

**Regular Meeting of the Madera City Council  
and  
Special Meeting of the Madera Public Financing Authority**  
205 W. 4<sup>th</sup> Street, Madera, California 93637

**JOINT MEETING NOTICE AND AGENDA**

**Wednesday, December 20, 2017  
6:00 p.m.**

**Council Chambers  
City Hall**

**CALL TO ORDER**

**ROLL CALL:** Mayor/Chairperson Andrew J. Medellin  
Mayor Pro Tem/Authority Member Jose Rodriguez, District 2  
Council Member/Vice Chairperson Cece Foley Gallegos, District 1  
Council/Authority Member William Oliver, District 3  
Council/Authority Member Derek O. Robinson Sr., District 4  
Council/Authority Member Charles F. Rigby, District 5  
Council/Authority 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**

There are no items for this section.

**B. CONSENT CALENDAR**

- B-1 Minutes – 3/15/17
- B-2 Warrant Disbursement Report (Report by Tim Przybyla)
- B-3 Bi-Weekly Water Conservation Report for 11/20/17 – 12/10/17 (Report by Dave Randall)
- B-4 Consideration of a Resolution Accepting Grant Funding from Kaiser Foundation Hospitals (KFH) for the Madera Heal Zone III Project, Approving the Grant Agreement with KFH and Authorizing the City Administrator to Execute the Agreement and Related Documents on Behalf of the City; and  
  
Consideration of a Resolution Amending the FY 2017 – 18 Parks and Community Services Budget to Recognize the Proceeds of the Grant and Appropriate Funds to Specified Accounts (Report by Mary Anne Seay)
- B-5 Consideration of a Minute Order Approving Settlement of a Claim Filed with Nationwide Insurance Company for Property Damage (Report by Wendy Silva)
- B-6 Consideration of a Minute Order Rejecting a Claim filed by Maribel Shaw (Report by Wendy Silva)
- B-7 Consideration of a Minute Order Rejecting a Claim filed by F. Loduca Co. (Report by Wendy Silva)
- B-8 Consideration of a Resolution Approving an Agreement between the City of Madera and Thales Consulting, Inc. to Prepare and File the City's Financial Transactions Report, the Financing Authority Special District Report, and the Annual Transit Report for Fiscal Years 16/17, 17/18 and 18/19 and Authorizing the Mayor to Execute the Three-Year Agreement (Report by Tim Przybyla)
- B-9 Consideration of Resolution Approving a Grant of Easement Agreement with the County of Madera for an Easement Needed to Construct a Portion of the Gateway/UPRR Trail Undercrossing, Authorizing the Mayor to Sign the Agreement on Behalf of the City 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 a Lease Agreement with First Transit, Inc. for its Office at the Intermodal Facility and Authorizing the Mayor to Execute the Agreement on Behalf of the City (Report by Ivette Iraheta)
- B-11 Consideration of a Resolution Appointing Linda Clark, Cynthia Ortegon, and Alex Salazar as Members of the City of Madera Transit Advisory Board (Report by Ivette Iraheta)
- B-12 Consideration of a Resolution Approving a Contract with PredPol, Inc. to Provide Predictive Policing Crime Analytics Services and Authorizing the Mayor to Execute the Contract on Behalf of the City (Report by Brian Esteves)
- B-13 Consideration of a Resolution Approving a Contract with Vigilant Solutions, LLC to Provide Automatic License Plate Reader Equipment, Data Collection and Software Access and Authorizing the Mayor to Execute the Contract on Behalf of the City (Report by Brian Esteves)



- B-14 Consideration of a Resolution Approving the Award of Contract for E. Yosemite Avenue (SR 145) & Elm Avenue Traffic Signal Installation City Project No. TS 17-02, CDBG Project No. B17MC060053 (REBID) in the Amount of \$516,310 to Bush Engineering, Inc., Authorizing Construction Contingencies of Up to 10% and Construction Inspection and Management Contingencies of Up to 10% as Approved by the City Engineer, and Authorizing the Mayor to Execute the Contract on Behalf of the City (Report by Keith Helmuth)
- B-15 Consideration of a Resolution Approving the Award of Contract for Water Main Installations at Various Locations City Project No. W 16-03 to Emmett's Excavation Inc., Authorizing Construction Contingencies of Up to 10% as Approved by the City Engineer, Construction Management and Inspection Costs Up to 5% and Authorizing the Mayor to Execute the Contract on Behalf of the City; and

