOR OF PARKS & COMMUNITY SERVICES**  
**AT-WILL EMPLOYMENT AGREEMENT**

THIS AGREEMENT, entered into this 3<sup>rd</sup> day of October, 2018, by and between the CITY OF MADERA, State of California, a municipal corporation (hereinafter referred to as "Employer" or "City"), and Mary Anne Seay (hereinafter referred to as "Employee"), both of whom understand as follows:

**Recitals**

WHEREAS, Employer desires to employ the services of Mary Anne Seay as Director of Parks & Community Services for the City of Madera; and

WHEREAS, it is the desire of the City Administrator of the Employer, hereinafter called "Administrator", to provide certain benefits, to establish certain conditions of employment, and to set working conditions of said Director of Parks & Community Services; and

WHEREAS, Mary Anne Seay desires to be employed as Director of Parks & Community Services for said City of Madera.

NOW THEREFORE, in consideration of the mutual covenants herein contained, the parties agree as follows:

**Agreement**

Section 1: TERM

- A. The term of this Agreement shall be 3 years commencing on October 3, 2018. The Employer will provide written notice to the Director of Parks & Community Services on or before July 3, 2021 of its intent to offer to extend, renew, or otherwise not renew this contract for an additional term. If the Employer chooses to extend the Agreement, the Employer will inform the Director of Parks & Community Services of the newly proposed term at the time of its offer to renew. The Director of Parks & Community Services must respond to an offer to extend or renew the Agreement within 45 days of the offered extension or renewal.
- B. The Director of Parks & Community Services shall at all times serve at the pleasure of the Administrator. This means that the Employee is an at-will employee. Nothing in this Agreement shall prevent, limit or otherwise interfere with the right of the Employer to suspend or terminate the services of the Employee at any time.
- C. Nothing in this Agreement shall prevent, limit or otherwise interfere with the right of the Employee to resign at any time, after August 5, 2015, from her position with Employer, upon thirty (30) calendar days advanced written notice to Employer.

## Section 2: TERMINATION AND SEVERANCE PAY

- A. In the event Employee is terminated by the Administrator before expiration of the aforesaid term of employment and during such time that Employee is willing and able to perform her duties under this Agreement, then in that event, Employer agrees to pay Employee a lump sum cash payment equal to the maximum amount of pay permitted by law under Government Code sections 53260 and 53261, up to a lump sum cash payment equal to three (3) months' aggregate salary and health benefits. Upon such termination, Employee shall also be compensated for all earned paid leave and other accrued benefits to date of termination. This shall not include the payout of accumulated sick leave other than as authorized pursuant to this Agreement.

In the event Employee is terminated for cause or for conviction, then, in that event, Employer shall have no obligation to pay the aggregate severance sum designated in the above paragraph.

- B. In the event Employer at any time during the term of this Agreement reduces the salary or other financial benefits of Employee in a greater percentage than an applicable across-the-board reduction for all Employees of Employer, or in the event Employer refuses, following written notice, to comply with any other provision benefiting Employee herein, or the Employee resigns following a suggestion, whether formal or informal, by the Administrator that she resign, then, in that event, Employee may, at her option, be deemed to be "terminated" at the date of such reduction, such refusal to comply or such suggestion within the meaning and context of the herein severance pay provisions.

## Section 3: DUTIES

- A. Employer hereby agrees to employ the Employee to perform the functions and duties of such office as set forth in the Director of Parks & Community Services Job Description on file with the Office of the City Clerk and referred to for more particulars, and to perform such other duties as the Administrator may from time to time assign.
- B. The Director of Parks & Community Services is exempt from the overtime provisions of the Fair Labor and Standards Act, as amended, but is expected to engage in those hours of work that are necessary to fulfill the obligations of the Director of Parks & Community Services.
- C. Employee may engage in up to five (5) hours per week for teaching without prior written approval of the Employer. Employee shall not be involved in any other outside employment without written prior approval from the Employer. This includes, but is not limited to, consultant work, speaking engagements, entering an

independent contract relationship, or any other activities unrelated to the Employee's employment with the City.

- D. Employee will maintain on file with the Employer her current place of residence and telephone number(s), and shall notify the Employer of any changes within twenty-four (24) hours.
- E. In the event Employee becomes mentally or physically incapable of performing the Director of Parks & Community Services job duties, the Employer will comply with the law in regard to separating the Employee from employment.

#### Section 4: PERFORMANCE EVALUATION

The Administrator shall review and evaluate the performance of the Director of Parks & Community Services on an ongoing basis and shall, at least once annually on the employment anniversary date established, complete a written performance review and/or evaluation. The review and/or evaluation shall be in accordance with specific criteria developed by the Administrator. Specific criterion may be added or deleted as the Administrator may determine.

#### Section 5: SALARY

Employer agrees to pay the Director of Parks & Community Services for her services rendered pursuant hereto a base salary of \$5,308.25 bi-weekly (City of Madera Salary Schedule Range 509, Step F), payable in installments at the same time as the majority of the Employer's employees. The Administrator may review and adjust said annual base salary in such amounts and to such extent as the Administrator determines, consistent with the published City of Madera Salary Schedule adopted by the City Council of the City of Madera.

Employee desires to take a reduction in her compensation package equivalent to the salary contribution Miscellaneous employees are making towards the CalPERS Employee Contribution, however, employee already pays the full 8% Employee Contribution per Section 6.C. of the Agreement. Therefore, employee desires to contribute an equivalent amount of salary towards the Employer Contribution to CalPERS. These contributions toward the CalPERS Employer Contribution shall be made as an after tax payroll deduction and be equivalent to 2.375% of salary.

#### Section 6: OTHER TERMS AND CONDITIONS OF EMPLOYMENT

##### A. Paid Leave

Effective the first whole pay period following adoption of this Agreement by the City Council or the effective date of this Agreement, whichever is later, Employee will no longer receive an Annual Leave bank, but will instead receive leave banks/types as outlined below. To transition from the existing Annual Leave program to the revised separate leave types of Vacation, Sick, Administrative and Holiday, Employee's

existing Annual Leave will be redistributed and the new leave banks credited as outlined in Exhibit 1.

1. Vacation

Employee will earn vacation credits, dependent upon the number of years of service with the City, for each pay period Employee is in a paid status at least 50% or more of the period. All accrued vacation is paid to Employee upon retirement, resignation or termination.

COMPLETED YEARS = NUMBER OF HOURS RECEIVED PER PAY PERIOD

0 through 4 yrs.	3.6923 hrs. per pay period
5 through 9 yrs.	4.6156 hrs. per pay period
10 through 14 yrs.	5.5384 hrs. per pay period
15 through 19 yrs.	6.1538 hrs. per pay period
20 plus yrs.	6.4615 hrs. per pay period

The maximum vacation Employee is allowed to accumulate is 360 hours.

Each employee shall receive the date known as the "employee anniversary date" as a vacation day. This day shall be added to vacation time at a straight time rate. Credit for the day will not be given until the employee's anniversary date has passed during the current fiscal year and is in addition to the above accrual schedule. Because this Agreement is being executed mid-fiscal year, Employee will not receive an anniversary date credit until the first anniversary date occurring on or after July 1, 2019.

Employee may request to cash out up to 80 hours of vacation once each fiscal year. To be eligible for such cash out provision, employees must have a vacation balance of at least 160 hours at the time of request. Requests must be made in writing to the Payroll Specialist at least 15 days in advance and such requests will be paid on a regular pay date of the City.

2. Sick Leave

Sick leave, with pay, accrues at the rate of 3.6923 hours per pay period an employee is in a paid status at least 50% or more of the period. Rules governing sick leave use and eligibility are noted in the City of Madera Personnel Rules and Regulations.

In addition to the reasons for use of Sick Leave as stated in the Personnel Rules & Regulations, an employee may utilize accrued Sick Leave hours for any absence designated by the City as being covered by the Federal Family Medical Leave Act (FMLA) and/or the California Family Rights Act (CFRA), regardless of the reason for the leave. It will be the employee's responsibility to complete the required paperwork to certify the need for leave and he/she must provide timely notification of the need for leave in compliance with FMLA/CFRA

regulations. Use of Sick Leave for this purpose will not commence until such requirements have been met. Use of Sick Leave for family members when the leave has been designated as FMLA/CFRA will not count against the employee's annual limit of Family Sick Leave as provided in this Agreement.

Employee may cash out sick leave upon retirement or positive separation from the City based on the below table. To be eligible, employees must be employed with the City on a full time basis for a minimum of five years. Negative terminations (discharge) are not eligible for cash out of sick leave. An employee has the option to convert 100% of the remaining sick leave upon retirement to CalPERS service credit.

<u>Years of Service</u>	<u>Sick Leave Cash-Out</u>
5	7.5%
7	10.5%
10	15.0%
15	22.0%
20	30.0%

### 3. Family Sick Leave

Sick Leave may be used up to the limit of seventy-two hours each calendar year:

3.1. For the diagnosis, care, or treatment of an existing health condition or preventative care for an employee's family member, including:

3.1.1. Child (including a biological, adopted, or foster child, stepchild, legal ward, or a child to whom the employee stands in loco parentis.)

3.1.2. Spouse or Registered Domestic Partner

3.1.3. Parent (including biological, adoptive, or foster parent, stepparent, or legal guardian of an employee or the employee's spouse or registered domestic partner, or a person who stood in loco parentis when the employee was a minor child.)

3.1.4. Grandparent

3.1.5. Grandchild.

3.1.6. Sibling.

3.2. To obtain any relief or services related to being a victim of domestic violence, sexual assault, or stalking including the following with appropriate certification of the need for such services:

- 3.2.1. A temporary restraining order or restraining order.
- 3.2.2. Other injunctive relief to help ensure the health, safety or welfare of themselves or their children.
- 3.2.3. To seek medical attention for injuries caused by domestic violence, sexual assault, or stalking.
- 3.2.4. To obtain services from a domestic violence shelter, program, or rape crisis center as a result of domestic violence, sexual assault, or stalking.
- 3.2.5. To obtain psychological counseling related to an experience of domestic violence, sexual assault, or stalking.
- 3.2.6. To participate in safety planning and take other actions to increase safety from future domestic violence, sexual assault, or stalking, including temporary or permanent relocation.

Such leave is a part of Sick Leave accrual, not in addition to, the 12 days (96 hours) of Sick Leave earned per year. All conditions and restrictions placed by the City upon the use by an employee of sick leave for himself or herself shall apply to the use by an employee of sick leave to attend to an illness of his or her identified family member.

All other provisions for use of Sick Leave by the employee also apply to Family Sick Leave use. This includes, but is not limited to, the Sick Leave section of the Personnel Rules and Regulations.

#### 4. Administrative Leave

In recognition of the fact that Employee is expected to work all reasonable hours necessary to accomplish assigned tasks he will be credited with five days (40 hours) of Administrative Leave at the beginning of each fiscal year. This leave may not be carried over or cashed out and shall be taken under the same conditions as vacation leave. It is recognized that such time is not intended to provide an hour for hour or greater leave for actual hours worked over those scheduled, but is a benefit in recognition of duty requirements.

#### 5. Holidays

The following (8) hour days are established as holidays with pay: New Year's Day, Martin Luther King's Birthday, President's Day, Memorial Day: Independence Day, Labor Day, Columbus Day, Veteran's Day, Thanksgiving Day, Day After Thanksgiving, and Christmas Day.

The parties agree that the following half days (4 hours) are established as partial holidays with pay: Good Friday and the last work day prior to Christmas or New Year's Day.

The parties agree that to be eligible to receive a paid holiday, the employee must be in a paid status on the scheduled work day either immediately preceding the identified holiday or on the scheduled work day immediately following the identified holiday.

In addition to the City observed holidays outlined above, Employee will receive floating holiday leave hours. Said leave hours shall be credited to the employee on July 1 of each fiscal year, may not be carried over or cashed out, and shall be taken under the same conditions as vacation leave. Employees with 5-9 years of full time continuous service with the City of Madera as of July 1 of each year shall be credited with 20 hours of floating holiday leave. Employees with 10 or more years of full time continuous service with the City of Madera as of July 1 of each year shall be credited with 40 hours of floating holiday leave.

**B. Disability, Health, and Life Insurance**

Employer will provide term life insurance for Employee in the amount of \$50,000 which includes accidental death and dismemberment (AD&D) coverage. Employer also will provide dependent life in the amount of \$5,000 and Long Term Disability Insurance, which provides salary replacement benefits.

Employer agrees to provide a monthly health benefit allowance for the employee to purchase health insurance (including medical, dental and vision coverage of the Employee and family) through an IRS Section 125 Cafeteria Plan.

For the 2018/19 Plan Year, the monthly allowance will be as follows:

<b>Enrollment Level</b>	<b>Monthly Allowance</b>
Waiver of Coverage	\$300.00
EE Only	\$740.16
EE+1	\$1,354.83
EE+Family	\$1,971.79

Employer will continue offering Teledoc services for the July 1, 2018-June 30, 2019 plan year. The teledoc services are captured in the medical plan premiums and monthly benefit allowance as indicated above and no contribution beyond the above monthly benefit allowance will be made by Employer.

Medicare - 1.45% Employer's contribution matched by an Employee contribution of 1.45% of Employee's salary for mandated Medicare coverage.

### C. Retirement

The City participates in the CalPERS retirement system. Employee will be placed on the appropriate safety plan consistent with CalPERS membership requirements. The Employee will pay all of the Employee Contribution for the plan in pre-tax dollars under IRS Code 414(h)(2). The Employee will also be responsible for the Employee's Contribution for the 1959 Survivor's Benefit.

### D. Longevity Pay

In addition to the established base salary, Employee is eligible for longevity pay at the rate of 2 ½% for each five years of service as a management employee to a maximum of 10%.

### E. Bereavement Leave

Employee is allowed an additional three (3) days leave per fiscal year in the event of death of any of the following members of the employee's family: spouse, child, parent or grandparent.

### F. City Paid Health Insurance Upon Retirement

Upon retirement, if Employee has twenty years of service with the City, at least three (3) of which are in a department head management position, and Employee is eligible for CalPERS retirement at the time of retirement, Employee is eligible for the health benefits noted below.

a) City pays 100% of the premium for medical coverage for employee (retiree) only with City plan through age 64. Employee pays dental and vision coverage if desired. Coverage for a spouse is available at the expense of retired Employee.

b) At age 65, or when eligible for Medicare if earlier, the City will pay or provide a health insurance benefits program which will be supplemental to Medicare. The program will cover only the retired Employee. The retired Employee must first obtain both parts A & B of Medicare.

If Employee qualifies for employer paid health insurance in retirement as outlined in paragraph one of this section, she has the opportunity to make an irrevocable election to receive a monthly payment, equivalent to the premium charged by the carrier/plan the employee is enrolled in at the time of retirement, in lieu of participation in the City medical plan. The monthly payment would be equal to the premium amount charged to cover one person. The payment will continue until the retiree reaches age 65 or becomes eligible for Medicare, whichever comes first. At age 65, or when eligible for Medicare if earlier, the City will provide a monthly payment equivalent to the premium charged by the Medicare supplement

carrier/plan selected by the retiree from those available through the City at the time provided the retiree has subscribed to or enrolled in parts A & B of Medicare. The monthly payment will be equal to the premium amount charged to cover one person.

If, in the future, the City no longer offers the carrier/plan, the premium for the replacement plan would be used to determine the amount of monthly payment in lieu of participation in the health plan.

When making an election to receive the cash equivalent of the medical insurance premium, the retiring employee waives the right to participate in the City's medical insurance plan for themselves and any dependents except for the rights provided by COBRA continuation coverage.

#### G. Retiree Paid Health Insurance

If Employee does not qualify for City Paid Health Insurance Upon Retirement as outlined in Section 6.F. of this Agreement, the City will allow Employee to continue to participate in the City health plan offerings (medical, dental, and vision) at the retiree's expense until age 65 or when eligible for Medicare, whichever comes first. Both retiree and dependent coverage are available under this program. An administrative fee in an amount equal to two percent (2%) of the insurance premiums will be charged to the retiree for the City to process the benefit. In the event the administrative fee increases, retiree shall pay the higher fee. If, in the future, the City no longer offers the same insurance carrier/plan the retiree and her or her spouse will be eligible to purchase insurance coverage under the new plan. Coverage must be selected upon retirement; no lapse in coverage will be allowed under this provision. If retiree chooses not to participate or chooses to terminate participation, retiree may not seek coverage under the City health plan at a later date.

#### H. Technology Allowance

Employee previously received a monthly technology allowance of \$75 in lieu of a City-issued cell phone. Effective the first whole pay period following approval of this agreement, Employee will no longer receive the technology allowance and will instead be provided a City-issued cell phone.

#### I. Other

The Administrator shall fix any such other terms and conditions of employment, as he may determine from time to time, relating to the performance of the Director of Parks & Community Services, provided such terms and conditions are not inconsistent with or in conflict with the provisions of this Agreement, the City of Madera Municipal Code or any other law.

## Section 7: TERMINATION

Employee is an at-will employee and serves at the will and pleasure of the Administrator and may be terminated at any time.

## Section 8: DUES AND SUBSCRIPTIONS

Employer agrees, to the extent it is financially able, to budget for and to pay for professional dues and subscriptions of Employee necessary for her continuation and full participation in national, regional, state, and local associations and organizations necessary and desirable for her continued professional participation, growth, and advancement, and for the good of the Employer.

## Section 9: PROFESSIONAL DEVELOPMENT

- A. Employer hereby agrees, to the extent it is financially able, to budget for and to pay for travel and subsistence expenses of Employee for professional and official travel, meetings, and occasions adequate to continue the professional development of Employee and to adequately pursue necessary official functions for Employer, including but not limited to such other national, regional, state and local governmental groups and committees thereof which Employee serves as member.
- B. Employer also agrees, to the extent it is financially able, to budget for and to pay for travel and subsistence expenses of Employee for short courses, institutes and seminars that are necessary for her professional development and for the good of the Employer.