Consideration of a Resolution Approving Funding Amendments to the City of Madera Fiscal Year 2017/18 Capital Fund Budget for Water Main Installations at Various Locations City Project No. W 16-03 (Keith Helmuth)

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

- C-1 Consideration of a Resolution of the Madera City Council Approving a Lease, a Sublease and an Assignment Agreement; and Authorizing Execution of Documents and the Taking of All Necessary Actions Relating to the Lease Financing (City – Report by Tim Przybyla)
- C-2 Consideration of a Resolution of the Madera Public Financing Authority Approving a Lease, a Sublease and an Assignment Agreement; and Authorizing Execution of Documents and the Taking of All Necessary Actions Relating to the Lease Financing (MPFA – Report by Tim Przybyla)

**D. WRITTEN COMMUNICATIONS**

- D-1 Request for Letter in Support of the San Joaquin Joint Powers Authority (SJJPA) and the San Joaquin Regional Rail Commission's (SJRRRC) Transit and Intercity Rail Capital Program (TIRCP) Grant Application (Report by Ivette Iraheta)

**E. ADMINISTRATIVE REPORTS**

- E-1 Consideration of a Resolution Approving a Cooperative Agreement with the County of Madera and the City of Chowchilla to Facilitate Intergovernmental Collaboration to Benefit the Greater Madera County Area (Report by Sonia Alvarez)
- E-2 Discussion and Appointment of Interim City Administrator and Appointment of Ad Hoc Committee to Negotiate Terms and Conditions of Appointment (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): 1 case

G-3 Public Employee Discipline/Dismissal/Release - Pursuant to Government Code §54957

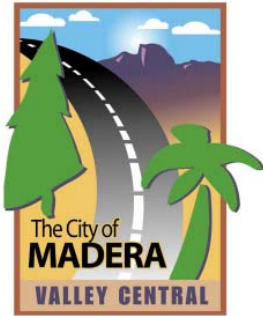
G-4 Closed Session Report – City Attorney

**ADJOURNMENT** – Next regular meeting January 3, 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 agenda for the regular meeting of the Madera City Council for December 20, 2017, near the front entrances of City Hall at 4:30 p.m. on December 14, 2017.

  
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Sonia Alvarez, City Clerk



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

**March 15, 2017  
6:00 p.m.**

**Council Chambers  
City Hall**

### **CALL TO ORDER**

The regular meeting for 3/15/17 was called to order by Mayor Medellin at 6:00 p.m.

**ROLL CALL:** The Deputy City Clerk called roll.

**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, Deputy City Clerk Zelda Leon, 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 Parks and Community Services Mary Anne Seay, Grant Administrator Ivette Iraheta, Chief Building Official Steve Woodworth, Planning Manager Chris Boyle, Administrative Analyst for Human Resources Eugene Haynes, Streets and Storm Drainage Operations Manager Bob Mack, and Battalion Chief Jim Forga.

**INVOCATION:**       Pastor Randy Brannon, Grace Community Church

**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.

No comments were offered.

### **A.     WORKSHOP**

#### **A-1     Report on Planned Weed Abatement Enforcement**



Neighborhood Preservation Specialist Fabela Rodriguez stated today's presentation is an update on her weed abatement season. She explained that the weed abatement ordinance was passed in January of 2015 and weed abatement season starts on March 13<sup>th</sup>. She advised that currently inspections are being conducted on more than 700 properties in the City. She stated that the 700 properties consist of about 300 properties that are already in compliance. She has already conducted inspections on the east side. She will be closing about 300 of those which are newly built homes. This includes the Benchmark properties off of Knox, the new subdivision on St. Montelena Court off of Monterey Avenue and the newly built homes on Tevin off of Barnett and Pecan.

Ms. Rodriguez stated that weed abatement is a year round program to inspect vacant lots for refuse, wild vegetation and brush. Their primary goal is to prevent fires and blight in their City and neighborhoods. She referred to a property on W. Park Drive which sits on three different parcels. She explained that weeds were over three feet tall and as they can see, it is a huge fire hazard to all the abutting properties. She added that it harbors rodents. She stated that after she went out there for her reinspection, she spoke to some of the property owners and they told her that by the time the property owner went out there to abate the property, they were actually able to see the mice run out of the property as it was being abated.