## Section 10: INDEMNIFICATION

In addition to that required under state and local law, Employer shall defend, hold harmless and indemnify Employee against any tort, professional liability claim or demand or other legal action, whether groundless or otherwise, arising out of an alleged act or omission occurring in the performance of Employee's duties as Director of Parks & Community Services. Employer will compromise and settle any such claim or suit and pay the amount of any settlement or judgment rendered thereon.

## Section 11: BONDING

Employer shall bear the full cost of any fidelity or other bonds required of the Employee under any law or ordinance.

## Section 12: CONFLICT OF INTEREST

- A. Employee shall not engage in any business or transaction or have a financial or other personal interest or association, direct or indirect, which is in conflict with the

proper discharge of official duties or would tend to impair independence of judgment or action in the performance of official duties. Personal interests, distinguished from financial interests, include an interest as arising from blood or marriage relationships or close business, and personal or political affiliations.

- B. Employee shall also comply with the conflict of interest provisions of the California Government Code and any conflict of interest code applicable to the Director of Parks & Community Services' employment.
- C. Employee is responsible for submitting to the City Clerk the appropriate Conflict of Interest Statements (including Form 700) at the time of appointment, annually thereafter, and at the time of separation from position.

### Section 13: NOTICES

Notices pursuant to this Agreement shall be given by deposit in the custody of the United States Postal Service, postage prepaid, addressed as follows:

Employer: City Administrator, City of Madera, 205 West Fourth Street, Madera CA 93637

Director of Parks & Community Services: [REDACTED]

Alternately, notices required pursuant to this Agreement may be personally served in the same manner as is applicable to civil judicial practice. Notice shall be deemed given as of the date of personal service or as of the date of deposit of such written notice in the course of transmission in the United States Postal Service.

### Section 14: REDUCTION OF BENEFITS

Employer shall not at any time during the term of this Agreement reduce the salary, compensation or other financial benefits of Employee, except to the degree of such reduction across-the-board for all Employees of the Employer.

### Section 15: GENERAL PROVISIONS

- A. The text herein shall constitute the entire and fully integrated Agreement between the parties and no promise, representation, warranty or covenant not included in this Agreement has been relied upon by any party hereto.
- B. This Agreement shall be binding upon and inure to the benefit of the heirs at law and executors of Employee; however, this Agreement is not assignable by either party.
- C. This Agreement shall become effective commencing October 3, 2018.

D. This Agreement replaces and supersedes any previous Employment Agreements or Agreement Amendments between Employer and Employee.

E. If any provision, or any portion thereof, contained in this Agreement is held unconstitutional, invalid or unenforceable by a court of law, the remainder of this Agreement, or portion thereof, shall be deemed severable, shall not be affected, and shall remain in full force and effect. This Agreement shall be construed under California law. No waiver of any term or condition of the Agreement shall be considered a continuing waiver thereof.

IN WITNESS WHEREOF, the City of Madera has caused this Agreement to be signed and executed on its behalf by its City Administrator, and duly attested by its City Clerk, and the Director of Parks & Community Services has signed and executed this Agreement, both in duplicate, the day and year first above written.

EMPLOYEE

CITY OF MADERA

By:  \_\_\_\_\_  
Mary Anne Seay

By: \_\_\_\_\_  
Steve Frazier, City Administrator

ATTEST

APPROVED AS TO LEGAL FORM

By: \_\_\_\_\_  
Sonia Alvarez, City Clerk

By: \_\_\_\_\_  
Brent Richardson, City Attorney

## **Exhibit 1**

### **Plan for Transition of Existing Annual Leave to New Leave Banks**

Using Employee's remaining Annual Leave balance at the start of the first whole pay period following adoption of this Agreement or the effective date of the Agreement, whichever comes later, hours will be subtracted first from the additional hours credited bank and then from the front-end bank in the following order. If Employee does not have sufficient leave credits to move to the next step in the order, then they do not receive a beginning credit in that bank.

1. Subtract off remaining City-recognized holidays in the current fiscal year from the additional hours credited bank. These now become observed holidays with pay as opposed to leave time on the books.
2. Subtract off 5 days from the additional hours credited bank and credit to Administrative Leave balance.
3. Any remaining hours in the additional hours credited bank will be credited to the employee's new sick leave bank balance.
4. Any remaining leave in the front-end bank will be credited to the employee's new vacation bank balance (this is inclusive of the Employee Anniversary Date credited to vacation and no anniversary date will be credited pursuant to the new language until after 6/30/19).
  - a. For employees who previously accepted the option of reducing Annual Leave by 7 days in exchange for Management Incentive Pay, Management Incentive Pay will cease and employees will be credited back a pro-rated number of days toward the vacation bank based on the length of time between the effective date of the leave transition and the end of the fiscal year.
5. Employees will be credited with Floating Holiday based on years of service.
6. Effective the pay period when the employee is transitioned to these new leave banks, employees will accrue vacation and sick leave on a per pay period basis consistent with the accrual schedules as stated in this Agreement.

## **CHIEF OF POLICE AT-WILL EMPLOYMENT AGREEMENT**

THIS AGREEMENT, entered into this 3<sup>rd</sup> day of October 2018, by and between the CITY OF MADERA, State of California, a municipal corporation (hereinafter referred to as "Employer" or "City"), and Charlie Dino Lawson (hereinafter referred to as "Chief of Police"), both of whom understand as follows:

### **Recitals**

WHEREAS, Employer desires to employ the services of Charlie Dino Lawson as Chief of Police for the City of Madera; and

WHEREAS, it is the desire of the City Administrator of the Employer, hereinafter called "Administrator", to provide certain benefits, to establish certain conditions of employment, and to set working conditions of said Chief of Police; and

WHEREAS, Charlie Dino Lawson desires to be employed as Chief of Police for said City of Madera.

NOW THEREFORE, in consideration of the mutual covenants herein contained, the parties agree as follows:

### **Agreement**

#### **Section 1: TERM**

- A. The term of this Agreement shall be 3 years commencing on October 3, 2018. The Employer will provide written notice to the Chief of Police on or before July 3, 2021 of its intent to offer to extend, renew, or otherwise not renew this contract for an additional term. If the Employer chooses to extend the Agreement, the Employer will inform the Chief of Police of the newly proposed term at the time of its offer to renew. The Chief of Police must respond to an offer to extend or renew the Agreement within 45 days of the offered extension or renewal.
- B. The Chief of Police shall at all times serve at the pleasure of the Administrator. This means that the Chief of Police is an at-will employee. Nothing in this Agreement shall prevent, limit or otherwise interfere with the right of the Employer to suspend or terminate the services of the Chief of Police at any time.
- C. Nothing in this Agreement shall prevent, limit or otherwise interfere with the right of the Chief of Police to resign at any time, after October 3, 2018, from his position with Employer, upon thirty (30) calendar days advanced written notice to Employer.

## Section 2: TERMINATION AND SEVERANCE PAY

- A. In the event Employee is terminated by the Administrator before expiration of the aforesaid term of employment and during such time that Employee is willing and able to perform his duties under this Agreement, then in that event, Employer agrees to pay Employee a lump sum cash payment equal to the maximum amount of pay permitted by law under Government Code sections 53260 and 53261, up to a lump sum cash payment equal to three (3) months' aggregate salary and health benefits. Upon such termination, Employee shall also be compensated for all earned paid leave and other accrued benefits to date of termination. This shall not include the payout of accumulated sick leave other than as authorized pursuant to the MOU.

In the event Employee is terminated for cause or for conviction, then, in that event, Employer shall have no obligation to pay the aggregate severance sum designated in the above paragraph.

- B. In the event Employer at any time during the term of this Agreement reduces the salary or other financial benefits of Employee in a greater percentage than an applicable across-the-board reduction for all Employees of Employer, or in the event Employer refuses, following written notice, to comply with any other provision benefiting Employee herein, or the Employee resigns following a suggestion, whether formal or informal, by the Administrator that he resign, then, in that event, Employee may, at his option, be deemed to be "terminated" at the date of such reduction, such refusal to comply or such suggestion within the meaning and context of the herein severance pay provisions.

## Section 3: DUTIES

- A. Employer hereby agrees to employ the Chief of Police to perform the functions and duties of such office as set forth in the Chief of Police Job Description on file with the Office of the City Clerk and referred to for more particulars, and to perform such other duties as the Administrator may from time to time assign.
- B. The Chief of Police is exempt from the overtime provisions of the Fair Labor and Standards Act, as amended, but is expected to engage in those hours of work that are necessary to fulfill the obligations of the Chief of Police.
- C. The Chief of Police shall not be involved in any outside employment without written prior approval from the Employer. This includes, but is not limited to, consultant work, speaking engagements, entering an independent contract relationship, or any other activities unrelated to the Chief of Police's employment with the City. However, Employee may engage in teaching for up to five (5) hours per week without prior written approval of the Administrator.

- D. The Chief of Police will maintain on file with the Employer his current place of residence and telephone number(s), and shall notify the Employer of any changes within twenty-four (24) hours.
- E. In the event the Chief of Police becomes mentally or physically incapable of performing the Chief of Police job duties, the Employer will comply with the law in regard to separating the Police Chief from employment.

#### Section 4: PERFORMANCE EVALUATION

The Administrator shall review and evaluate the performance of the Chief of Police on an ongoing basis and shall, at least once annually on the employment anniversary date established, complete a written performance review and/or evaluation. The review and/or evaluation shall be in accordance with specific criteria developed by the Administrator. Specific criterion may be added or deleted as the Administrator may determine.

#### Section 5: SALARY

Employer agrees to pay the Chief of Police for his services rendered pursuant hereto a base salary of \$6,327.70 bi-weekly (City of Madera Salary Schedule Range 554, Step E), payable in installments at the same time as the majority of the Employer's employees. The Administrator may review and adjust said base salary in such amounts and to such extent as the Administrator determines, consistent with the published City of Madera Salary Schedule adopted by the City Council of the City of Madera.

Employee desires to take a reduction in his compensation package equivalent to the salary contribution other Safety employees are making towards the CalPERS Employee Contribution. Because Employee already pays the full 9% Employee Contribution per Section 6.C. of the Agreement, Employee desires to contribute an equivalent amount of salary towards the Employer Contribution to CalPERS. These contributions toward the CalPERS Employer Contribution shall be made as an after tax payroll deduction and be equivalent to 3% of salary.

#### Section 6: OTHER TERMS AND CONDITIONS OF EMPLOYMENT

##### A. Paid Leave

Effective the first whole pay period following adoption of this Agreement by the City Council or the effective date of this Agreement, whichever is later, Employee will no longer receive an Annual Leave bank, but will instead receive leave banks/types as outlined below. To transition from the existing Annual Leave program to the revised separate leave types of Vacation, Sick, Administrative and Holiday, Employee's existing Annual Leave will be redistributed and the new leave banks credited as outlined in Exhibit 1.

1. Vacation

Employee will earn vacation credits, dependent upon the number of years of service with the City, for each pay period Employee is in a paid status at least 50% or more of the period. All accrued vacation is paid to Employee upon retirement, resignation or termination.

COMPLETED YEARS = NUMBER OF HOURS RECEIVED PER PAY PERIOD

0 through 4 yrs.	3.6923 hrs. per pay period
5 through 9 yrs.	4.6156 hrs. per pay period
10 through 14 yrs.	5.5384 hrs. per pay period
15 through 19 yrs.	6.1538 hrs. per pay period
20 plus yrs.	6.4615 hrs. per pay period

The maximum vacation Employee is allowed to accumulate is 360 hours.

Each employee shall receive the date known as the "employee anniversary date" as a vacation day. This day shall be added to vacation time at a straight time rate. Credit for the day will not be given until the employee's anniversary date has passed during the current fiscal year and is in addition to the above accrual schedule. Because this Agreement is being executed mid-fiscal year, Employee will not receive an anniversary date credit until the first anniversary date occurring on or after July 1, 2019.

Employee may request to cash out up to 80 hours of vacation once each fiscal year. To be eligible for such cash out provision, employees must have a vacation balance of at least 160 hours at the time of request. Requests must be made in writing to the Payroll Specialist at least 15 days in advance and such requests will be paid on a regular pay date of the City.

2. Sick Leave

Sick leave, with pay, accrues at the rate of 3.6923 hours per pay period an employee is in a paid status at least 50% or more of the period. Rules governing sick leave use and eligibility are noted in the City of Madera Personnel Rules and Regulations.

In addition to the reasons for use of Sick Leave as stated in the Personnel Rules & Regulations, an employee may utilize accrued Sick Leave hours for any absence designated by the City as being covered by the Federal Family Medical Leave Act (FMLA) and/or the California Family Rights Act (CFRA), regardless of the reason for the leave. It will be the employee's responsibility to complete the required paperwork to certify the need for leave and he/she must provide timely notification of the need for leave in compliance with FMLA/CFRA regulations. Use of Sick Leave for this purpose will not commence until such requirements have been met. Use of Sick Leave for family members when the leave has been designated as FMLA/CFRA will not count against the employee's annual limit of Family Sick Leave as provided in this Agreement.

Employee may cash out sick leave upon retirement or positive separation from the City based on the below table. To be eligible, employees must be employed with the City on a full time basis for a minimum of five years. Negative terminations (discharge) are not eligible for cash out of sick leave. An employee has the option to convert 100% of the remaining sick leave upon retirement to CalPERS service credit.

<u>Years of Service</u>	<u>Sick Leave Cash-Out</u>
5	7.5%
7	10.5%
10	15.0%
15	22.0%
20	30.0%

### 3. Family Sick Leave

Sick Leave may be used up to the limit of seventy-two hours each calendar year:

3.1. For the diagnosis, care, or treatment of an existing health condition or preventative care for an employee's family member, including:

3.1.1. Child (including a biological, adopted, or foster child, stepchild, legal ward, or a child to whom the employee stands in loco parentis.)

3.1.2. Spouse or Registered Domestic Partner

3.1.3. Parent (including biological, adoptive, or foster parent, stepparent, or legal guardian of an employee or the employee's spouse or registered domestic partner, or a person who stood in loco parentis when the employee was a minor child.)

3.1.4. Grandparent

3.1.5. Grandchild.

3.1.6. Sibling.

3.2. To obtain any relief or services related to being a victim of domestic violence, sexual assault, or stalking including the following with appropriate certification of the need for such services:

3.2.1. A temporary restraining order or restraining order.

3.2.2. Other injunctive relief to help ensure the health, safety or welfare of

themselves or their children.

- 3.2.3. To seek medical attention for injuries caused by domestic violence, sexual assault, or stalking.
- 3.2.4. To obtain services from a domestic violence shelter, program, or rape crisis center as a result of domestic violence, sexual assault, or stalking.
- 3.2.5. To obtain psychological counseling related to an experience of domestic violence, sexual assault, or stalking.
- 3.2.6. To participate in safety planning and take other actions to increase safety from future domestic violence, sexual assault, or stalking, including temporary or permanent relocation.

Such leave is a part of Sick Leave accrual, not in addition to, the 12 days (96 hours) of Sick Leave earned per year. All conditions and restrictions placed by the City upon the use by an employee of sick leave for himself or herself shall apply to the use by an employee of sick leave to attend to an illness of his or her identified family member.

All other provisions for use of Sick Leave by the employee also apply to Family Sick Leave use. This includes, but is not limited to, the Sick Leave section of the Personnel Rules and Regulations.

#### 4. Administrative Leave

In recognition of the fact that Employee is expected to work all reasonable hours necessary to accomplish assigned tasks he will be credited with five days (40 hours) of Administrative Leave at the beginning of each fiscal year. This leave may not be carried over or cashed out and shall be taken under the same conditions as vacation leave. It is recognized that such time is not intended to provide an hour for hour or greater leave for actual hours worked over those scheduled, but is a benefit in recognition of duty requirements.

#### 5. Holidays

The following (8) hour days are established as holidays with pay: New Year's Day, Martin Luther King's Birthday, President's Day, Memorial Day: Independence Day, Labor Day, Columbus Day, Veteran's Day, Thanksgiving Day, Day After Thanksgiving, and Christmas Day.

The parties agree that the following half days (4 hours) are established as partial holidays with pay: Good Friday and the last work day prior to Christmas or New Year's Day.

The parties agree that to be eligible to receive a paid holiday, the employee must be in a paid status on the scheduled work day either immediately preceding the identified holiday or on the scheduled work day immediately following the identified holiday.

In addition to the City observed holidays outlined above, Employee will receive floating holiday leave hours. Said leave hours shall be credited to the employee on July 1 of each fiscal year, may not be carried over or cashed out, and shall be taken under the same conditions as vacation leave. Employees with 5-9 years of full time continuous service with the City of Madera as of July 1 of each year shall be credited with 20 hours of floating holiday leave. Employees with 10 or more years of full time continuous service with the City of Madera as of July 1 of each year shall be credited with 40 hours of floating holiday leave.

**B. Disability, Health, and Life Insurance**

Employer will provide term life insurance for Employee in the amount of \$50,000 which includes accidental death and dismemberment (AD&D) coverage. Employer also will provide dependent life in the amount of \$5,000 and Long Term Disability Insurance, which provides salary replacement benefits.

Employer agrees to provide a monthly health benefit allowance for the employee to purchase health insurance (including medical, dental and vision coverage of the Employee and family) through an IRS Section 125 Cafeteria Plan. For the 2018/19 Plan Year, the monthly allowance will be as follows:

<b>Enrollment Level</b>	<b>Monthly Allowance</b>
Waiver of Coverage	\$300.00
EE Only	\$740.16
EE+1	\$1,354.83
EE+Family	\$1,971.79

Employer will continue offering Teledoc services for the July 1, 2018-June 30, 2019 plan year. The teledoc services are captured in the medical plan premiums and monthly benefit allowance as indicated above and no contribution beyond the above monthly benefit allowance will be made by Employer.

Medicare - 1.45% Employer's contribution matched by an Employee contribution of 1.45% of Employee's salary for mandated Medicare coverage.

**C. Retirement**

The City participates in the CalPERS retirement system. The Chief of Police will be placed on the appropriate safety plan consistent with CalPERS membership requirements. The Employee will pay all of the Employee Contribution for the plan

in pre-tax dollars under IRS Code 414(h)(2). The Employee will also be responsible for the Employee's Contribution for the 1959 Survivor's Benefit.

#### D. Longevity Pay

In addition to the established base salary, Employee is eligible for longevity pay at the rate of 2 ½% for each five years of service as a management employee to a maximum of 10%.

#### E. City Provided Automobile

The Chief of Police will be provided with a City of Madera fleet vehicle for use while performing official duties.

#### F. Bereavement Leave

Employee is allowed an additional three (3) days leave per fiscal year in the event of death of any of the following members of the employee's family: spouse, child, parent or grandparent.

#### G. City Paid Health Insurance Upon Retirement

Upon retirement, if the Chief of Police has twenty years of service with the City, at least three (3) of which are in the position of Chief of Police, and Employee is eligible for CalPERS retirement at the time of retirement, Employee is eligible for the health benefits noted below.

a) City pays 100% of the premium for medical coverage for employee (retiree) only with City plan through age 64. Employee pays dental and vision coverage if desired. Coverage for a spouse is available at the expense of retired Employee.

b) At age 65, or when eligible for Medicare if earlier, the City will pay or provide a health insurance benefits program which will be supplemental to Medicare. The program will cover only the retired Employee. The retired Employee must first obtain both parts A & B of Medicare.

If the Chief of Police qualifies for employer paid health insurance in retirement as outlined in paragraph one of this section, he has the opportunity to make an irrevocable election to receive a monthly payment, equivalent to the premium charged by the carrier/plan the employee is enrolled in at the time of retirement, in lieu of participation in the City medical plan. The monthly payment would be equal to the premium amount charged to cover one person. The payment will continue until the retiree reaches age 65 or becomes eligible for Medicare, whichever comes first. At age 65, or when eligible for Medicare if earlier, the City will provide a monthly payment equivalent to the premium charged by the Medicare supplement carrier/plan selected by the retiree from those available through the

City at the time provided the retiree has subscribed to or enrolled in parts A & B of Medicare. The monthly payment will be equal to the premium amount charged to cover one person.

If, in the future, the City no longer offers the carrier/plan, the premium for the replacement plan would be used to determine the amount of monthly payment in lieu of participation in the health plan.

When making an election to receive the cash equivalent of the medical insurance premium, the retiring employee waives the right to participate in the City's medical insurance plan for themselves and any dependents except for the rights provided by COBRA continuation coverage.

An employee electing to exercise the option to receive the cash equivalent of the retiree medical insurance premium will only be able to cash out sick leave using Option #1 provided in Section 6.B. of this agreement.

#### H. Retiree Paid Health Insurance

If the Chief of Police does not qualify for City Paid Health Insurance Upon Retirement as outlined in Section 6.G. of this agreement, the City will allow Employee to continue to participate in the City health plan offerings (medical, dental, and vision) at the retiree's expense until age 65 or when eligible for Medicare, whichever comes first. Both retiree and dependent coverage are available under this program. An administrative fee in an amount equal to two percent (2%) of the insurance premiums will be charged to the retiree for the City to process the benefit. In the event the administrative fee increases, retiree shall pay the higher fee. If, in the future, the City no longer offers the same insurance carrier/plan, the retiree and his or her spouse will be eligible to purchase insurance coverage under the new plan. Coverage must be selected upon retirement; no lapse in coverage will be allowed under this provision. If retiree chooses not to participate or chooses to terminate participation, retiree may not seek coverage under the City health plan at a later date.

#### I. Other

The Administrator shall fix any such other terms and conditions of employment, as s/he may determine from time to time, relating to the performance of the Chief of Police, provided such terms and conditions are not inconsistent with or in conflict with the provisions of this Agreement, the City of Madera Municipal Code or any other law.

### Section 7: TERMINATION

- A. The Chief of Police is an at-will employee and serves at the will and pleasure of the Administrator and may be terminated at any time.

## Section 8: CONFLICT OF INTEREST

- A. The Chief of Police shall not engage in any business or transaction or have a financial or other personal interest or association, direct or indirect, which is in conflict with the proper discharge of official duties or would tend to impair independence of judgment or action in the performance of official duties. Personal interests, distinguished from financial interests, include an interest as arising from blood or marriage relationships or close business, and personal or political affiliations.
- B. The Chief of Police shall also comply with the conflict of interest provisions of the California Government Code and any conflict of interest code applicable to the Chief of Police's employment.
- C. The Chief of Police is responsible for submitting to the City Clerk the appropriate Conflict of Interest Statements (including Form 700) at the time of appointment, annually thereafter, and at the time of separation from position.

## Section 9: DUES AND SUBSCRIPTIONS

Employer agrees, to the extent it is financially able, to budget for and to pay for professional dues and subscriptions of Employee necessary for his continuation and full participation in national, regional, state and local associations and organizations necessary and desirable for his continued professional participation, growth and advancement, and for the good of the Employer.

## Section 10: PROFESSIONAL DEVELOPMENT

- A. Employer hereby agrees, to the extent it is financially able, to budget for and to pay for travel and subsistence expenses of Employee for professional and official travel, meetings, and occasions adequate to continue the professional development of Employee and to adequately pursue necessary official functions for Employer, including but not limited to such other national, regional, state and local governmental groups and committees thereof which employee serves as a member.
- B. Employer also agrees, to the extent it is financially able, to budget for and to pay for travel and subsistence expenses of Employee for short courses, institutes and seminars that are necessary for his professional development and for the good of the Employer.
- C. All travel and subsistence expenses will be paid/reimbursed in accordance with the City of Madera Travel and Business Expense Policy.

## Section 11: INDEMNIFICATION

In addition to that required under state and local law, Employer shall defend, hold harmless and indemnify Employee against any tort, professional liability claim or demand or other legal action, whether groundless or otherwise, arising out of an alleged act or omission occurring in the performance of Employee's duties as Chief of Police. Employer will compromise and settle any such claim or suit and pay the amount of any settlement or judgment rendered thereon.

#### Section 12: BONDING

Employer shall bear the full cost of any fidelity or other bonds required of the Employee under any law or ordinance.

#### Section 13: NOTICES

Notices pursuant to this Agreement shall be given by deposit in the custody of the United States Postal Service, postage prepaid, addressed as follows:

Employer: City Administrator, City of Madera, 205 West Fourth Street, Madera CA 93637

Chief of Police: On file with the City of Madera Human Resources Department

Alternately, notices required pursuant to this Agreement may be personally served in the same manner as is applicable to civil judicial practice. Notice shall be deemed given as of the date of personal service or as of the date of deposit of such written notice in the course of transmission in the United States Postal Service.

#### Section 14: REDUCTION OF BENEFITS

Employer shall not at any time during the term of this Agreement reduce the salary, compensation or other financial benefits of Employee, except to the degree of such reduction across-the-board for all Employees of the Employer.

#### Section 15: GENERAL PROVISIONS

- A. The text herein shall constitute the entire and fully integrated Agreement between the parties and no promise, representation, warranty or covenant not included in this Agreement has been relied upon by any party hereto.
- B. This Agreement shall be binding upon and inure to the benefit of the heirs at law and executors of the Chief of Police; however, this Agreement is not assignable by either party.
- C. This Agreement shall become effective commencing October 3, 2018.

- D. This Agreement replaces and supersedes any previous Employment Agreements or Agreement Amendments between Employer and Employee.
- E. If any provision, or any portion thereof, contained in this Agreement is held unconstitutional, invalid or unenforceable by a court of law, the remainder of this Agreement, or portion thereof, shall be deemed severable, shall not be affected, and shall remain in full force and effect. This Agreement shall be construed under California law. No waiver of any term or condition of the Agreement shall be considered a continuing waiver thereof.

IN WITNESS WHEREOF, the City of Madera has caused this Agreement to be signed and executed on its behalf by its City Administrator, and duly attested by its City Clerk, and the Chief of Police has signed and executed this Agreement, both in duplicate, the day and year first above written.

EMPLOYEE

CITY OF MADERA

  
\_\_\_\_\_  
Charlie Dino Lawson, Employee

\_\_\_\_\_  
Steve Frazier, Interim City Administrator

ATTEST:

APPROVED AS TO FORM:

\_\_\_\_\_  
Sonia Alvarez, City Clerk

\_\_\_\_\_  
Brent Richardson, City Attorney

## **Exhibit 1**

### **Plan for Transition of Existing Annual Leave to New Leave Banks**

Using Employee's remaining Annual Leave balance at the start of the first whole pay period following adoption of this Agreement or the effective date of the Agreement, whichever comes later, hours will be subtracted first from the additional hours credited bank and then from the front-end bank in the following order. If Employee does not have sufficient leave credits to move to the next step in the order, then they do not receive a beginning credit in that bank.

1. Subtract off remaining City-recognized holidays in the current fiscal year from the additional hours credited bank. These now become observed holidays with pay as opposed to leave time on the books.
2. Subtract off 5 days from the additional hours credited bank and credit to Administrative Leave balance.
3. Any remaining hours in the additional hours credited bank will be credited to the employee's new sick leave bank balance.
4. Any remaining leave in the front-end bank will be split equally between the employee's new sick leave bank and new vacation bank (this is inclusive of the Employee Anniversary Date credited to vacation and no anniversary date will be credited pursuant to the new language until after 6/30/19).
  - a. For employees who previously accepted the option of reducing Annual Leave by 7 days in exchange for Management Incentive Pay, Management Incentive Pay will cease and employees will be credited back a pro-rated number of days toward the vacation bank based on the length of time between the effective date of the leave transition and the end of the fiscal year.
5. Employees will be credited with Floating Holiday based on years of service.
6. Effective the pay period when the employee is transitioned to these new leave banks, employees will accrue vacation and sick leave on a per pay period basis consistent with the accrual schedules as stated in this Agreement.

## **CHIEF BUILDING OFFICIAL AT-WILL EMPLOYMENT AGREEMENT**

THIS AGREEMENT, entered into this 3<sup>rd</sup> day of October, 2018, by and between the CITY OF MADERA, State of California, a municipal corporation (hereinafter referred to as "Employer" or "City"), and Steven Woodworth (hereinafter referred to as "Employee"), both of whom understand as follows:

### **Recitals**

WHEREAS, Employer desires to employ the services of Steven Woodworth as Chief Building Official for the City of Madera; and

WHEREAS, it is the desire of the City Administrator of the Employer, hereinafter called "Administrator", to provide certain benefits, to establish certain conditions of employment, and to set working conditions of said Chief Building Official; and

WHEREAS, Steven Woodworth desires to be employed as Chief Building Official for said City of Madera.

NOW THEREFORE, in consideration of the mutual covenants herein contained, the parties agree as follows:

### **Agreement**

#### **Section 1: TERM**

- A. The term of this Agreement shall be 3 years commencing on October 3, 2018. The Employer will provide written notice to the Chief Building Official on or before July 3, 2021 of its intent to offer to extend, renew, or otherwise not renew this contract for an additional term. If the Employer chooses to extend the Agreement, the Employer will inform the Chief Building Official of the newly proposed term at the time of its offer to renew. The Chief Building Official must respond to an offer to extend or renew the Agreement within 45 days of the offered extension or renewal.
- B. The Chief Building Official shall at all times serve at the pleasure of the Administrator. This means that the Chief Building Official is an at-will employee. Nothing in this Agreement shall prevent, limit or otherwise interfere with the right of the Employer to suspend or terminate the services of the Chief Building Official at any time.
- C. Nothing in this Agreement shall prevent, limit or otherwise interfere with the right of the Chief Building Official to resign at any time, after October 3, 2018, from his position with Employer, upon thirty (30) calendar days advanced written notice to Employer.

## Section 2: TERMINATION AND SEVERANCE PAY

- A. In the event Employee is terminated by the Administrator before expiration of the aforesaid term of employment and during such time that Employee is willing and able to perform his duties under this Agreement, then in that event, Employer agrees to pay Employee a lump sum cash payment equal to the maximum amount of pay permitted by law under Government Code sections 53260 and 53261, up to a lump sum cash payment equal to three (3) months' aggregate salary and health benefits. Upon such termination, Employee shall also be compensated for all earned paid leave and other accrued benefits to date of termination. This shall not include the payout of accumulated sick leave other than as authorized pursuant to this Agreement.

In the event Employee is terminated for cause or for conviction, then, in that event, Employer shall have no obligation to pay the aggregate severance sum designated in the above paragraph.

- B. In the event Employer at any time during the term of this Agreement reduces the salary or other financial benefits of Employee in a greater percentage than an applicable across-the-board reduction for all Employees of Employer, or in the event Employer refuses, following written notice, to comply with any other provision benefiting Employee herein, or the Employee resigns following a suggestion, whether formal or informal, by the Administrator that he resign, then, in that event, Employee may, at his option, be deemed to be "terminated" at the date of such reduction, such refusal to comply or such suggestion within the meaning and context of the herein severance pay provisions.

## Section 3: DUTIES

- A. Employer hereby agrees to employ the Chief Building Official to perform the functions and duties of such office as set forth in the Chief Building Official Job Description on file with the Office of the City Clerk and referred to for more particulars, and to perform such other duties as the Administrator may from time to time assign.
- B. The Chief Building Official is exempt from the overtime provisions of the Fair Labor and Standards Act, as amended, but is expected to engage in those hours of work that are necessary to fulfill the obligations of the Chief Building Official.
- C. Employee may engage in up to five (5) hours per week for teaching without prior written approval of the Employer. Employee shall not be involved in any other outside employment without written prior approval from the Employer. This includes, but is not limited to, consultant work, speaking engagements, entering an independent contract relationship, or any other activities unrelated to the Employee's employment with the City.

- D. The Chief Building Official will maintain on file with the Employer his current place of residence and telephone number(s), and shall notify the Employer of any changes within twenty-four (24) hours.
- E. In the event the Chief Building Official becomes mentally or physically incapable of performing the Chief Building Official job duties, the Employer will comply with the law in regard to separating the Chief Building Official from employment.

#### Section 4: PERFORMANCE EVALUATION

The Administrator shall review and evaluate the performance of the Chief Building Official on an ongoing basis and shall, at least once annually on the employment anniversary date established, complete a written performance review and/or evaluation. The review and/or evaluation shall be in accordance with specific criteria developed by the Administrator. Specific criterion may be added or deleted as the Administrator may determine.

#### Section 5: SALARY

Employer agrees to pay the Chief Building Official for his services rendered pursuant hereto a base salary of \$4,241.32 bi-weekly (City of Madera Salary Schedule Range 464, Step F), payable in installments at the same time as the majority of the Employer's employees. The Administrator may review and adjust said annual base salary in such amounts and to such extent as the Administrator determines, consistent with the published City of Madera Salary Schedule adopted by the City Council of the City of Madera.

Employee desires to take a reduction in his compensation package equivalent to the salary contribution Miscellaneous employees are making towards the CalPERS Employee Contribution. Because Employee already pays the full 8% Employee Contribution per Section 6.C. of the Agreement, Employee desires to contribute an equivalent amount of salary towards the Employer Contribution to CalPERS. These contributions toward the CalPERS Employer Contribution shall be made as an after tax payroll deduction and be equivalent to 2.375% of salary.

#### Section 6: OTHER TERMS AND CONDITIONS OF EMPLOYMENT

##### A. Paid Leave

Effective the first whole pay period following adoption of this Agreement by the City Council or the effective date of this Agreement, whichever is later, Employee will no longer receive an Annual Leave bank, but will instead receive leave banks/types as outlined below. To transition from the existing Annual Leave program to the revised separate leave types of Vacation, Sick, Administrative and Holiday, Employee's existing Annual Leave will be redistributed and the new leave banks credited as outlined in Exhibit 1.

1. Vacation

Employee will earn vacation credits, dependent upon the number of years of service with the City, for each pay period Employee is in a paid status at least 50% or more of the period. All accrued vacation is paid to Employee upon retirement, resignation or termination.

COMPLETED YEARS = NUMBER OF HOURS RECEIVED PER PAY PERIOD

0 through 4 yrs.	3.6923 hrs. per pay period
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15 through 19 yrs.	6.1538 hrs. per pay period
20 plus yrs.	6.4615 hrs. per pay period

The maximum vacation Employee is allowed to accumulate is 360 hours.

Each employee shall receive the date known as the "employee anniversary date" as a vacation day. This day shall be added to vacation time at a straight time rate. Credit for the day will not be given until the employee's anniversary date has passed during the current fiscal year and is in addition to the above accrual schedule. Because this Agreement is being executed mid-fiscal year, Employee will not receive an anniversary date credit until the first anniversary date occurring on or after July 1, 2019.

Employee may request to cash out up to 80 hours of vacation once each fiscal year. To be eligible for such cash out provision, employees must have a vacation balance of at least 160 hours at the time of request. Requests must be made in writing to the Payroll Specialist at least 15 days in advance and such requests will be paid on a regular pay date of the City.

2. Sick Leave

Sick leave, with pay, accrues at the rate of 3.6923 hours per pay period an employee is in a paid status at least 50% or more of the period. Rules governing sick leave use and eligibility are noted in the City of Madera Personnel Rules and Regulations.

In addition to the reasons for use of Sick Leave as stated in the Personnel Rules & Regulations, an employee may utilize accrued Sick Leave hours for any absence designated by the City as being covered by the Federal Family Medical Leave Act (FMLA) and/or the California Family Rights Act (CFRA), regardless of the reason for the leave. It will be the employee's responsibility to complete the required paperwork to certify the need for leave and he/she must provide timely notification of the need for leave in compliance with FMLA/CFRA regulations. Use of Sick Leave for this purpose will not commence until such requirements have been met. Use of Sick Leave for family members when the

leave has been designated as FMLA/CFRA will not count against the employee's annual limit of Family Sick Leave as provided in this Agreement.

Employee may cash out sick leave upon retirement or positive separation from the City based on the below table. To be eligible, employees must be employed with the City on a full time basis for a minimum of five years. Negative terminations (discharge) are not eligible for cash out of sick leave. An employee has the option to convert 100% of the remaining sick leave upon retirement to CalPERS service credit.