Ms. Rodriguez referred to a property located on the corner of West 3<sup>rd</sup> and North "M". She explained that the weeds were over three feet tall. As they can see, it covers the fire hydrant and the red curb. When she was out there for her inspection, she observed stagnant water due to weeds obstructing the flow of water which harbors mosquitos.

Ms. Rodriguez referred to a property located on South "D". She noted that the weeds were clearly over the six inches. There was trash accumulated and as they can see, there is a propane tank on the property. She noted that weeds were green at the time but by July of course, they are all high and dry. She commented that it is a very high traffic area so if any of the drivers were smoking and they throw a cigarette butt out, that could cause a huge fire on that property.

Ms. Rodriguez referred to a property located on Country Club Drive. She noted that weeds were overgrown and as they can see, it is clearly obstructing the public right of way as trash was accumulated causing blight.

Ms. Rodriguez referred to a property located at 1119 Columbia Street. She noted that weeds were over four feet tall and of course, it is a fire hazard. She added that it is in between two residential properties. When she went out there for her inspection, she actually spoke to the resident next door who was playing outside with his daughter. He told her that this was the first time that this property had ever been inspected. He had been living there for about five years and no one had ever looked at it or inspected the property, and the property owner never did anything to bring it into compliance. She advised that this was actually one of the properties they had to abate last year.

Ms. Rodriguez reviewed her weed abatement process noting that she starts off with an inspection. She looks for anything that is over six inches, any trash, any obstructions of right of way. She then issues a 45 day notice of violation. She advised that the notice of violation is just a warning but with that, it is good for a whole year so they have a whole year that they need to have it in compliance. If it is not in compliance then they would enforce other action on the property. She advised that all lots need to be clean and disked or mowed by May 13<sup>th</sup>. With that, ample time is given because they do have 45 days to bring it into compliance. She will go out there after the 45 days. If it is in compliance then the case is closed. If it is not in compliance then further enforcement action will be taken.

Ms. Rodriguez commented that with the abatement process, she then comes here. They see her again and she schedules the abatement for all the non-compliant properties. She advised that last year they had about 23 properties that were not in compliance that they had to abate. With that, they do go into cost recovery once they get abated so she comes back again and they actually place those properties on the tax rolls. Ms. Rodriguez showed them an example of her notice of violation. As they can see, it shows the APN (assessor's parcel number), the property information, the property owner's information. It also states

the violation, the corrective action, the deadline and it is also a notice of hearing specifying the date, time and location.

Ms. Rodriguez showed them what she looks for when she goes out on her reinspections. For any properties that are five acres or less, she looks for total mowing and/or removal of weeds, brush, trash, and/or hazardous debris. For anything that is over five acres she looks for a fire break of a 30 feet minimum in width that shall be maintained around the perimeter of the property; removal of weed clippings, brush, any debris and trash and/or other hazardous materials is required; and any firebreak of minimum 100 feet shall be created and maintained surrounding any structure which is constructed of any flammable material within the property. She advised that a good example of that one would be the property on South "D" because it does have the propane tank on it. She showed them examples of the perfect lots as she would call them. As they can see, there is the fire break of 100 feet. It is clearly over the five acres. For another one, it is clearly over five acres but the property owner decided to disk the whole property which is perfect. For the next one, she noted that it is under the five acres so they mowed the whole property. For the final one, she noted that it is also over the five acres and they got rid of all the weeds too.

Ms. Rodriguez discussed why weed abatement is important. It prevents fires, protects the health and safety of the public, keeps right of ways accessible, prevents damages to abutting properties, and discourages illegal dumping. She added that most importantly, it makes Madera a better City. Ms. Rodriguez offered to answer any questions.

Mayor Medellin stated he knows that they maybe had a little bit of a concern through their Parks Department with some of the landscaped medians and things of that nature because they had a good wet winter this year. He noted that as is with all of the code enforcement, for those that cannot come in compliance within that 45 days, we work with those folks and give them time as long as they are willing to.

Ms. Rodriguez replied that they do. She actually sends out a courtesy notice before the 45 days are up just reminding them of what needs to be done in order to be in compliance. Most of the time, a lot of the property owners do get in contact with and she works with them if they need more time.