<u>Years of Service</u>	<u>Sick Leave Cash-Out</u>
5	7.5%
7	10.5%
10	15.0%
15	22.0%
20	30.0%

### 3. Family Sick Leave

Sick Leave may be used up to the limit of seventy-two hours each calendar year:

3.1. For the diagnosis, care, or treatment of an existing health condition or preventative care for an employee's family member, including:

3.1.1. Child (including a biological, adopted, or foster child, stepchild, legal ward, or a child to whom the employee stands in loco parentis.)

3.1.2. Spouse or Registered Domestic Partner

3.1.3. Parent (including biological, adoptive, or foster parent, stepparent, or legal guardian of an employee or the employee's spouse or registered domestic partner, or a person who stood in loco parentis when the employee was a minor child.)

3.1.4. Grandparent

3.1.5. Grandchild.

3.1.6. Sibling.

3.2. To obtain any relief or services related to being a victim of domestic violence, sexual assault, or stalking including the following with appropriate certification of the need for such services:

3.2.1. A temporary restraining order or restraining order.

- 3.2.2. Other injunctive relief to help ensure the health, safety or welfare of themselves or their children.
- 3.2.3. To seek medical attention for injuries caused by domestic violence, sexual assault, or stalking.
- 3.2.4. To obtain services from a domestic violence shelter, program, or rape crisis center as a result of domestic violence, sexual assault, or stalking.
- 3.2.5. To obtain psychological counseling related to an experience of domestic violence, sexual assault, or stalking.
- 3.2.6. To participate in safety planning and take other actions to increase safety from future domestic violence, sexual assault, or stalking, including temporary or permanent relocation.

Such leave is a part of Sick Leave accrual, not in addition to, the 12 days (96 hours) of Sick Leave earned per year. All conditions and restrictions placed by the City upon the use by an employee of sick leave for himself or herself shall apply to the use by an employee of sick leave to attend to an illness of his or her identified family member.

All other provisions for use of Sick Leave by the employee also apply to Family Sick Leave use. This includes, but is not limited to, the Sick Leave section of the Personnel Rules and Regulations.

#### 4. Administrative Leave

In recognition of the fact that Employee is expected to work all reasonable hours necessary to accomplish assigned tasks he will be credited with five days (40 hours) of Administrative Leave at the beginning of each fiscal year. This leave may not be carried over or cashed out and shall be taken under the same conditions as vacation leave. It is recognized that such time is not intended to provide an hour for hour or greater leave for actual hours worked over those scheduled, but is a benefit in recognition of duty requirements.

#### 5. Holidays

The following (8) hour days are established as holidays with pay: New Year's Day, Martin Luther King's Birthday, President's Day, Memorial Day: Independence Day, Labor Day, Columbus Day, Veteran's Day, Thanksgiving Day, Day After Thanksgiving, and Christmas Day.

The parties agree that the following half days (4 hours) are established as partial holidays with pay: Good Friday and the last work day prior to Christmas or New Year's Day.

The parties agree that to be eligible to receive a paid holiday, the employee must be in a paid status on the scheduled work day either immediately preceding the identified holiday or on the scheduled work day immediately following the identified holiday.

In addition to the City observed holidays outlined above, Employee will receive floating holiday leave hours. Said leave hours shall be credited to the employee on July 1 of each fiscal year, may not be carried over or cashed out, and shall be taken under the same conditions as vacation leave. Employees with 5-9 years of full time continuous service with the City of Madera as of July 1 of each year shall be credited with 20 hours of floating holiday leave. Employees with 10 or more years of full time continuous service with the City of Madera as of July 1 of each year shall be credited with 40 hours of floating holiday leave.

**B. Disability, Health, and Life Insurance**

Employer will provide term life insurance for Employee in the amount of \$50,000 which includes accidental death and dismemberment (AD&D) coverage. Employer also will provide dependent life in the amount of \$5,000 and Long Term Disability Insurance, which provides salary replacement benefits.

Employer agrees to provide a monthly health benefit allowance for the employee to purchase health insurance (including medical, dental and vision coverage of the Employee and family) through an IRS Section 125 Cafeteria Plan. For the 2018/19 Plan Year, the monthly allowance will be as follows:

<b>Enrollment Level</b>	<b>Monthly Allowance</b>
Waiver of Coverage	\$300.00
EE Only	\$740.16
EE+1	\$1,354.83
EE+Family	\$1,971.79

Employer will continue offering Teledoc services for the July 1, 2018-June 30, 2019 plan year. The teledoc services are captured in the medical plan premiums and monthly benefit allowance as indicated above and no contribution beyond the above monthly benefit allowance will be made by Employer.

Medicare - 1.45% Employer's contribution matched by an Employee contribution of 1.45% of Employee's salary for mandated Medicare coverage.

**C. Retirement**

The City participates in the CalPERS retirement system. The Chief Building Official will be placed on the appropriate miscellaneous plan consistent with

CalPERS membership requirements. The Employee will pay all of the Employee Contribution for the plan in pre-tax dollars under IRS Code 414(h)(2). The Employee will also be responsible for the Employee's Contribution for the 1959 Survivor's Benefit.

#### D. Longevity Pay

In addition to the established base salary, Employee is eligible for longevity pay at the rate of 2 ½% for each five years of service as a management employee to a maximum of 10%.

#### E. Bereavement Leave

Employee is allowed an additional three (3) days leave per fiscal year in the event of death of any of the following members of the employee's family: spouse, child, parent or grandparent.

#### F. City Paid Health Insurance Upon Retirement

Upon retirement, if the Chief Building Official has twenty years of service with the City, at least three (3) of which are in a department head management position, and Employee is eligible for CalPERS retirement at the time of retirement, Employee is eligible for the health benefits noted below.

a) City pays 100% of the premium for medical coverage for employee (retiree) only with City plan through age 64. Employee pays dental and vision coverage if desired. Coverage for a spouse is available at the expense of retired Employee.

b) At age 65, or when eligible for Medicare if earlier, the City will pay or provide a health insurance benefits program which will be supplemental to Medicare. The program will cover only the retired Employee. The retired Employee must first obtain both parts A & B of Medicare.

If the Chief Building Official qualifies for employer paid health insurance in retirement as outlined in paragraph one of this section, he has the opportunity to make an irrevocable election to receive a monthly payment, equivalent to the premium charged by the carrier/plan the employee is enrolled in at the time of retirement, in lieu of participation in the City medical plan. The monthly payment would be equal to the premium amount charged to cover one person. The payment will continue until the retiree reaches age 65 or becomes eligible for Medicare, whichever comes first. At age 65, or when eligible for Medicare if earlier, the City will provide a monthly payment equivalent to the premium charged by the Medicare supplement carrier/plan selected by the retiree from those available through the City at the time provided the retiree has subscribed to or enrolled in

parts A & B of Medicare. The monthly payment will be equal to the premium amount charged to cover one person.

If, in the future, the City no longer offers the carrier/plan, the premium for the replacement plan would be used to determine the amount of monthly payment in lieu of participation in the health plan.

When making an election to receive the cash equivalent of the medical insurance premium, the retiring employee waives the right to participate in the City's medical insurance plan for themselves and any dependents except for the rights provided by COBRA continuation coverage.

An employee electing to exercise the option to receive the cash equivalent of the retiree medical insurance premium will only be able to cash out sick leave using Option #1 provided in Section 6.B. of this agreement.

#### G. Retiree Paid Health Insurance

If the Chief Building Official does not qualify for City Paid Health Insurance Upon Retirement as outlined in Section 6.F. of this agreement, the City will allow Employee to continue to participate in the City health plan offerings (medical, dental, and vision) at the retiree's expense until age 65 or when eligible for Medicare, whichever comes first. Both retiree and dependent coverage are available under this program. An administrative fee in an amount equal to two percent (2%) of the insurance premiums will be charged to the retiree for the City to process the benefit. In the event the administrative fee increases, retiree shall pay the higher fee. If, in the future, the City no longer offers the same insurance carrier/plan the retiree and his or her spouse will be eligible to purchase insurance coverage under the new plan. Coverage must be selected upon retirement; no lapse in coverage will be allowed under this provision. If retiree chooses not to participate or chooses to terminate participation, retiree may not seek coverage under the City health plan at a later date.

#### H. Other

The Administrator shall fix any such other terms and conditions of employment, as s/he may determine from time to time, relating to the performance of the Chief Building Official, provided such terms and conditions are not inconsistent with or in conflict with the provisions of this Agreement, the City of Madera Municipal Code or any other law.

### Section 7: TERMINATION

The Chief Building Official is an at-will employee and serves at the will and pleasure of the Administrator and may be terminated at any time.

## Section 8: DUES AND SUBSCRIPTIONS

Employer agrees, to the extent it is financially able, to budget for and to pay for professional dues and subscriptions of Employee necessary for his continuation and full participation in national, regional, state, and local associations and organizations necessary and desirable for his continued professional participation, growth, and advancement, and for the good of the Employer.

## Section 9: PROFESSIONAL DEVELOPMENT

- A. Employer hereby agrees, to the extent it is financially able, to budget for and to pay for travel and subsistence expenses of Employee for professional and official travel, meetings, and occasions adequate to continue the professional development of Employee and to adequately pursue necessary official functions for Employer, including but not limited to such other national, regional, state and local governmental groups and committees thereof which Employee serves as member.
- B. Employer also agrees, to the extent it is financially able, to budget for and to pay for travel and subsistence expenses of Employee for short courses, institutes and seminars that are necessary for his professional development and for the good of the Employer.

## Section 10: INDEMNIFICATION

In addition to that required under state and local law, Employer shall defend, hold harmless and indemnify Employee against any tort, professional liability claim or demand or other legal action, whether groundless or otherwise, arising out of an alleged act or omission occurring in the performance of Employee's duties as Chief Building Official. Employer will compromise and settle any such claim or suit and pay the amount of any settlement or judgment rendered thereon.

## Section 11: BONDING

Employer shall bear the full cost of any fidelity or other bonds required of the Employee under any law or ordinance.

## Section 12: CONFLICT OF INTEREST

- A. The Chief Building Official shall not engage in any business or transaction or have a financial or other personal interest or association, direct or indirect, which is in conflict with the proper discharge of official duties or would tend to impair independence of judgment or action in the performance of official duties. Personal interests, distinguished from financial interests, include an interest as arising from

blood or marriage relationships or close business, and personal or political affiliations.

- B. The Chief Building Official shall also comply with the conflict of interest provisions of the California Government Code and any conflict of interest code applicable to the Chief Building Official's employment.
- C. The Chief Building Official is responsible for submitting to the City Clerk the appropriate Conflict of Interest Statements (including Form 700) at the time of appointment, annually thereafter, and at the time of separation from position.

### Section 13: NOTICES

Notices pursuant to this Agreement shall be given by deposit in the custody of the United States Postal Service, postage prepaid, addressed as follows:

Employer: City Administrator, City of Madera, 205 West Fourth Street, Madera CA 93637

Chief Building Official: [REDACTED]

Alternately, notices required pursuant to this Agreement may be personally served in the same manner as is applicable to civil judicial practice. Notice shall be deemed given as of the date of personal service or as of the date of deposit of such written notice in the course of transmission in the United States Postal Service.

### Section 14: REDUCTION OF BENEFITS

Employer shall not at any time during the term of this Agreement reduce the salary, compensation or other financial benefits of Employee, except to the degree of such reduction across-the-board for all Employees of the Employer.

### Section 15: GENERAL PROVISIONS

- A. The text herein shall constitute the entire and fully integrated Agreement between the parties and no promise, representation, warranty or covenant not included in this Agreement has been relied upon by any party hereto.
- B. This Agreement shall be binding upon and inure to the benefit of the heirs at law and executors of the Chief Building Official; however, this Agreement is not assignable by either party.
- C. This Agreement shall become effective commencing October 3, 2018.
- D. This Agreement replaces and supersedes any previous Employment Agreements or Agreement Amendments between Employer and Employee.

E. If any provision, or any portion thereof, contained in this Agreement is held unconstitutional, invalid or unenforceable by a court of law, the remainder of this Agreement, or portion thereof, shall be deemed severable, shall not be affected, and shall remain in full force and effect. This Agreement shall be construed under California law. No waiver of any term or condition of the Agreement shall be considered a continuing waiver thereof.

IN WITNESS WHEREOF, the City of Madera has caused this Agreement to be signed and executed on its behalf by its City Administrator, and duly attested by its City Clerk, and the Chief Building Official has signed and executed this Agreement, both in duplicate, the day and year first above written.

EMPLOYEE

CITY OF MADERA

By:   
Steven Woodworth

By: \_\_\_\_\_  
Steve Frazier, City Administrator

ATTEST

APPROVED AS TO LEGAL FORM

By: \_\_\_\_\_  
Sonia Alvarez, City Clerk

By: \_\_\_\_\_  
Brent Richardson, City Attorney

## **Exhibit 1**

### **Plan for Transition of Existing Annual Leave to New Leave Banks**

Using Employee's remaining Annual Leave balance at the start of the first whole pay period following adoption of this Agreement or the effective date of the Agreement, whichever comes later, hours will be subtracted first from the additional hours credited bank and then from the front-end bank in the following order. If Employee does not have sufficient leave credits to move to the next step in the order, then they do not receive a beginning credit in that bank.

1. Subtract off remaining City-recognized holidays in the current fiscal year from the additional hours credited bank. These now become observed holidays with pay as opposed to leave time on the books.
2. Subtract off 5 days from the additional hours credited bank and credit to Administrative Leave balance.
3. Any remaining hours in the additional hours credited bank will be credited to the employee's new sick leave bank balance.
4. Any remaining leave in the front-end bank will be credited to the employee's new vacation bank balance (this is inclusive of the Employee Anniversary Date credited to vacation and no anniversary date will be credited pursuant to the new language until after 6/30/19).
  - a. For employees who previously accepted the option of reducing Annual Leave by 7 days in exchange for Management Incentive Pay, Management Incentive Pay will cease and employees will be credited back a pro-rated number of days toward the vacation bank based on the length of time between the effective date of the leave transition and the end of the fiscal year.
5. Employees will be credited with Floating Holiday based on years of service.
6. Effective the pay period when the employee is transitioned to these new leave banks, employees will accrue vacation and sick leave on a per pay period basis consistent with the accrual schedules as stated in this Agreement.

**INFORMATION SERVICES MANAGER**  
**AT-WILL EMPLOYMENT AGREEMENT**

THIS AGREEMENT, entered into this 3<sup>rd</sup> day of October, 2018, by and between the CITY OF MADERA, State of California, a municipal corporation (hereinafter referred to as "Employer" or "City"), and Mark Souders (hereinafter referred to as "Employee"), both of whom understand as follows:

**Recitals**

WHEREAS, Employer desires to continue to employ the services of Mark Souders as Information Services Manager for the City of Madera; and

WHEREAS, it is the desire of the City Administrator of the Employer, hereinafter called "Administrator", to provide certain benefits, to establish certain conditions of employment, and to set working conditions of said Information Services Manager; and

WHEREAS, Mark Souders desires to be employed as Information Services Manager for said City of Madera.

NOW THEREFORE, in consideration of the mutual covenants herein contained, the parties agree as follows:

**Agreement**

Section 1: TERM

- A. The term of this Agreement shall be 3 years commencing on October 3, 2018. Employer will provide written notice to the Employee on or before July 3, 2021 of its intent to offer to extend, renew, or otherwise not renew this contract for an additional term. If the Employer chooses to extend the Agreement, the Employer will inform the Employee of the newly proposed term at the time of its offer to renew. The Employee must respond to an offer to extend or renew the Agreement within 45 days of the offered extension or renewal.
- B. The Information Services Manager shall at all times serve at the pleasure of the Administrator. This means that the Employee is an at-will employee. Nothing in this Agreement shall prevent, limit or otherwise interfere with the right of the Employer to suspend or terminate the services of the Employee at any time.
- C. Nothing in this Agreement shall prevent, limit or otherwise interfere with the right of the Employee to resign at any time, after October 3, 2018, from his position with Employer, upon thirty (30) calendar days advanced written notice to Employer.

## Section 2: TERMINATION AND SEVERANCE PAY

- A. In the event Employee is terminated by the Administrator before expiration of the aforesaid term of employment and during such time that Employee is willing and able to perform his duties under this Agreement, then in that event, Employer agrees to pay Employee a lump sum cash payment equal to the maximum amount of pay permitted by law under Government Code sections 53260 and 53261, up to a lump sum cash payment equal to three (3) months' aggregate salary and health benefits. Upon such termination, Employee shall also be compensated for all earned paid leave and other accrued benefits to date of termination. This shall not include the payout of accumulated sick leave other than as authorized pursuant to this Agreement.

In the event Employee is terminated for cause or for conviction, then, in that event, Employer shall have no obligation to pay the aggregate severance sum designated in the above paragraph.

- B. In the event Employer at any time during the term of this Agreement reduces the salary or other financial benefits of Employee in a greater percentage than an applicable across-the-board reduction for all Employees of Employer, or in the event Employer refuses, following written notice, to comply with any other provision benefiting Employee herein, or the Employee resigns following a suggestion, whether formal or informal, by the Administrator that he resign, then, in that event, Employee may, at his option, be deemed to be "terminated" at the date of such reduction, such refusal to comply or such suggestion within the meaning and context of the herein severance pay provisions.

## Section 3: DUTIES

- A. Employer hereby agrees to employ the Employee to perform the functions and duties of such office as set forth in the Information Services Manager Job Description on file with the Office of the City Clerk and referred to for more particulars, and to perform such other duties as the Administrator may from time to time assign.
- B. The Information Services Manager is exempt from the overtime provisions of the Fair Labor and Standards Act, as amended, but is expected to engage in those hours of work that are necessary to fulfill the obligations of the Information Services Manager.
- C. Employee may engage in up to five (5) hours per week for teaching without prior written approval of the Employer. Employee shall not be involved in any other outside employment without written prior approval from the Employer. This includes, but is not limited to, consultant work, speaking engagements, entering an independent contract relationship, or any other activities unrelated to the Employee's employment with the City.

- D. Employee will maintain on file with the Employer his current place of residence and telephone number(s), and shall notify the Employer of any changes within twenty-four (24) hours.
- E. In the event the Employee becomes mentally or physically incapable of performing the Information Services Manager job duties, the Employer will comply with the law in regard to separating the Information Services Manager from employment.