Mayor Medellin stated he only says that because he doesn't want somebody to say...hey the City is not doing anything about it, why are you making me do something about it. He hopes by May things will hopefully be taken care of.

Ms. Rodriguez stated that the weeds are super tall right now so she is definitely getting on that.

Council Member Rodriguez asked if when she says cost recovery if that is in the form of a tax lien if these people don't comply.

Ms. Rodriguez replied yes.

Council Member Rodriguez added that she will send them a bill.

Ms. Rodriguez replied yes and added that most of the time they do pay so they have a certain amount of time to pay it. They either come to the office and pay it or send in their check. Or, if they don't receive any payment then it is placed on the tax rolls.

Council Member Rodriguez asked if after these rains does this happen just typically once a year right before spring.

Ms. Rodriguez replied that she does start her inspections right before the spring but it is a year round process so come August, she will go out there again, reinspect the properties. If she sees that anything is not in compliance then she does contact the property owner to get that done.

Mayor Medellin commented that Ms. Rodriguez brought up a good point that the neighborhood recognizes that they are being proactive. They are trying to make the entire neighborhood and the entire City look good; not just one particular area. He thanked Ms. Rodriguez for the workshop and commended her for her efforts.

**B. CONSENT CALENDAR**

- B-1 Minutes – 7/20/16
- B-2 Information Only – Warrant Disbursement Report
- B-3 Bi-Weekly Water Conservation Report for 2/20/17 – 3/05/17 (Report by Dave Randall)
- B-4 Consideration of a Resolution Approving a Letter of Commitment as a Participating Jurisdiction in the Madera County Multi-Jurisdictional Local Hazard Mitigation Plan Update and Authorizing the Mayor to Sign the Letter of Commitment (Report by Wendy Silva)
- B-5 Consideration of a Resolution Approving Agreement for Outside of City Water Service for Property Located at 27722 Avenue 16, 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 Approving the Submission of a Grant Application to the Housing Related Parks Program 2016 and Authorizing the City Administrator to Execute All Required Grant Documents (Report by Ivette Iraheta)

Mayor Medellin asked the members of the Council if they would like to pull any items from the consent calendar for further discussion. No requests were made and Mayor Medellin announced that he would accept a motion for action.

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

**RES. NO. 17-41      A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MADERA APPROVING A LETTER OF COMMITMENT AS A PARTICIPATING JURISDICTION IN THE MADERA COUNTY MULTI-JURISDICTIONAL LOCAL HAZARD MITIGATION PLAN UPDATE AND AUTHORIZING THE MAYOR TO SIGN THE LETTER OF COMMITMENT**

**RES. NO. 17-42      A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MADERA, CALIFORNIA, APPROVING THE AGREEMENT WITH REGINALDO MEDINA AND AURORA MEDINA FOR OUTSIDE OF CITY WATER SERVICE FOR 27722 AVENUE 16, 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**

**RES. NO 17-43      A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MADERA, CALIFORNIA, AUTHORIZING APPLICATION FOR HOUSING RELATED PARKS GRANT**

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

- C-1      Second Reading and Consideration of the Adoption of an Ordinance Amending the City Municipal Code Relating to Organic Waste Recycling**



Public Works Operations Director Dave Randall stated that they will remember from their last meeting that this is an ordinance that simply implements the program to start collecting organic waste at commercial businesses. He advised that this is obviously the second step and they are asking the Council to adopt at this point. Mr. Randall offered to answer any questions or they can go back to the PowerPoint.

Mayor Medellin commented that he doesn't think they need to do that.

Council Member Rigby stated he is curious if any of the local businesses have caught wind of this and if there is any conversation being had between maybe waste management, noting that he sees Ms. Kwock is here.

Mr. Randall replied that they have had some people that are already interested. He advised that JBT who previously had done some stuff is in the mix. The Vineyard is eager to make that happen. He advised that there are some people who are going to step up and endorse this already.

Council Member Rigby asked Ms. Kwock if she is encouraged that they are seeing a little bit more. He stated that to him, the best kind of peer pressure is not when government says you have to, but it is when others that are going to be participating in the program themselves are saying...hey, we think this is a great idea, why don't you join us.