#### Section 4: PERFORMANCE EVALUATION

The Administrator shall review and evaluate the performance of the Employee on an ongoing basis and shall, at least once annually on the employment anniversary date established, complete a written performance review and/or evaluation. The review and/or evaluation shall be in accordance with specific criteria developed by the Administrator. Specific criterion may be added or deleted as the Administrator may determine.

#### Section 5: SALARY

Employer agrees to pay the Information Services Manager for his services rendered pursuant hereto, a base salary of \$4,043.50 bi-weekly (City of Madera Salary Schedule Range 474, Step D), payable in installments at the same time as the majority of the Employer's employees. The Administrator may review and adjust said base salary in such amounts and to such extent as the Administrator determines, consistent with the published City of Madera Salary Schedule adopted by the City Council of the City of Madera.

Employee desires to take a reduction in his compensation package equivalent to the salary contribution Miscellaneous employees are making towards the CalPERS Employee Contribution, however, employee already pays the full 8% Employee Contribution per Section 6.C. of the Agreement. Therefore, employee desires to reduce his salary in an equivalent amount. Employee's salary as set pursuant to the terms of this Agreement shall be reduced by 2.375% for reasons stated above.

#### Section 6: OTHER TERMS AND CONDITIONS OF EMPLOYMENT

##### A. Paid Leave

Effective the first whole pay period following adoption of this Agreement by the City Council or the effective date of this Agreement, whichever is later, Employee will no longer receive an Annual Leave bank, but will instead receive leave banks/types as outlined below. To transition from the existing Annual Leave program to the revised separate leave types of Vacation, Sick, Administrative and Holiday, Employee's existing Annual Leave will be redistributed and the new leave banks credited as outlined in Exhibit 1.

1. Vacation

Employee will earn vacation credits, dependent upon the number of years of service with the City, for each pay period Employee is in a paid status at least 50% or more of the period. All accrued vacation is paid to Employee upon retirement, resignation or termination.

COMPLETED YEARS = NUMBER OF HOURS RECEIVED PER PAY PERIOD

0 through 4 yrs.	3.6923 hrs. per pay period
5 through 9 yrs.	4.6156 hrs. per pay period
10 through 14 yrs.	5.5384 hrs. per pay period
15 through 19 yrs.	6.1538 hrs. per pay period
20 plus yrs.	6.4615 hrs. per pay period

The maximum vacation Employee is allowed to accumulate is 360 hours.

Each employee shall receive the date known as the "employee anniversary date" as a vacation day. This day shall be added to vacation time at a straight time rate. Credit for the day will not be given until the employee's anniversary date has passed during the current fiscal year and is in addition to the above accrual schedule. Because this Agreement is being executed mid-fiscal year, Employee will not receive an anniversary date credit until the first anniversary date occurring on or after July 1, 2019.

Employee may request to cash out up to 80 hours of vacation once each fiscal year. To be eligible for such cash out provision, employees must have a vacation balance of at least 160 hours at the time of request. Requests must be made in writing to the Payroll Specialist at least 15 days in advance and such requests will be paid on a regular pay date of the City.

2. Sick Leave

Sick leave, with pay, accrues at the rate of 3.6923 hours per pay period an employee is in a paid status at least 50% or more of the period. Rules governing sick leave use and eligibility are noted in the City of Madera Personnel Rules and Regulations.

In addition to the reasons for use of Sick Leave as stated in the Personnel Rules & Regulations, an employee may utilize accrued Sick Leave hours for any absence designated by the City as being covered by the Federal Family Medical Leave Act (FMLA) and/or the California Family Rights Act (CFRA), regardless of the reason for the leave. It will be the employee's responsibility to complete the required paperwork to certify the need for leave and he/she must provide timely notification of the need for leave in compliance with FMLA/CFRA regulations. Use of Sick Leave for this purpose will not commence until such requirements have been met. Use of Sick Leave for family members when the

leave has been designated as FMLA/CFRA will not count against the employee's annual limit of Family Sick Leave as provided in this Agreement.

Employee may cash out sick leave upon retirement or positive separation from the City based on the below table. To be eligible, employees must be employed with the City on a full time basis for a minimum of five years. Negative terminations (discharge) are not eligible for cash out of sick leave. An employee has the option to convert 100% of the remaining sick leave upon retirement to CalPERS service credit.

<u>Years of Service</u>	<u>Sick Leave Cash-Out</u>
5	7.5%
7	10.5%
10	15.0%
15	22.0%
20	30.0%

### 3. Family Sick Leave

Sick Leave may be used up to the limit of seventy-two hours each calendar year:

3.1. For the diagnosis, care, or treatment of an existing health condition or preventative care for an employee's family member, including:

3.1.1. Child (including a biological, adopted, or foster child, stepchild, legal ward, or a child to whom the employee stands in loco parentis.)

3.1.2. Spouse or Registered Domestic Partner

3.1.3. Parent (including biological, adoptive, or foster parent, stepparent, or legal guardian of an employee or the employee's spouse or registered domestic partner, or a person who stood in loco parentis when the employee was a minor child.)

3.1.4. Grandparent

3.1.5. Grandchild.

3.1.6. Sibling.

3.2. To obtain any relief or services related to being a victim of domestic violence, sexual assault, or stalking including the following with appropriate certification of the need for such services:

3.2.1. A temporary restraining order or restraining order.

- 3.2.2. Other injunctive relief to help ensure the health, safety or welfare of themselves or their children.
- 3.2.3. To seek medical attention for injuries caused by domestic violence, sexual assault, or stalking.
- 3.2.4. To obtain services from a domestic violence shelter, program, or rape crisis center as a result of domestic violence, sexual assault, or stalking.
- 3.2.5. To obtain psychological counseling related to an experience of domestic violence, sexual assault, or stalking.
- 3.2.6. To participate in safety planning and take other actions to increase safety from future domestic violence, sexual assault, or stalking, including temporary or permanent relocation.

Such leave is a part of Sick Leave accrual, not in addition to, the 12 days (96 hours) of Sick Leave earned per year. All conditions and restrictions placed by the City upon the use by an employee of sick leave for himself or herself shall apply to the use by an employee of sick leave to attend to an illness of his or her identified family member.

All other provisions for use of Sick Leave by the employee also apply to Family Sick Leave use. This includes, but is not limited to, the Sick Leave section of the Personnel Rules and Regulations.

#### 4. Administrative Leave

In recognition of the fact that Employee is expected to work all reasonable hours necessary to accomplish assigned tasks he will be credited with five days (40 hours) of Administrative Leave at the beginning of each fiscal year. This leave may not be carried over or cashed out and shall be taken under the same conditions as vacation leave. It is recognized that such time is not intended to provide an hour for hour or greater leave for actual hours worked over those scheduled, but is a benefit in recognition of duty requirements.

#### 5. Holidays

The following (8) hour days are established as holidays with pay: New Year's Day, Martin Luther King's Birthday, President's Day, Memorial Day: Independence Day, Labor Day, Columbus Day, Veteran's Day, Thanksgiving Day, Day After Thanksgiving, and Christmas Day.

The parties agree that the following half days (4 hours) are established as partial holidays with pay: Good Friday and the last work day prior to Christmas or New Year's Day.

The parties agree that to be eligible to receive a paid holiday, the employee must be in a paid status on the scheduled work day either immediately preceding the identified holiday or on the scheduled work day immediately following the identified holiday.

In addition to the City observed holidays outlined above, Employee will receive floating holiday leave hours. Said leave hours shall be credited to the employee on July 1 of each fiscal year, may not be carried over or cashed out, and shall be taken under the same conditions as vacation leave. Employees with 5-9 years of full time continuous service with the City of Madera as of July 1 of each year shall be credited with 20 hours of floating holiday leave. Employees with 10 or more years of full time continuous service with the City of Madera as of July 1 of each year shall be credited with 40 hours of floating holiday leave.

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#### G. Technology Allowance

Employee will receive a monthly technology allowance of \$75. Employee will not receive a City-issued cell phone or be provided with any type of wireless or data plan for a cell phone through the City's wireless carrier and will be expected to utilize his personal cell phone for City business. Employee's personal cell phone number must be available to the public.

#### H. Other

The Administrator shall fix any such other terms and conditions of employment, as s/he may determine from time to time, relating to the performance of the Information Services Manager, provided such terms and conditions are not inconsistent with or in conflict with the provisions of this Agreement, the City of Madera Municipal Code or any other law.

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The Information Services Manager is an at-will employee and serves at the will and pleasure of the Administrator and may be terminated at any time.

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Employer shall bear the full cost of any fidelity or other bonds required of the Employee under any law or ordinance.

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- A. Employee shall not engage in any business or transaction or have a financial or other personal interest or association, direct or indirect, which is in conflict with the

proper discharge of official duties or would tend to impair independence of judgment or action in the performance of official duties. Personal interests, distinguished from financial interests, include an interest as arising from blood or marriage relationships or close business, and personal or political affiliations.

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Employee: Mark Souders [REDACTED]

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Employer shall not at any time during the term of this Agreement reduce the salary, compensation or other financial benefits of Employee, except to the degree of such reduction across-the-board for all Employees of the Employer.

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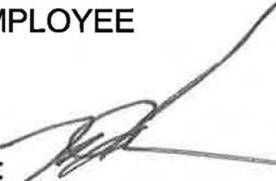
- A. The text herein shall constitute the entire and fully integrated Agreement between the parties and no promise, representation, warranty or covenant not included in this Agreement has been relied upon by any party hereto.
- B. This Agreement shall be binding upon and inure to the benefit of the heirs at law and executors of the Employee; however, this Agreement is not assignable by either party.
- C. This Agreement shall become effective commencing October 3, 2018.

- D. This Agreement replaces and supersedes any previous Employment Agreements or Agreement Amendments between Employer and Employee.
- E. If any provision, or any portion thereof, contained in this Agreement is held unconstitutional, invalid or unenforceable by a court of law, the remainder of this Agreement, or portion thereof, shall be deemed severable, shall not be affected, and shall remain in full force and effect. This Agreement shall be construed under California law. No waiver of any term or condition of the Agreement shall be considered a continuing waiver thereof.

IN WITNESS WHEREOF, the City of Madera has caused this Agreement to be signed and executed on its behalf by its City Administrator, and duly attested by its City Clerk, and the Information Services Manager has signed and executed this Agreement, both in duplicate, the day and year first above written.

EMPLOYEE

CITY OF MADERA

By:   
\_\_\_\_\_   
Mark Souders

By: \_\_\_\_\_  
Steve Frazier, City Administrator

ATTEST

APPROVED AS TO LEGAL FORM

By: \_\_\_\_\_  
Sonia Alvarez, City Clerk

By: \_\_\_\_\_  
Brent Richardson, City Attorney

## **Exhibit 1**

### **Plan for Transition of Existing Annual Leave to New Leave Banks**

Using Employee's remaining Annual Leave balance at the start of the first whole pay period following adoption of this Agreement or the effective date of the Agreement, whichever comes later, hours will be subtracted first from the additional hours credited bank and then from the front-end bank in the following order. If Employee does not have sufficient leave credits to move to the next step in the order, then they do not receive a beginning credit in that bank.

1. Subtract off remaining City-recognized holidays in the current fiscal year from the additional hours credited bank. These now become observed holidays with pay as opposed to leave time on the books.
2. Subtract off 5 days from the additional hours credited bank and credit to Administrative Leave balance.
3. Any remaining hours in the additional hours credited bank will be credited to the employee's new sick leave bank balance.
4. Any remaining leave in the front-end bank will be credited to the employee's new vacation bank balance (this is inclusive of the Employee Anniversary Date credited to vacation and no anniversary date will be credited pursuant to the new language until after 6/30/19).
  - a. For employees who previously accepted the option of reducing Annual Leave by 7 days in exchange for Management Incentive Pay, Management Incentive Pay will cease and employees will be credited back a pro-rated number of days toward the vacation bank based on the length of time between the effective date of the leave transition and the end of the fiscal year.
5. Employees will be credited with Floating Holiday based on years of service.
6. Effective the pay period when the employee is transitioned to these new leave banks, employees will accrue vacation and sick leave on a per pay period basis consistent with the accrual schedules as stated in this Agreement.

## **DIRECTOR OF FINANCIAL SERVICES AT-WILL EMPLOYMENT AGREEMENT**

THIS AGREEMENT, entered into this 3<sup>rd</sup> day of October, 2018, by and between the CITY OF MADERA, State of California, a municipal corporation (hereinafter referred to as "Employer" or "City"), and Tim Przybyla (hereinafter referred to as "Employee"), both of whom understand as follows:

### **Recitals**

WHEREAS, Employer desires to employ the services of Tim Przybyla as Director of Financial Services for the City of Madera; and

WHEREAS, it is the desire of the City Administrator of the Employer, hereinafter called "Administrator", to provide certain benefits, to establish certain conditions of employment, and to set working conditions of said Director of Financial Services; and

WHEREAS, Tim Przybyla desires to be employed as Director of Financial Services for said City of Madera.

NOW THEREFORE, in consideration of the mutual covenants herein contained, the parties agree as follows:

### **Agreement**

#### **Section 1: TERM**

- A. The term of this Agreement shall be 3 years commencing on October 3, 2018. The Employer will provide written notice to the Employee on or before July 3, 2021 of its intent to offer to extend, renew, or otherwise not renew this contract for an additional term. If the Employer chooses to extend the Agreement, the Employer will inform the Employee of the newly proposed term at the time of its offer to renew. The Employee must respond to an offer to extend or renew the Agreement within 45 days of the offered extension or renewal.
- B. The Director of Financial Services shall at all times serve at the pleasure of the Administrator. This means that the Employee is an at-will employee. Nothing in this Agreement shall prevent, limit or otherwise interfere with the right of the Employer to suspend or terminate the services of the Employee at any time.
- C. Nothing in this Agreement shall prevent, limit or otherwise interfere with the right of the Employee to resign at any time after October 3, 2018, from his position with Employer, upon thirty (30) calendar days advanced written notice to Employer.

## Section 2: TERMINATION AND SEVERANCE PAY

- A. In the event Employee is terminated by the Administrator before expiration of the aforesaid term of employment and during such time that Employee is willing and able to perform his duties under this Agreement, then in that event, Employer agrees to pay Employee a lump sum cash payment equal to the maximum amount of pay permitted by law under Government Code sections 53260 and 53261, up to a lump sum cash payment equal to three (3) months' aggregate salary and health benefits. Upon such termination, Employee shall also be compensated for all earned paid leave and other accrued benefits to date of termination. This shall not include the payout of accumulated sick leave other than as authorized pursuant to this Agreement.

In the event Employee is terminated for cause or for conviction, then, in that event, Employer shall have no obligation to pay the aggregate severance sum designated in the above paragraph.

- B. In the event Employer at any time during the term of this Agreement reduces the salary or other financial benefits of Employee in a greater percentage than an applicable across-the-board reduction for all Employees of Employer, or in the event Employer refuses, following written notice, to comply with any other provision benefiting Employee herein, or the Employee resigns following a suggestion, whether formal or informal, by the Administrator that he resign, then, in that event, Employee may, at his option, be deemed to be "terminated" at the date of such reduction, such refusal to comply or such suggestion within the meaning and context of the herein severance pay provisions.

## Section 3: DUTIES

- A. Employer hereby agrees to employ the Employee to perform the functions and duties of such office as set forth in the Director of Financial Services Job Description on file with the Office of the City Clerk and referred to for more particulars, and to perform such other duties as the Administrator may from time to time assign.
- B. The Director of Financial Services is exempt from the overtime provisions of the Fair Labor and Standards Act, as amended, but is expected to engage in those hours of work that are necessary to fulfill the obligations of the Director of Financial Services.
- C. Employee may engage in up to five (5) hours per week for teaching without prior written approval of the Employer. Employee shall not be involved in any other outside employment without written prior approval from the Employer. This includes, but is not limited to, consultant work, speaking engagements, entering an independent contract relationship, or any other activities unrelated to the Employee's employment with the City.

- D. Employee will maintain on file with the Employer his current place of residence and telephone number(s), and shall notify the Employer of any changes within twenty-four (24) hours.
- E. In the event the Employee becomes mentally or physically incapable of performing the Director of Financial Services job duties, the Employer will comply with the law in regard to separating the Director of Financial Services from employment.

#### Section 4: PERFORMANCE EVALUATION

The Administrator shall review and evaluate the performance of the Employee on an ongoing basis and shall, at least once annually on the employment anniversary date established, complete a written performance review and/or evaluation. The review and/or evaluation shall be in accordance with specific criteria developed by the Administrator. Specific criterion may be added or deleted as the Administrator may determine.

#### Section 5: SALARY

Employer agrees to pay the Director of Financial Services for his services rendered pursuant hereto a base salary of \$5,749.43 bi-weekly (City of Madera Salary Schedule Range 525, Step F), payable in installments at the same time as the majority of the Employer's employees. The Administrator may review and adjust said annual base salary in such amounts and to such extent as the Administrator determines, consistent with the published City of Madera Salary Schedule adopted by the City Council of the City of Madera.

Employee desires to take a reduction in his compensation package equivalent to the salary contribution Miscellaneous employees are making towards the CalPERS Employee Contribution, however, employee already pays the full 7% Employee Contribution per Section 6.C. of the Agreement. Therefore, employee desires to contribute an equivalent amount of salary towards the Employer Contribution to CalPERS. These contributions toward the CalPERS Employer Contribution shall be made as an after tax payroll deduction and be equivalent to 2.375% of salary.

#### Section 6: OTHER TERMS AND CONDITIONS OF EMPLOYMENT

##### A. Paid Leave

Effective the first whole pay period following adoption of this Agreement by the City Council or the effective date of this Agreement, whichever is later, Employee will no longer receive an Annual Leave bank, but will instead receive leave banks/types as outlined below. To transition from the existing Annual Leave program to the revised separate leave types of Vacation, Sick, Administrative and Holiday, Employee's existing Annual Leave will be redistributed and the new leave banks credited as

outlined in Exhibit 1. For the sole purpose of leave accrual as provided in this Section 6.A., Employee received credit for 9 years of prior public service upon hire.