Annette Kwock stated she is with Mid Valley Disposal and she resides in Madera, California. Ms. Kwock replied that it is one of those things. It is an Assembly Bill that got passed last year. It has taken this long to get everything in working order but they have done Chamber news blast. They are at every event letting everyone know that this is coming and like anything else, it does take time. She advised that all the customers, all the food preparation areas are all aware of the program.

Council Member Rigby stated he understands AB 1826 obviously and added that it is coming whether they like it or not. He added that it helps...a spoon full of sugar helps the medicine go down...is what he recalls as a kid.

Ms. Kwock commented that way back when she first started in the Solid Waste Department, Chris Mariscotti from the Vineyard wanted this program to get started 13 years ago and she said...hey, we're not gonna do that here...no it's not gonna happen. Low and behold, here they are collecting food waste.

Council Member Rigby stated he appreciates Ms. Kwock's diligence and asked that she pass his appreciation on to her organization. He thanked her for being here tonight.

Mayor Medellin asked if there are any other questions.

Council Member Holley stated he has noticed at the schools he goes to that they are starting to do their recycling. He asked if that will be happening at all the schools or are they just chosen schools.

Ms. Kwock replied that right now she has three schools participating in the pilot program. That is Cesar Chavez, Parkwood Elementary and Alpha Elementary. She commented that the State of California was here on Monday. They did do a site visit at the school. They are doing a very good job with the schools. She advised that it is a lot of training. They have been doing this for four months now and she thinks they finally got it down. She advised that every school will be online before the summer hits she hopes.

Council Member Holley stated that is good because he has been keeping an eye on that. He thinks it works. He sits and watches how they are learning which to put each item in so it is educational.

Ms. Kwock told Council Member Holley if he would like to join her one day to one of the school sites she would be happy to. She invited any of them to attend with her and see how great they are doing. She

added that even though it is a separate contract for Madera Unified, it still falls under the City of Madera and they get to use that tonnage for their annual report to the State of California.

Mayor Medellin asked if there are any other questions. No other questions were asked and Mayor Medellin thanked Ms. Kwock.

Mayor Medellin asked the Deputy City Clerk to read title.

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-1, ORD. NO. 940 C.S. WAS ADOPTED UNANIMOUSLY BY A VOTE OF 7-0.**

**ORD. 940 C.S.                    AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MADERA AMENDING CHAPTER 3 OF TITLE V OF THE MADERA MUNICIPAL CODE RELATING TO COLLECTION OF REFUSE & RECYCLING**

**D.        WRITTEN COMMUNICATIONS**

There are no items for this section.

**E.        ADMINISTRATIVE REPORTS**

**E-1        Acceptance of the Audited Financial Statements and Single Audit Report (Federal Grants) for the Fiscal Year ended June 30, 2016**

Director of Financial Services Tim Przybyla stated he is happy to present to them this evening the audited financial statements for the year ending June 30, 2016. He advised that the audit is kind of what demonstrates how they have done their accounting work properly during the entire fiscal year and culminates in the written document before them this evening. One point in the staff report that he wants to mention is that for the current fiscal year they are hoping to complete a CAFR (Comprehensive Annual Financial Report) which is a Comprehensive Annual Financial Report rather than just a general basic audited financial statements. He explained that the difference is that there are more components, more introductory letters, more comparative information. That will enable them to apply for an award just as they did for the budget to see if they can get the CAFR award from the CSMFO (California Society of Municipal Officers) and/or GFOA (Government Finance Officers Association).

Mr. Przybyla stated that this evening they have Mr. Fausto Hinojosa, Managing Partner of Price Paige & Company, to present the audited financial statements.

Fausto Hinojosa with Price Paige & Company stated he appreciates the opportunity to come before the Council tonight to present the results of the audit. As Mr. Przybyla just mentioned about the CAFR for next time, if 110 pages isn't big enough yet so their CAFR will probably be about 140 pages. But, as he points out, that is going to provide additional information and give them the opportunity to be recognized by the California Society of Municipal Finance Officers or the Government Finance Officers Association. He thinks that is important for a City their size to be recognized by those organizations with respect to the quality of their financial reporting. He thinks that is a move in the right direction.