1. Vacation

Employee will earn vacation credits, dependent upon the number of years of service with the City, for each pay period Employee is in a paid status at least 50% or more of the period. All accrued vacation is paid to Employee upon retirement, resignation or termination.

COMPLETED YEARS = NUMBER OF HOURS RECEIVED PER PAY PERIOD

0 through 4 yrs.	3.6923 hrs. per pay period
5 through 9 yrs.	4.6156 hrs. per pay period
10 through 14 yrs.	5.5384 hrs. per pay period
15 through 19 yrs.	6.1538 hrs. per pay period
20 plus yrs.	6.4615 hrs. per pay period

The maximum vacation Employee is allowed to accumulate is 360 hours.

Each employee shall receive the date known as the "employee anniversary date" as a vacation day. This day shall be added to vacation time at a straight time rate. Credit for the day will not be given until the employee's anniversary date has passed during the current fiscal year and is in addition to the above accrual schedule. Because this Agreement is being executed mid-fiscal year, Employee will not receive an anniversary date credit until the first anniversary date occurring on or after July 1, 2019.

Employee may request to cash out up to 80 hours of vacation once each fiscal year. To be eligible for such cash out provision, employees must have a vacation balance of at least 160 hours at the time of request. Requests must be made in writing to the Payroll Specialist at least 15 days in advance and such requests will be paid on a regular pay date of the City.

2. Sick Leave

Sick leave, with pay, accrues at the rate of 3.6923 hours per pay period an employee is in a paid status at least 50% or more of the period. Rules governing sick leave use and eligibility are noted in the City of Madera Personnel Rules and Regulations.

In addition to the reasons for use of Sick Leave as stated in the Personnel Rules & Regulations, an employee may utilize accrued Sick Leave hours for any absence designated by the City as being covered by the Federal Family Medical Leave Act (FMLA) and/or the California Family Rights Act (CFRA), regardless of the reason for the leave. It will be the employee's responsibility to complete the required paperwork to certify the need for leave and he/she must provide timely notification of the need for leave in compliance with FMLA/CFRA

regulations. Use of Sick Leave for this purpose will not commence until such requirements have been met. Use of Sick Leave for family members when the leave has been designated as FMLA/CFRA will not count against the employee's annual limit of Family Sick Leave as provided in this Agreement.

Employee may cash out sick leave upon retirement or positive separation from the City based on the below table. To be eligible, employees must be employed with the City on a full time basis for a minimum of five years. Negative terminations (discharge) are not eligible for cash out of sick leave. An employee has the option to convert 100% of the remaining sick leave upon retirement to CalPERS service credit.

<u>Years of Service</u>	<u>Sick Leave Cash-Out</u>
5	7.5%
7	10.5%
10	15.0%
15	22.0%
20	30.0%

3. Family Sick Leave

Sick Leave may be used up to the limit of seventy-two hours each calendar year:

3.1. For the diagnosis, care, or treatment of an existing health condition or preventative care for an employee's family member, including:

3.1.1. Child (including a biological, adopted, or foster child, stepchild, legal ward, or a child to whom the employee stands in loco parentis.)

3.1.2. Spouse or Registered Domestic Partner

3.1.3. Parent (including biological, adoptive, or foster parent, stepparent, or legal guardian of an employee or the employee's spouse or registered domestic partner, or a person who stood in loco parentis when the employee was a minor child.)

3.1.4. Grandparent

3.1.5. Grandchild.

3.1.6. Sibling.

3.2. To obtain any relief or services related to being a victim of domestic violence, sexual assault, or stalking including the following with appropriate

certification of the need for such services:

- 3.2.1. A temporary restraining order or restraining order.
- 3.2.2. Other injunctive relief to help ensure the health, safety or welfare of themselves or their children.
- 3.2.3. To seek medical attention for injuries caused by domestic violence, sexual assault, or stalking.
- 3.2.4. To obtain services from a domestic violence shelter, program, or rape crisis center as a result of domestic violence, sexual assault, or stalking.
- 3.2.5. To obtain psychological counseling related to an experience of domestic violence, sexual assault, or stalking.
- 3.2.6. To participate in safety planning and take other actions to increase safety from future domestic violence, sexual assault, or stalking, including temporary or permanent relocation.

Such leave is a part of Sick Leave accrual, not in addition to, the 12 days (96 hours) of Sick Leave earned per year. All conditions and restrictions placed by the City upon the use by an employee of sick leave for himself or herself shall apply to the use by an employee of sick leave to attend to an illness of his or her identified family member.

All other provisions for use of Sick Leave by the employee also apply to Family Sick Leave use. This includes, but is not limited to, the Sick Leave section of the Personnel Rules and Regulations.

#### 4. Administrative Leave

In recognition of the fact that Employee is expected to work all reasonable hours necessary to accomplish assigned tasks he will be credited with five days (40 hours) of Administrative Leave at the beginning of each fiscal year. This leave may not be carried over or cashed out and shall be taken under the same conditions as vacation leave. It is recognized that such time is not intended to provide an hour for hour or greater leave for actual hours worked over those scheduled, but is a benefit in recognition of duty requirements.

#### 5. Holidays

The following (8) hour days are established as holidays with pay: New Year's Day, Martin Luther King's Birthday, President's Day, Memorial Day: Independence Day, Labor Day, Columbus Day, Veteran's Day, Thanksgiving Day, Day After Thanksgiving, and Christmas Day.

The parties agree that the following half days (4 hours) are established as partial holidays with pay: Good Friday and the last work day prior to Christmas or New Year's Day.

The parties agree that to be eligible to receive a paid holiday, the employee must be in a paid status on the scheduled work day either immediately preceding the identified holiday or on the scheduled work day immediately following the identified holiday.

In addition to the City observed holidays outlined above, Employee will receive floating holiday leave hours. Said leave hours shall be credited to the employee on July 1 of each fiscal year, may not be carried over or cashed out, and shall be taken under the same conditions as vacation leave. Employees with 5-9 years of full time continuous service with the City of Madera as of July 1 of each year shall be credited with 20 hours of floating holiday leave. Employees with 10 or more years of full time continuous service with the City of Madera as of July 1 of each year shall be credited with 40 hours of floating holiday leave.

**B. Disability, Health, and Life Insurance**

Employer will provide term life insurance for Employee in the amount of \$50,000 which includes accidental death and dismemberment (AD&D) coverage. Employer also will provide dependent life in the amount of \$5,000 and Long Term Disability Insurance, which provides salary replacement benefits.

Employer agrees to provide a monthly health benefit allowance for the employee to purchase health insurance (including medical, dental and vision coverage of the Employee and family) through an IRS Section 125 Cafeteria Plan.

For the 2018/19 Plan Year, the monthly allowance will be as follows:

<b>Enrollment Level</b>	<b>Monthly Allowance</b>
Waiver of Coverage	\$300.00
EE Only	\$740.16
EE+1	\$1,354.83
EE+Family	\$1,971.79

Employer will continue offering Teledoc services for the July 1, 2018-June 30, 2019 plan year. The teledoc services are captured in the medical plan premiums and monthly benefit allowance as indicated above and no contribution beyond the above monthly benefit allowance will be made by Employer.

Medicare - 1.45% Employer's contribution matched by an Employee contribution of 1.45% of Employee's salary for mandated Medicare coverage.

### C. Retirement

The City participates in the CalPERS retirement system. Employee will be placed on the appropriate miscellaneous plan consistent with CalPERS membership requirements. The Employee will pay all of the Employee Contribution for the plan in pre tax dollars under IRS Code 414(h)(2). The Employee will also be responsible for the Employee's Contribution for the 1959 Survivor's Benefit.

### D. Longevity Pay

In addition to the established base salary, Employee is eligible for longevity pay at the rate of 2 ½% for each five years of service as a management employee to a maximum of 10%.

### E. Bereavement Leave

Employee is allowed an additional three (3) days leave per fiscal year in the event of death of any of the following members of the employee's family: spouse, child, parent or grandparent.

### F. Retiree Paid Health Insurance

The City will allow Employee to continue to participate in the City health plan offerings (medical, dental, and vision) at the retiree's expense until age 65 or when eligible for Medicare, whichever comes first. Both retiree and dependent coverage are available under this program. An administrative fee in an amount equal to two percent (2%) of the insurance premiums will be charged to the retiree for the City to process the benefit. In the event the administrative fee increases, retiree shall pay the higher fee. If, in the future, the City no longer offers the same insurance carrier/plan the retiree and his or her spouse will be eligible to purchase insurance coverage under the new plan. Coverage must be selected upon retirement; no lapse in coverage will be allowed under this provision. If retiree chooses not to participate or chooses to terminate participation, retiree may not seek coverage under the City health plan at a later date.

### G. Automobile Allowance

Employee will be provided with a \$50 per month automobile allowance for use of his personal vehicle while conducting City business. Employee will not be eligible for any additional mileage or vehicle reimbursement for use of his personal vehicle.

### H. Technology Allowance

Employee will receive a monthly technology allowance of \$75. Employee will not receive a City-issued cell phone or be provided with any type of wireless or data

plan through the City's wireless carrier and will be expected to utilize his personal cell phone for City business. Employee's personal cell phone number must be available to the public.

#### I. Other

The Administrator shall fix any such other terms and conditions of employment, as s/he may determine from time to time, relating to the performance of the Director of Financial Services, provided such terms and conditions are not inconsistent with or in conflict with the provisions of this Agreement, the City of Madera Municipal Code or any other law.

### Section 7: TERMINATION

The Director of Financial Services is an at-will employee and serves at the will and pleasure of the Administrator and may be terminated at any time.

### Section 8: DUES AND SUBSCRIPTIONS

Employer agrees, to the extent it is financially able, to budget for and to pay for professional dues and subscriptions of Employee necessary for his continuation and full participation in national, regional, state, and local associations and organizations necessary and desirable for his continued professional participation, growth, and advancement, and for the good of the Employer.

### Section 9: PROFESSIONAL DEVELOPMENT

- A. Employer hereby agrees, to the extent it is financially able, to budget for and to pay for travel and subsistence expenses of Employee for professional and official travel, meetings, and occasions adequate to continue the professional development of Employee and to adequately pursue necessary official functions for Employer, including but not limited to such other national, regional, state and local governmental groups and committees thereof which Employee serves as member.
- B. Employer also agrees, to the extent it is financially able, to budget for and to pay for travel and subsistence expenses of Employee for short courses, institutes and seminars that are necessary for his professional development and for the good of the Employer.

### Section 10: INDEMNIFICATION

In addition to that required under state and local law, Employer shall defend, hold harmless and indemnify Employee against any tort, professional liability claim or demand or other legal action, whether groundless or otherwise, arising out of an alleged act or omission occurring in the performance of Employee's duties as Director

of Financial Services. Employer will compromise and settle any such claim or suit and pay the amount of any settlement or judgment rendered thereon.

#### Section 11: BONDING

Employer shall bear the full cost of any fidelity or other bonds required of the Employee under any law or ordinance.

#### Section 12: CONFLICT OF INTEREST

- A. Employee shall not engage in any business or transaction or have a financial or other personal interest or association, direct or indirect, which is in conflict with the proper discharge of official duties or would tend to impair independence of judgment or action in the performance of official duties. Personal interests, distinguished from financial interests, include an interest as arising from blood or marriage relationships or close business, and personal or political affiliations.
- B. Employee shall also comply with the conflict of interest provisions of the California Government Code and any conflict of interest code applicable to the Director of Financial Services' employment.
- C. Employee is responsible for submitting to the City Clerk the appropriate Conflict of Interest Statements (including Form 700) at the time of appointment, annually thereafter, and at the time of separation from position.

#### Section 13: NOTICES

Notices pursuant to this Agreement shall be given by deposit in the custody of the United States Postal Service, postage prepaid, addressed as follows:

Employer: City Administrator, City of Madera, 205 West Fourth Street, Madera CA 93637

Employee: [REDACTED]

Alternately, notices required pursuant to this Agreement may be personally served in the same manner as is applicable to civil judicial practice. Notice shall be deemed given as of the date of personal service or as of the date of deposit of such written notice in the course of transmission in the United States Postal Service.

#### Section 14: REDUCTION OF BENEFITS

Employer shall not at any time during the term of this Agreement reduce the salary, compensation or other financial benefits of Employee, except to the degree of such reduction across-the-board for all Employees of the Employer.

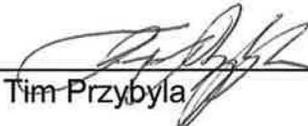
Section 15: GENERAL PROVISIONS

- A. The text herein shall constitute the entire and fully integrated Agreement between the parties and no promise, representation, warranty or covenant not included in this Agreement has been relied upon by any party hereto.
- B. This Agreement shall be binding upon and inure to the benefit of the heirs at law and executors of the Employee; however, this Agreement is not assignable by either party.
- C. This Agreement shall become effective commencing October 3, 2018.
- D. This Agreement replaces and supersedes any previous Employment Agreements or Agreement Amendments between Employer and Employee.
- E. If any provision, or any portion thereof, contained in this Agreement is held unconstitutional, invalid or unenforceable by a court of law, the remainder of this Agreement, or portion thereof, shall be deemed severable, shall not be affected, and shall remain in full force and effect. This Agreement shall be construed under California law. No waiver of any term or condition of the Agreement shall be considered a continuing waiver thereof.

IN WITNESS WHEREOF, the City of Madera has caused this Agreement to be signed and executed on its behalf by its City Administrator, and duly attested by its City Clerk, and the Director of Financial Services has signed and executed this Agreement, both in duplicate, the day and year first above written.

EMPLOYEE

CITY OF MADERA

By:  \_\_\_\_\_  
Tim Przybyla

By: \_\_\_\_\_  
Steve Frazier, City Administrator

ATTEST

APPROVED AS TO LEGAL FORM

By: \_\_\_\_\_  
Sonia Alvarez, City Clerk

By: \_\_\_\_\_  
Brent Richardson, City Attorney

## Exhibit 1

### Plan for Transition of Existing Annual Leave to New Leave Banks

Using Employee's remaining Annual Leave balance at the start of the first whole pay period following adoption of this Agreement or the effective date of the Agreement, whichever comes later, hours will be subtracted first from the additional hours credited bank and then from the front-end bank in the following order. If Employee does not have sufficient leave credits to move to the next step in the order, then they do not receive a beginning credit in that bank.

1. Subtract off remaining City-recognized holidays in the current fiscal year from the additional hours credited bank. These now become observed holidays with pay as opposed to leave time on the books.
2. Subtract off 5 days from the additional hours credited bank and credit to Administrative Leave balance.
3. Any remaining hours in the additional hours credited bank will be credited to the employee's new sick leave bank balance.
4. Any remaining leave in the front-end bank will be credited to the employee's new vacation bank balance (this is inclusive of the Employee Anniversary Date credited to vacation and no anniversary date will be credited pursuant to the new language until after 6/30/19).
  - a. For employees who previously accepted the option of reducing Annual Leave by 7 days in exchange for Management Incentive Pay, Management Incentive Pay will cease and employees will be credited back a pro-rated number of days toward the vacation bank based on the length of time between the effective date of the leave transition and the end of the fiscal year.
5. Employees will be credited with Floating Holiday based on years of service.
6. Effective the pay period when the employee is transitioned to these new leave banks, employees will accrue vacation and sick leave on a per pay period basis consistent with the accrual schedules as stated in this Agreement.

## **DIRECTOR OF HUMAN RESOURCES AT-WILL EMPLOYMENT AGREEMENT**

THIS AGREEMENT, entered into this 3<sup>rd</sup> day of October, 2018, by and between the CITY OF MADERA, State of California, a municipal corporation (hereinafter referred to as "Employer" or "City"), and Wendy Silva (hereinafter referred to as "Employee"), both of whom understand as follows:

### **Recitals**

WHEREAS, Employer desires to continue to employ the services of Wendy Silva as Director of Human Resources for the City of Madera; and

WHEREAS, it is the desire of the City Administrator of the Employer, hereinafter called "Administrator", to provide certain benefits, to establish certain conditions of employment, and to set working conditions of said Director of Human Resources; and

WHEREAS, Wendy Silva desires to be employed as Director of Human Resources for said City of Madera.

NOW THEREFORE, in consideration of the mutual covenants herein contained, the parties agree as follows:

### **Agreement**

#### **Section 1: TERM**

- A. The term of this Agreement shall be 3 years commencing on October 3, 2018. The Employer will provide written notice to the Employee on or before July 3, 2021 of its intent to offer to extend, renew, or otherwise not renew this contract for an additional term. If the Employer chooses to extend the Agreement, the Employer will inform the Employee of the newly proposed term at the time of its offer to renew. The Employee must respond to an offer to extend or renew the Agreement within 45 days of the offered extension or renewal.
- B. The Director of Human Resources shall at all times serve at the pleasure of the Administrator. This means that the Employee is an at-will employee. Nothing in this Agreement shall prevent, limit or otherwise interfere with the right of the Employer to suspend or terminate the services of the Employee at any time.
- C. Nothing in this Agreement shall prevent, limit or otherwise interfere with the right of the Employee to resign at any time, after October 3, 2018, from her position with Employer, upon thirty (30) calendar days advanced written notice to Employer.

#### **Section 2: TERMINATION AND SEVERANCE PAY**

- A. In the event Employee is terminated by the Administrator before expiration of the aforesaid term of employment and during such time that Employee is willing and

able to perform her duties under this Agreement, then in that event, Employer agrees to pay Employee a lump sum cash payment equal to the maximum amount of pay permitted by law under Government Code sections 53260 and 53261, up to a lump sum cash payment equal to three (3) months' aggregate salary and health benefits. Upon such termination, Employee shall also be compensated for all earned paid leave and other accrued benefits to date of termination. This shall not include the payout of accumulated sick leave other than as authorized pursuant to this Agreement.

In the event Employee is terminated for cause or for conviction, then, in that event, Employer shall have no obligation to pay the aggregate severance sum designated in the above paragraph.