Mr. Hinojosa stated they completed the audit. Obviously he is not going to go through 110 pages. He is going to hit a couple of highlights but he thinks that the important thing for him to do as an auditor is not so much look at numbers because these numbers are June 30, 2016 but to really talk about process and the audit process that they go through to determine whether in fact their financial statements are fairly presented or not. As auditors they are hired by the City Council so they don't report to management as they know. It is their job to assess whether the financial statements are fairly presented in accordance with

the accounting rules. He explained that the accounting rules are promulgated by the Governmental Accounting Standards Board. They set the rules and they ask that the City comply with those accounting rules. Their job as auditors then is to come in, take a look at their accounts, their footnotes, their financial statements and determine whether the City has complied with those rules. The way that they do that is that they initially conduct a risk assessment. Their job is to look for two things. They are looking for errors. Have they made any material errors that may need to be adjusted in their numbers? And, number two, they are looking for fraud; errors and fraud. The concept of materiality is important because as auditors certainly they can't look at every transaction so they apply different techniques to try to reasonably judge and determine whether there are any material errors or fraud.

Mr. Hinojosa restated that the first thing that they do is a risk assessment. They do that by first obtaining an understanding of their internal control structure. Their first and best line of defense with respect to both errors and fraud is a proper sound internal control structure that includes not only the tone at the top which is what they are demonstrating here tonight by even just inviting him here and having a public session where the results of the audit are presented but all the way down to, for example, two signatures on a warrant or when somebody prepares a schedule somebody else reviews that. When the cash collections come in there is a reconciliation of those, somebody reconciles the bank statement. Those are internal controls. He stated that their job as auditors then is to obtain a thorough enough understanding of those controls. He advised that he and his team, which includes Dave Dybas, their Audit Manager on this engagement and who also happens to be a resident of their City, sit down, four or five of them, and they start to think...ok, this is how their controls function...if somebody wanted to do something improper, what would they do, what could they do, what weaknesses are there in the system. Once they assess those risks then they develop audit tests to determine whether any of those things have happened and that is really what the audit is. They start to take a look in their cash receipts area, in their disbursements area, in their capital assets, across the City in the most significant areas, and they perform tests to determine whether anything improper has happened. He stated again errors or fraud is what they are focused on.

Mr. Hinojosa stated, as he said, they have to sample transactions but they have guidance in the auditing standards that tell them...we have a population of 5,000 transactions then you need to pull a sample, this is how you pull that sample, this is how you test that group of transactions. The end result then is once they do all of that work, they issue an opinion that says...yes your financial statements are fairly presented.

Mr. Hinojosa referred to page 1 of the financial statements, on their letterhead, the very last paragraph in that report is their opinion. He advised that the City has received what they call an unmodified opinion which is a clean opinion. It is the highest level of opinion that you can receive, the best type of opinion. He advised that it basically means that their financial statements are fairly presented in accordance with Generally Accepted Accounting Principles for all of their funds and for their government wide financial statements.

Mr. Hinojosa again stated that he doesn't plan to go through the financial statements in any great detail but maybe just to point out a couple of items in them.

Mr. Hinojosa referred to page 24, Balance Sheet for Governmental Funds. He explained that a balance sheet is a listing of assets and liabilities and then equity. For example, if they look at their General Fund, they will notice, that very first column, that there are just over \$17 million in assets. They have liabilities of about \$1.5 million. Some deferred inflows and outflows which function like assets and liabilities. He referred to the third line from the bottom, the very first column which is the general fund column, they will see an unassigned fund balance of \$12.8 million. If they took a look at their general fund there, they can see that their general fund is in a healthy position. He knows that they are going to be looking at numbers later tonight with the budget so again he is not going to get into any great detail there.

Mr. Hinojosa referred to page 26, Income Statement or Profit and Loss Statement is what it is called in the private sector. They can see in their General Fund revenues of \$22.8 million and expenses of \$28.6 million; some transfers in and out. Bottom line is that they had a net change in fund balance, and in the private



sector they might call that a profit or loss, and the third line from the bottom is \$467,000 so they are basically breaking even there in their General Fund.