- B. In the event Employer at any time during the term of this Agreement reduces the salary or other financial benefits of Employee in a greater percentage than an applicable across-the-board reduction for all Employees of Employer, or in the event Employer refuses, following written notice, to comply with any other provision benefiting Employee herein, or the Employee resigns following a suggestion, whether formal or informal, by the Administrator that she resign, then, in that event, Employee may, at her option, be deemed to be "terminated" at the date of such reduction, such refusal to comply or such suggestion within the meaning and context of the herein severance pay provisions.

### Section 3: DUTIES

- A. Employer hereby agrees to employ the Employee to perform the functions and duties of such office as set forth in the Director of Human Resources Job Description on file with the Office of the City Clerk and referred to for more particulars, and to perform such other duties as the Administrator may from time to time assign.
- B. The Director of Human Resources is exempt from the overtime provisions of the Fair Labor and Standards Act, as amended, but is expected to engage in those hours of work that are necessary to fulfill the obligations of the Director of Human Resources.
- C. Employee may engage in up to five (5) hours per week for teaching without prior written approval of the Employer. Employee shall not be involved in any other outside employment without written prior approval from the Employer. This includes, but is not limited to, consultant work, speaking engagements, entering an independent contract relationship, or any other activities unrelated to the Employee's employment with the City.
- D. Employee will maintain on file with the Employer her current place of residence and telephone number(s), and shall notify the Employer of any changes within twenty-four (24) hours.

- E. In the event the Employee becomes mentally or physically incapable of performing the Director of Human Resources job duties, the Employer will comply with the law in regard to separating the Director of Human Resources from employment.

#### Section 4: PERFORMANCE EVALUATION

The Administrator shall review and evaluate the performance of the Employee on an ongoing basis and shall, at least once annually on the employment anniversary date established, complete a written performance review and/or evaluation. The review and/or evaluation shall be in accordance with specific criteria developed by the Administrator. Specific criterion may be added or deleted as the Administrator may determine.

#### Section 5: SALARY

Employer agrees to pay the Director of Human Resources for her services rendered pursuant hereto a base salary of \$5,415.49 bi-weekly (City of Madera Salary Schedule Range 513, Step F), payable in installments at the same time as the majority of the Employer's employees. The Administrator may review and adjust said base salary in such amounts and to such extent as the Administrator determines, consistent with the published City of Madera Salary Schedule adopted by the City Council of the City of Madera.

Employee desires to take a reduction in her compensation package equivalent to the salary contribution Miscellaneous employees are making towards the CalPERS Employee Contribution, however, employee already pays the full 8% Employee Contribution per Section 6.C. of the Agreement. Therefore, employee desires to contribute an equivalent amount of salary towards the Employer Contribution to CalPERS. These contributions toward the CalPERS Employer Contribution shall be made as an after tax payroll deduction and be equivalent to 2.375% of salary.

#### Section 6: OTHER TERMS AND CONDITIONS OF EMPLOYMENT

##### A. Paid Leave

Effective the first whole pay period following adoption of this Agreement by the City Council or the effective date of this Agreement, whichever is later, Employee will no longer receive an Annual Leave bank, but will instead receive leave banks/types as outlined below. To transition from the existing Annual Leave program to the revised separate leave types of Vacation, Sick, Administrative and Holiday, Employee's existing Annual Leave will be redistributed and the new leave banks credited as outlined in Exhibit 1.

##### 1. Vacation

Employee will earn vacation credits, dependent upon the number of years of service with the City, for each pay period Employee is in a paid status at least

50% or more of the period. All accrued vacation is paid to Employee upon retirement, resignation or termination.

COMPLETED YEARS = NUMBER OF HOURS RECEIVED PER PAY PERIOD

0 through 4 yrs.	3.6923 hrs. per pay period
5 through 9 yrs.	4.6156 hrs. per pay period
10 through 14 yrs.	5.5384 hrs. per pay period
15 through 19 yrs.	6.1538 hrs. per pay period
20 plus yrs.	6.4615 hrs. per pay period

The maximum vacation Employee is allowed to accumulate is 360 hours.

Each employee shall receive the date known as the "employee anniversary date" as a vacation day. This day shall be added to vacation time at a straight time rate. Credit for the day will not be given until the employee's anniversary date has passed during the current fiscal year and is in addition to the above accrual schedule. Because this Agreement is being executed mid-fiscal year, Employee will not receive an anniversary date credit until the first anniversary date occurring on or after July 1, 2019.

Employee may request to cash out up to 80 hours of vacation once each fiscal year. To be eligible for such cash out provision, employees must have a vacation balance of at least 160 hours at the time of request. Requests must be made in writing to the Payroll Specialist at least 15 days in advance and such requests will be paid on a regular pay date of the City.

2. Sick Leave

Sick leave, with pay, accrues at the rate of 3.6923 hours per pay period an employee is in a paid status at least 50% or more of the period. Rules governing sick leave use and eligibility are noted in the City of Madera Personnel Rules and Regulations.

In addition to the reasons for use of Sick Leave as stated in the Personnel Rules & Regulations, an employee may utilize accrued Sick Leave hours for any absence designated by the City as being covered by the Federal Family Medical Leave Act (FMLA) and/or the California Family Rights Act (CFRA), regardless of the reason for the leave. It will be the employee's responsibility to complete the required paperwork to certify the need for leave and he/she must provide timely notification of the need for leave in compliance with FMLA/CFRA regulations. Use of Sick Leave for this purpose will not commence until such requirements have been met. Use of Sick Leave for family members when the leave has been designated as FMLA/CFRA will not count against the employee's annual limit of Family Sick Leave as provided in this Agreement.

Employee may cash out sick leave upon retirement or positive separation from the City based on the below table. To be eligible, employees must be employed

with the City on a full time basis for a minimum of five years. Negative terminations (discharge) are not eligible for cash out of sick leave. An employee has the option to convert 100% of the remaining sick leave upon retirement to CalPERS service credit.

Years of Service	Sick Leave Cash-Out
5	7.5%
7	10.5%
10	15.0%
15	22.0%
20	30.0%

**3. Family Sick Leave**

Sick Leave may be used up to the limit of seventy-two hours each calendar year:

3.1. For the diagnosis, care, or treatment of an existing health condition or preventative care for an employee's family member, including:

3.1.1. Child (including a biological, adopted, or foster child, stepchild, legal ward, or a child to whom the employee stands in loco parentis.)

3.1.2. Spouse or Registered Domestic Partner

3.1.3. Parent (including biological, adoptive, or foster parent, stepparent, or legal guardian of an employee or the employee's spouse or registered domestic partner, or a person who stood in loco parentis when the employee was a minor child.)

3.1.4. Grandparent

3.1.5. Grandchild.

3.1.6. Sibling.

3.2. To obtain any relief or services related to being a victim of domestic violence, sexual assault, or stalking including the following with appropriate certification of the need for such services:

3.2.1. A temporary restraining order or restraining order.

3.2.2. Other injunctive relief to help ensure the health, safety or welfare of themselves or their children.

3.2.3. To seek medical attention for injuries caused by domestic violence,

sexual assault, or stalking.

- 3.2.4. To obtain services from a domestic violence shelter, program, or rape crisis center as a result of domestic violence, sexual assault, or stalking.
- 3.2.5. To obtain psychological counseling related to an experience of domestic violence, sexual assault, or stalking.
- 3.2.6. To participate in safety planning and take other actions to increase safety from future domestic violence, sexual assault, or stalking, including temporary or permanent relocation.

Such leave is a part of Sick Leave accrual, not in addition to, the 12 days (96 hours) of Sick Leave earned per year. All conditions and restrictions placed by the City upon the use by an employee of sick leave for himself or herself shall apply to the use by an employee of sick leave to attend to an illness of his or her identified family member.

All other provisions for use of Sick Leave by the employee also apply to Family Sick Leave use. This includes, but is not limited to, the Sick Leave section of the Personnel Rules and Regulations.

#### 4. Administrative Leave

In recognition of the fact that Employee is expected to work all reasonable hours necessary to accomplish assigned tasks he will be credited with five days (40 hours) of Administrative Leave at the beginning of each fiscal year. This leave may not be carried over or cashed out and shall be taken under the same conditions as vacation leave. It is recognized that such time is not intended to provide an hour for hour or greater leave for actual hours worked over those scheduled, but is a benefit in recognition of duty requirements.

#### 5. Holidays

The following (8) hour days are established as holidays with pay: New Year's Day, Martin Luther King's Birthday, President's Day, Memorial Day: Independence Day, Labor Day, Columbus Day, Veteran's Day, Thanksgiving Day, Day After Thanksgiving, and Christmas Day.

The parties agree that the following half days (4 hours) are established as partial holidays with pay: Good Friday and the last work day prior to Christmas or New Year's Day.

The parties agree that to be eligible to receive a paid holiday, the employee must be in a paid status on the scheduled work day either immediately preceding the identified holiday or on the scheduled work day immediately following the identified holiday.

In addition to the City observed holidays outlined above, Employee will receive floating holiday leave hours. Said leave hours shall be credited to the employee on July 1 of each fiscal year, may not be carried over or cashed out, and shall be taken under the same conditions as vacation leave. Employees with 5-9 years of full time continuous service with the City of Madera as of July 1 of each year shall be credited with 20 hours of floating holiday leave. Employees with 10 or more years of full time continuous service with the City of Madera as of July 1 of each year shall be credited with 40 hours of floating holiday leave.

**B. Disability, Health, and Life Insurance**

Employer will provide term life insurance for Employee in the amount of \$50,000 which includes accidental death and dismemberment (AD&D) coverage. Employer also will provide dependent life in the amount of \$5,000 and Long Term Disability Insurance, which provides salary replacement benefits.

Employer agrees to provide a monthly health benefit allowance for the employee to purchase health insurance (including medical, dental and vision coverage of the Employee and family) through an IRS Section 125 Cafeteria Plan. For the 2018/19 Plan Year, the monthly allowance will be as follows:

<b>Enrollment Level</b>	<b>Monthly Allowance</b>
Waiver of Coverage	\$300.00
EE Only	\$740.16
EE+1	\$1,354.83
EE+Family	\$1,971.79

Employer will continue offering Teledoc services for the July 1, 2018-June 30, 2019 plan year. The teledoc services are captured in the medical plan premiums and monthly benefit allowance as indicated above and no contribution beyond the above monthly benefit allowance will be made by Employer.

Medicare - 1.45% Employer's contribution matched by an Employee contribution of 1.45% of Employee's salary for mandated Medicare coverage.

**C. Retirement**

The City participates in the CalPERS retirement system. Employee will be placed on the appropriate miscellaneous plan consistent with CalPERS membership requirements. The Employee will pay all of the Employee Contribution for the plan in pre-tax dollars under IRS Code 414(h)(2). The Employee will also be responsible for the Employee's Contribution for the 1959 Survivor's Benefit.

#### D. Longevity Pay

In addition to the established base salary, Employee is eligible for longevity pay at the rate of 2 ½% for each five years of service as a management employee to a maximum of 10%.

#### E. Bereavement Leave

Employee is allowed an additional three (3) days leave per fiscal year in the event of death of any of the following members of the employee's family: spouse, child, parent or grandparent.

#### F. City Paid Health Insurance Upon Retirement

Upon retirement, if Employee has twenty years of service with the City, at least three (3) of which are in a department head management position, and Employee is eligible for CalPERS retirement at the time of retirement, Employee is eligible for the health benefits noted below.

a) City pays 100% of the premium for medical coverage for employee (retiree) only with City plan through age 64. Employee pays dental and vision coverage if desired. Coverage for a spouse is available at the expense of retired Employee.

b) At age 65, or when eligible for Medicare if earlier, the City will pay or provide a health insurance benefits program which will be supplemental to Medicare. The program will cover only the retired Employee. The retired Employee must first obtain both parts A & B of Medicare.

If Employee qualifies for employer paid health insurance in retirement as outlined in paragraph one of this section, she has the opportunity to make an irrevocable election to receive a monthly payment, equivalent to the premium charged by the carrier/plan the employee is enrolled in at the time of retirement, in lieu of participation in the City medical plan. The monthly payment would be equal to the premium amount charged to cover one person. The payment will continue until the retiree reaches age 65 or becomes eligible for Medicare, whichever comes first. At age 65, or when eligible for Medicare if earlier, the City will provide a monthly payment equivalent to the premium charged by the Medicare supplement carrier/plan selected by the retiree from those available through the City at the time provided the retiree has subscribed to or enrolled in parts A & B of Medicare. The monthly payment will be equal to the premium amount charged to cover one person.

If, in the future, the City no longer offers the carrier/plan, the premium for the replacement plan would be used to determine the amount of monthly payment in lieu of participation in the health plan.

When making an election to receive the cash equivalent of the medical insurance premium, the retiring employee waives the right to participate in the City's medical insurance plan for themselves and any dependents except for the rights provided by COBRA continuation coverage.

An employee electing to exercise the option to receive the cash equivalent of the retiree medical insurance premium will only be able to cash out sick leave using Option #1 provided in Section 6.B. of this agreement.

#### G. Retiree Paid Health Insurance

If Employee does not qualify for City Paid Health Insurance Upon Retirement as outlined in Section 6.F. of this agreement, the City will allow Employee to continue to participate in the City health plan offerings (medical, dental, and vision) at the retiree's expense until age 65 or when eligible for Medicare, whichever comes first. Both retiree and dependent coverage are available under this program. An administrative fee in an amount equal to two percent (2%) of the insurance premiums will be charged to the retiree for the City to process the benefit. In the event the administrative fee increases, retiree shall pay the higher fee. If, in the future, the City no longer offers the same insurance carrier/plan the retiree and her or her spouse will be eligible to purchase insurance coverage under the new plan. Coverage must be selected upon retirement; no lapse in coverage will be allowed under this provision. If retiree chooses not to participate or chooses to terminate participation, retiree may not seek coverage under the City health plan at a later date.

#### H. Other

The Administrator shall fix any such other terms and conditions of employment, as s/he may determine from time to time, relating to the performance of the Director of Human Resources, provided such terms and conditions are not inconsistent with or in conflict with the provisions of this Agreement, the City of Madera Municipal Code or any other law.

#### I. Technology Allowance

Employee will receive a monthly technology allowance of \$75. Employee will not receive a City-issued cell phone or be provided with any type of wireless or data plan for a cell phone through the City's wireless carrier and will be expected to utilize her personal cell phone for City business. Employee's personal cell phone number must be available to the public.

### Section 7: TERMINATION

The Director of Human Resources is an at-will employee and serves at the will and pleasure of the Administrator and may be terminated at any time.

## Section 8: DUES AND SUBSCRIPTIONS

Employer agrees, to the extent it is financially able, to budget for and to pay for professional dues and subscriptions of Employee necessary for her continuation and full participation in national, regional, state, and local associations and organizations necessary and desirable for her continued professional participation, growth, and advancement, and for the good of the Employer.

## Section 9: PROFESSIONAL DEVELOPMENT

- A. Employer hereby agrees, to the extent it is financially able, to budget for and to pay for travel and subsistence expenses of Employee for professional and official travel, meetings, and occasions adequate to continue the professional development of Employee and to adequately pursue necessary official functions for Employer, including but not limited to such other national, regional, state and local governmental groups and committees thereof which Employee serves as member.
- B. Employer also agrees, to the extent it is financially able, to budget for and to pay for travel and subsistence expenses of Employee for short courses, institutes and seminars that are necessary for her professional development and for the good of the Employer.

## Section 10: INDEMNIFICATION

In addition to that required under state and local law, Employer shall defend, hold harmless and indemnify Employee against any tort, professional liability claim or demand or other legal action, whether groundless or otherwise, arising out of an alleged act or omission occurring in the performance of Employee's duties as Director of Human Resources. Employer will compromise and settle any such claim or suit and pay the amount of any settlement or judgment rendered thereon.

## Section 11: BONDING

Employer shall bear the full cost of any fidelity or other bonds required of the Employee under any law or ordinance.

## Section 12: CONFLICT OF INTEREST

- A. Employee shall not engage in any business or transaction or have a financial or other personal interest or association, direct or indirect, which is in conflict with the proper discharge of official duties or would tend to impair independence of judgment or action in the performance of official duties. Personal interests, distinguished from financial interests, include an interest as arising from blood or marriage relationships or close business, and personal or political affiliations.

- B. Employee shall also comply with the conflict of interest provisions of the California Government Code and any conflict of interest code applicable to the Director of Human Resources' employment.
- C. Employee is responsible for submitting to the City Clerk the appropriate Conflict of Interest Statements (including Form 700) at the time of appointment, annually thereafter, and at the time of separation from position.

### Section 13: NOTICES

Notices pursuant to this Agreement shall be given by deposit in the custody of the United States Postal Service, postage prepaid, addressed as follows:

Employer: City Administrator, City of Madera, 205 West Fourth Street, Madera CA 93637

Employee: [REDACTED]

Alternately, notices required pursuant to this Agreement may be personally served in the same manner as is applicable to civil judicial practice. Notice shall be deemed given as of the date of personal service or as of the date of deposit of such written notice in the course of transmission in the United States Postal Service.

### Section 14: REDUCTION OF BENEFITS

Employer shall not at any time during the term of this Agreement reduce the salary, compensation or other financial benefits of Employee, except to the degree of such reduction across-the-board for all Employees of the Employer.

### Section 15: GENERAL PROVISIONS

- A. The text herein shall constitute the entire and fully integrated Agreement between the parties and no promise, representation, warranty or covenant not included in this Agreement has been relied upon by any party hereto.
- B. This Agreement shall be binding upon and inure to the benefit of the heirs at law and executors of the Employee; however, this Agreement is not assignable by either party.
- C. This Agreement shall become effective commencing October 3, 2018.
- D. This Agreement replaces and supersedes any previous Employment Agreements or Agreement Amendments between Employer and Employee.
- E. If any provision, or any portion thereof, contained in this Agreement is held unconstitutional, invalid or unenforceable by a court of law, the remainder of this

Agreement, or portion thereof, shall be deemed severable, shall not be affected, and shall remain in full force and effect. This Agreement shall be construed under California law. No waiver of any term or condition of the Agreement shall be considered a continuing waiver thereof.