Mr. Hinojosa commented on a couple of numbers with respect to some debt that he notes council's usually are interested in noting that he will jump back to page 68. At page 68 they will be right in the middle of a very long footnote with respect to their pension liability. He advised that they have two pension plans. They have an agent plan and a cost sharing plan and those plans, as they know, are housed at PERS. Just a couple of years ago, noting that he thinks last year was the first year that they were required to report this liability in their financial statements. He referred to the table on page 68, far right net pension liability. The balance of that table shows about \$18 million. He advised that is an unfunded pension liability. He noted that PERS sends them invoices and they are paying those, the total liability \$70 million but they have been paying and accumulating assets of \$52 million so they have that net \$18 million which the way that PERS does this is that they calculate over the next 20 years how much they need to put in so the invoices that they are providing theoretically should make those numbers, the liability and assets, catch up to each other. He noted that this is for their agent plan.

Mayor Medellin referred to page 68 and what was noted in the report shows that the discounted rate is not what they are going to expect. He added that the discounted rate here has that 1%.

Mr. Hinojosa stated that is a great question to ask. He advised that the rate that PERS used to calculate these numbers was a 7.65% rate but PERS is going to decrease their discount rate which means that their liability is going to go up. He referred to the table on page 68 where they can see that at the current rate, 7.65%, that liability is \$17.9. At a 6.65%, that liability jumps up to almost \$27 million.

Mayor Medellin stated that is a huge, huge difference.

Mr. Hinojosa stated that if the stock market kept doing what it did for the last three months, maybe...nobody expects that. They can't look into the future but exactly what PERS does with their discount rate impacts the City significantly. However, from a budgeting perspective and from a cash flow perspective, it is like having a mortgage. They might have a \$300,000 mortgage but it doesn't come due next month. You are making payments on that and that is exactly how this PERS liability works. Unlike a mortgage where they know that fixed principle, here you don't know what that principle amount is. He referred to actuaries noting that his son is one and if they think accountants are boring, they've got to hear the discussion he and his son have at the dinner table. He noted that these numbers guys crunch all these numbers and they come up with that liability. He wanted to point that number out.

Mr. Hinojosa referred to page 75 and noted that this is one more liability that he would like to point out because these are kind of unique things. He referred to note 9 which says Other Post Employment Benefits (OPEB). He advised that these are retiree health benefits that have been promised. The City has currently reported a liability of \$2.4 million on their books. He advised that there is a new accounting standard that is going to be implemented not for the 17 year but for the 18 year, June 30, 2018. When that new standard comes into play, they will have to record the full amount of the liability. He noted that on the middle of this page where it says Funded Status and Funding Progress, Actuarial Accrued Liability, they see that the full amount of the liability is \$4.8 million. They currently have \$2.4 booked but with the new standard, they are going to be required to book the full amount so they will have that \$4.8 million booked. He added that is something also that they are doing on a pay as you go basis. He stated that they also have other debt, long term bonds, etc. but again those are amounts that are fixed and that they know so he is not going to get into any detail with respect to those.

Mr. Hinojosa advised he would go to a second report. They did an audit of the financial statements but they also did a federal compliance audit known as Single Audit which is 13 pages. They've issued two reports. A report on internal control and compliance in accordance with Government Auditing Standards. He advised that the standards that apply to the financial statements audit are standards issued by the American Institute of CPA's (Certified Public Accountant). He noted that the standards that apply to a government audit are issued by the Government Accountability Office. He added that there are separate

standards issued when you receive federal funding in excess of \$750,000 so they have issued two separate reports, one on the financial statements, this report in accordance with Government Auditing Standards, and a third report related to their federal grants.

Mr. Hinojosa advised that he will not go into great detail. He referred to page 3 which is a report on their federal grants and he commented that they had no compliance findings with respect to their federal grants.

Mr. Hinojosa referred to the report on page 1 and page 2 and stated that they have a finding related to the year end closing process. That finding is described on page 9. He explained that as they did the audit, they came in at the end of the year and they identified some accounting errors, no fraud but there were some accounting errors primarily that there was a deposit that had been recorded from developers on the City's books and it had been there for a number of years. As they investigated that further, it should not have been recorded as a deposit but really should have just been recorded as revenue and then restricted. He explained that it really was restricted revenue but when it came in, it was recorded as a deposit. He advised that a deposit is something that is recorded on a balance sheet as if you owe it back to them but in this case, they don't owe that money back to them; you simply have a requirement to use it for a restricted purpose. He noted that was the difference in the accounting. When they realized that, they recommended that an adjustment be made for that and management agreed with that adjustment.