IN WITNESS WHEREOF, the City of Madera has caused this Agreement to be signed and executed on its behalf by its City Administrator, and duly attested by its City Clerk, and the Director of Human Resources has signed and executed this Agreement, both in duplicate, the day and year first above written.

EMPLOYEE

CITY OF MADERA

By: Wendy Silva  
Wendy Silva

By: \_\_\_\_\_  
Steve Frazier, City Administrator

ATTEST

APPROVED AS TO LEGAL FORM

By: \_\_\_\_\_  
Sonia Alvarez, City Clerk

By: \_\_\_\_\_  
Brent Richardson, City Attorney

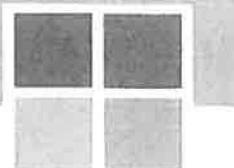
## Exhibit 1

### Plan for Transition of Existing Annual Leave to New Leave Banks

Using Employee's remaining Annual Leave balance at the start of the first whole pay period following adoption of this Agreement or the effective date of the Agreement, whichever comes later, hours will be subtracted first from the additional hours credited bank and then from the front-end bank in the following order. If Employee does not have sufficient leave credits to move to the next step in the order, then they do not receive a beginning credit in that bank.

1. Subtract off remaining City-recognized holidays in the current fiscal year from the additional hours credited bank. These now become observed holidays with pay as opposed to leave time on the books.
2. Subtract off 5 days from the additional hours credited bank and credit to Administrative Leave balance.
3. Any remaining hours in the additional hours credited bank will be credited to the employee's new sick leave bank balance.
4. Any remaining leave in the front-end bank will be credited to the employee's new vacation bank balance (this is inclusive of the Employee Anniversary Date credited to vacation and no anniversary date will be credited pursuant to the new language until after 6/30/19).
  - a. For employees who previously accepted the option of reducing Annual Leave by 7 days in exchange for Management Incentive Pay, Management Incentive Pay will cease and employees will be credited back a pro-rated number of days toward the vacation bank based on the length of time between the effective date of the leave transition and the end of the fiscal year.
5. Employees will be credited with Floating Holiday based on years of service.
6. Effective the pay period when the employee is transitioned to these new leave banks, employees will accrue vacation and sick leave on a per pay period basis consistent with the accrual schedules as stated in this Agreement.

SAFCO CAPITAL CORP



September 11,2018

City Of Madera  
205 W 4th St  
Madera, Ca 93637

Re: Planning Commission and City Council Meeting request to speak

Dear City Council and Planning Commission,

I understand I need to submit in writing a request to speak at each of your meetings two weeks in advance.

Please accept this as my request.

The subject I wish to speak about is the 2016 CUP granted to 2037 W Cleveland Ave Madera.

Sincerely,

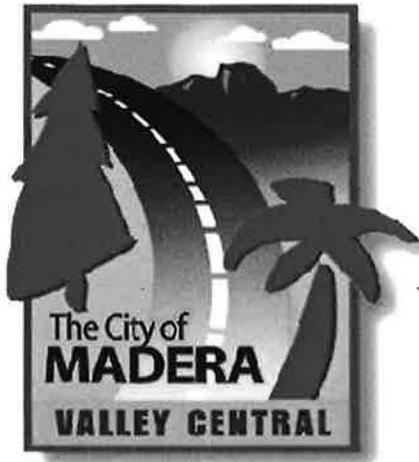
David Delawder  
Safco Capital Corp.  
661-547-8037  
Property Manager

Madera City Clerk

RECEIVED

By: Alvarado

Date: 9/12/18

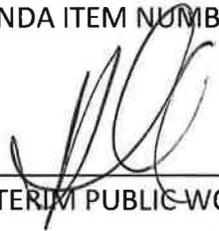


## REPORT TO CITY COUNCIL

MEETING DATE: October 3, 2018

AGENDA ITEM NUMBER: E-1

Approved By:

  
\_\_\_\_\_  
INTERIM PUBLIC WORKS DIRECTOR

  
\_\_\_\_\_  
CITY ADMINISTRATOR

### SUBJECT:

Informational Report Regarding Current City Water Regulations and Request for Direction to Staff Regarding Modifications

### RECOMMENDATION:

Staff requests that Council review this report and provide staff with comments and/or direction. Possible Council direction includes:

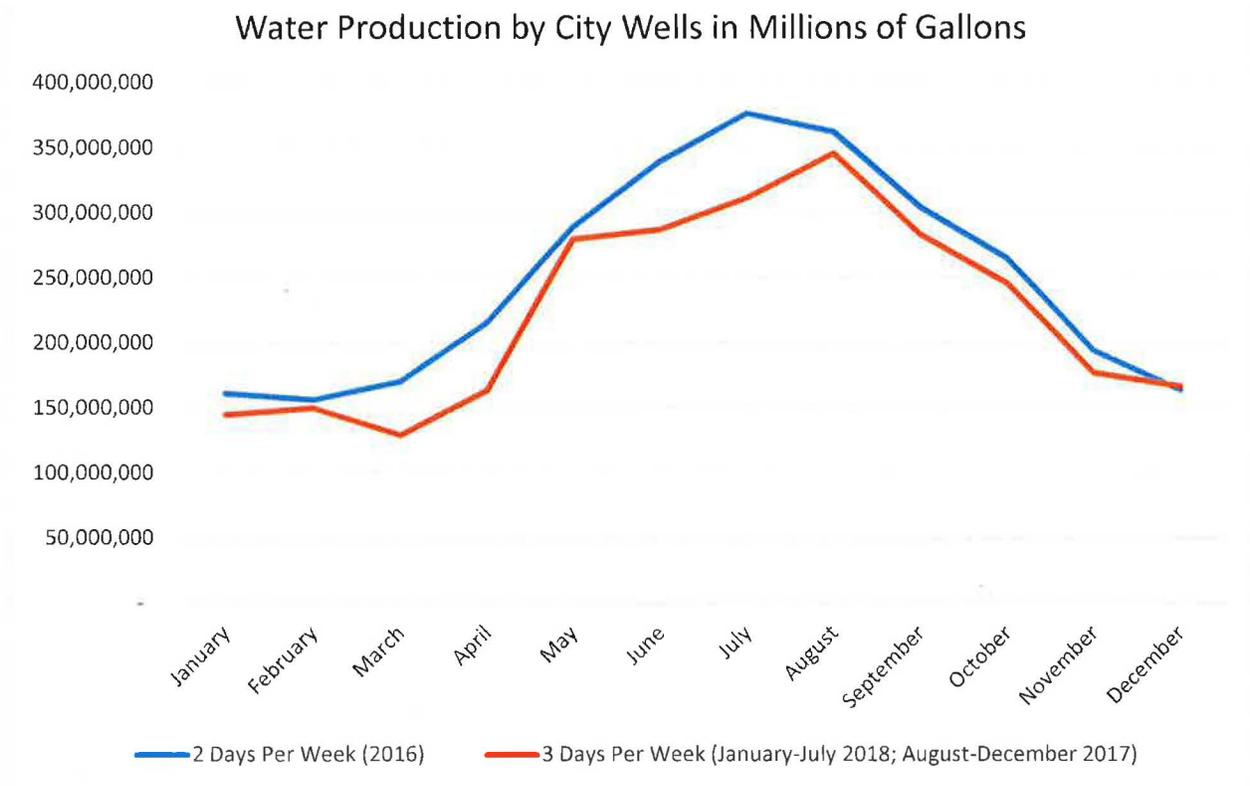
- Modify the existing watering ordinance to allow for seasonal changes to the watering schedule. Should Council direct this action, Staff would recommend that the City continue to allow watering three days per week during the months of March through November and taper down to one day per week during the months of December through February.
- Direct Water Conservation staff to issue a written notice of violation prior to issuance of the first water violation citation.
- Make suggestions for further community outreach that Council may feel is necessary to keep residents informed on current water regulations.
- Request no changes to the existing program.

### SUMMARY:

At the June 20<sup>th</sup> Council Meeting, Council requested staff bring an agenda item to a future Council meeting to allow for the discussion of the City's outdoor water regulations. Specific Council questions were directed to staff relative to the number of allowable outdoor watering days and the penalty structure for non-compliance contained within the regulation. Staff brought an informational item to Council at the July 18, 2018 meeting to generate discussion relative to this topic. During the course of discussion, Council identified several areas where additional data would assist the decision-making process and requested this data be brought back. This Council requested data is the subject of this report.

**DISCUSSION:***Water Production*

In order to analyze the amount of water delivered to residents, staff utilized reports on monthly water production by City wells. This data is the best representation of City water use, as it encompasses all metered and nonmetered, residential and commercial water delivered throughout Madera. Staff focused their analysis on the differences in water production when on Level C water restrictions and when on Level B water restrictions. During all of 2016, the City was on a Level C water restriction which allowed for watering two days per week. From September 2017 and on, the City has been on Level B water restriction which allows for watering three days per week. The City produces less water when watering three days per week than when watering two days per week, as demonstrated in the chart below.



Due to the fluctuation of water use during the rainy season, several surrounding cities adjust their watering schedule seasonally:

- City of Clovis:
  - April through October – Three days per week
  - November through March – One day per week
- City of Turlock:
  - March through October – Two days per week
  - November through February – One day per week
- City of Chowchilla:
  - May through November – Two days per week

- December through May – One day per Week  
(Chowchilla is currently on a one day per week schedule due to well failure.)

*Water Violation Citations:*

The administrative enforcement procedures are outlined in Title 1, Chapter 9 of the City of Madera Municipal Code. This section provides penalty levels for violations of the Municipal Code and allows citizens the right to an Appeal Hearing on water violation citations that have been issued. The current penalty schedule for water citation violations per City of Madera Municipal Code is as follows:

- (1) First administrative citation -- \$75;
- (2) Second administrative citation -- \$200;
- (3) Third or subsequent administrative citation -- \$500.

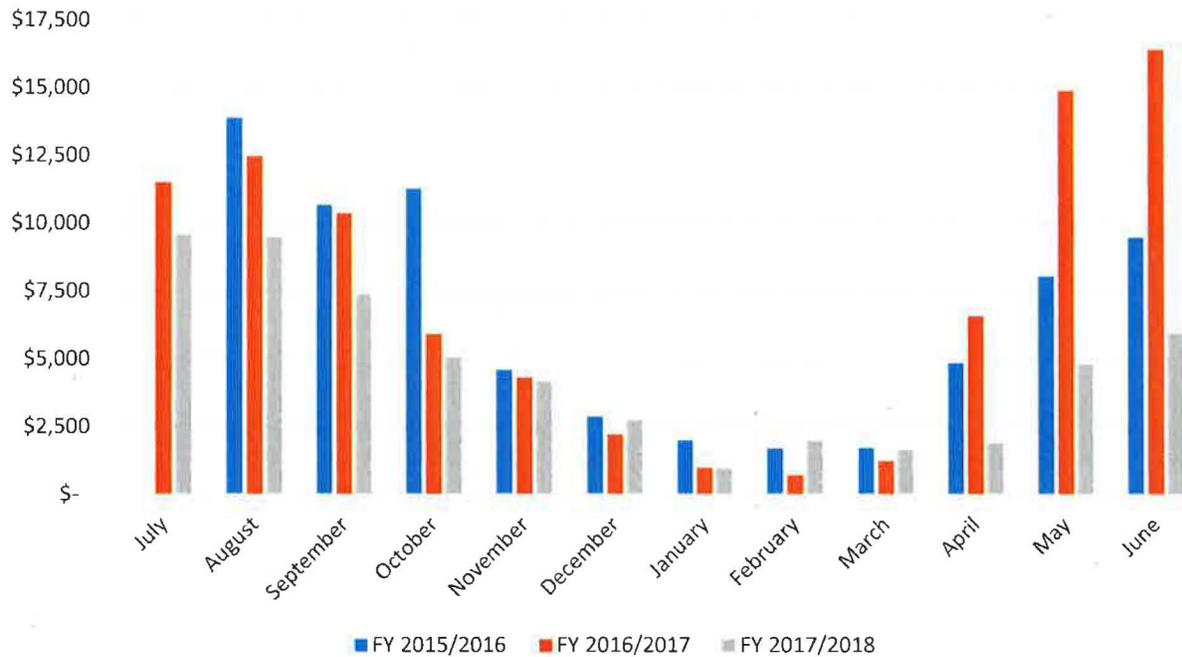
In early iterations of the outdoor watering policy, the penalties were set at \$50, \$100, and \$150 respectively. The current code structure brings enforcement and penalties in line with overall City practice, does not require a warning for a first offense and sets penalties at \$75, \$200, and \$500. In addition, the current system provides the general public the right to the formal Appeal Process.

The City collected the following amounts of revenue in water violation citations over the last three fiscal years:

FY 2015/2016	\$ 71,100
FY 2016/2017	\$ 87,750
<u>FY 2017/2018</u>	<u>\$ 55,575</u>
<b>TOTAL</b>	<b>\$214,425</b>

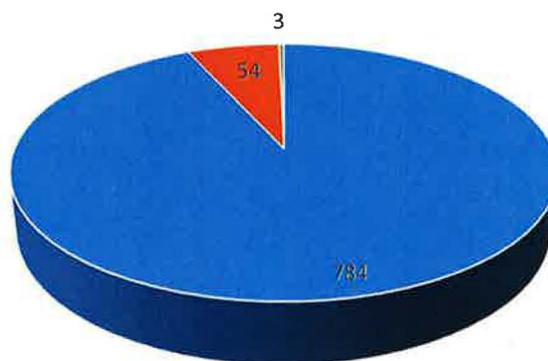
The chart below demonstrates the trend in citation revenue collected each month. The peak months for water citations are during the warmest weather, May through September. This is also when the Water Conservation Division brings on three seasonal part-time staff who focus solely on water patrol and outreach.

### Water Violation Citation Revenue



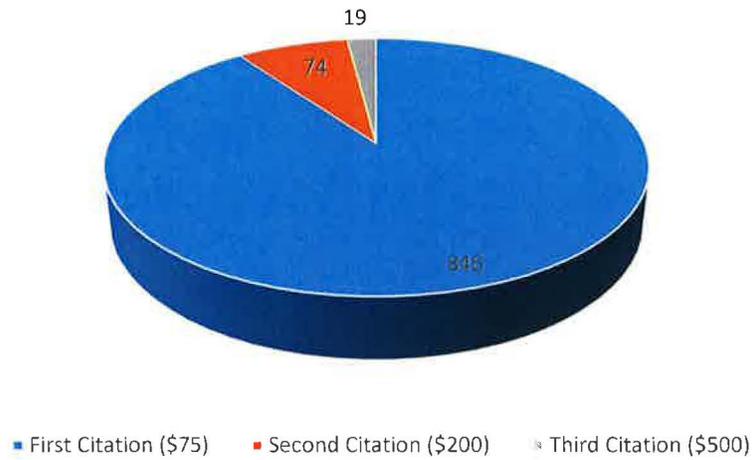
The charts below demonstrate the breakdown and number of citations (first, second, or third) over the last three fiscal years. FY 2015/2016 had a total of 841 citations; FY 2016/2017 had 939; and FY 2017/2018 came in the lowest with only 614 citations.

#### FY 2015/2016

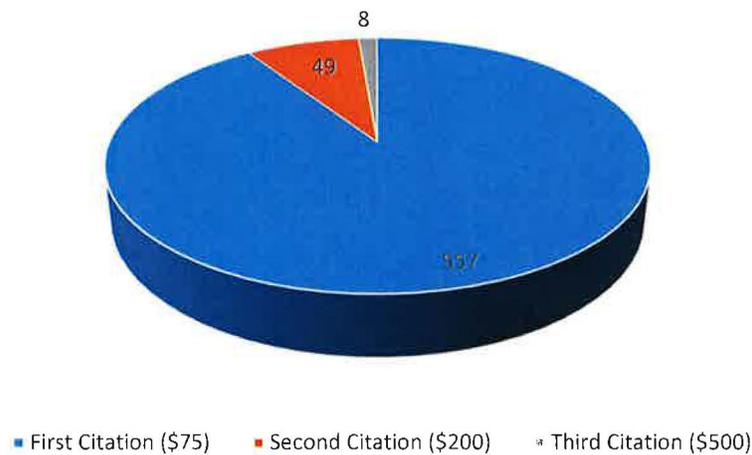


■ First Citation (\$75)   ■ Second Citation (\$200)   ■ Third Citation (\$500)

FY 2016/2017



FY 2017/2018



*Water Conservation Outreach*

Water Conservation staff conduct a variety of outreach over the course of the year. The Water Conservation Division participates in the Swap Meet, Madera District Fair, National Night Out, Old Timers Parade, Business Expo, and Pomegranate Festival each year. During these events, staff is available to answer questions to residents and provide materials educating the public on water regulations, conservation, and rebates. Water Conservation staff partner with Graffiti staff to deliver presentations at local elementary schools. Staff event outreach averages 6,500 residents over the course of a fiscal year. The Madera District Fair is the largest outreach effort annually, bringing over 2,000 visitors to the Water Conservation booth during the 4-day event.

Water patrol and conservation staff also have daily one-on-one contact with residents in the field and via phone calls that come into the City. Water conservation staff make individual contact with about 170

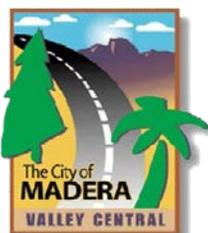
residents each month, totaling over 2,000 per year. Outreach numbers are higher during the warmer months of the spring and summer when the division brings on its seasonal patrol staff.

**FINANCIAL IMPACT:**

The expenses for implementing and administering these activities occur within the Water Fund and do not impact the General Fund.

**CONSISTENCY WITH THE VISION MADERA 2025 PLAN:**

The report is consistent with the Madera Vision Plan, specifically Strategy 434: Water Quality and Usage: ensure continued water supplies to meet the demands of all Maderans through innovative reclamation, conservation and education on water use.



## **Madera City Council Agenda 10/03/18 Agenda Item E-2**

Discussion and Action by Council as to the  
Use of City Facilities for Candidate or Political Forums

**This agenda item will be distributed prior to the scheduled meeting.**