Mr. Hinojosa stated that they had a couple of other adjustments related to some infrastructure costs. They can imagine that the capital assets and the infrastructure of the City is significant. As they go through the audit, if they identify any errors, they are pointing those out and recommending adjustments to make those. He advised that that year end closing process, as he understands it, management is working on creating maybe a better checklist for somebody to double check all of those things. He advised that some of that is just so time intensive that it might be difficult with respect to staffing, but in order to avoid some of these errors, really just management needs more time to be able to have a better closing process right at the end of the year.

Mr. Hinojosa stated that it is important to point out that these were not systemic issues. For example, if they found that their disbursement process was broken, they would be very concerned about that because that means that there are holes in that process. He commented that there is a difference between those systemic problems and then the final closing entries at the end of the year when they are trying to make the final adjustments to record certain things. That can be fairly complex. Mr. Hinojosa concluded his report and offered to answer any questions.

Council Member Rodriguez asked Mr. Hinojosa to elaborate on that last section of the error noting that he had mentioned something about a deposit and how it becomes restricted if you enter it a certain way. And if you don't, does that mean it is unrestricted and funds can be utilized a certain way.

Mr. Hinojosa replied that when the money came, the person that recorded it thought...gee this is from a developer, it is restricted for something so it must be a deposit. He explained that a deposit is a liability that is recorded on the balance sheet but then when they investigated that deeper in this year's audit, they looked at the agreements and as they read the agreements, it is not that you are going to owe that money back to the developer; and if you are not ever going to have to pay it back then it is not truly a liability. It is more like a restricted contribution which means when it first comes in, it should have been recorded as revenue and simply the fund balance should be restricted so that you never lose track of it, it is restricted for a specific purpose but it is not a liability in the sense that a bill from PG&E for example might be a liability. He asked if that makes...

Council Member Rodriguez replied that it does.

Mayor Medellin asked if there are any other questions. No other questions were asked and Mayor Medellin thanked Mr. Hinojosa for that report and stated his appreciation.

Mayor Medellin announced that he would accept a motion for action.

**ON MOTION BY COUNCIL MEMBER RIGBY, AND SECONDED BY COUNCIL MEMBER FOLEY GALLEGOS, THE MOTION FOR ACCEPTANCE OF THE AUDITED FINANCIAL STATEMENTS AND SINGLE AUDIT REPORT (FEDERAL GRANTS) FOR THE FISCAL YEAR ENDED JUNE 30, 2016 WAS ADOPTED UNANIMOUSLY BY A VOTE OF 7-0.**

**E-2 Presentation of the Mid-Year Operational Budget Report and Consideration of a Resolution Authorizing and Approving Amendments to the City of Madera Fiscal Year 2016/2017 Budget**

Director of Financial Services Tim Przybyla referred to the last item. He noticed that some Council Members eyes lit up when they said Dave Dybas lives in Madera. He just wanted to let them know that there is a position open as the Finance Manager. He has hit him up numerous times; he's not biting yet but they are trying.

Mr. Przybyla referred to the Council's packet and advised that there were some last minute changes. He should have taken out on the second page and another that shifts \$58,000 to the General Fund from Median Landscape Services that are not covered by gas tax. That was changed at the last minute. He apologized for not catching that in his last minute changes. He advised that that \$58,000 just disappeared so they don't need that budget amendment.

Mr. Przybyla stated the purpose of this is to see how they are doing at mid-year which is December 31<sup>st</sup>. He advised that obviously it takes them a while to compile that information and see where they are at. He commented that at mid-year the General Fund is performing very well overall. He added that the Enterprise Funds are performing well but they are behind on the capital project expenditures. He noted that the Internal Service Funds and the Special Revenue Funds also seem to be performing within budget but won't be the focus of this report. He advised that those are not typically operational in nature, the capital projects. They wouldn't expect those to be at 50% at mid-year just because it is whenever the projects happen rather than a steady flow of revenues and expenses.

Mr. Przybyla referred to the big picture year to date. He advised that revenues are exceeding expenses. They budgeted for deficits but they've generated a surplus as of mid-year anyway. They expect to come close to budget by fiscal year end and will establish accurate estimates for the current fiscal year how much they're really going to need or how much they're really going to make to finish out the year as they begin their FY 17/18 budget preparations.

Mr. Przybyla commented that they can see that the General Fund has \$471,000 more revenues than expenses as of December 31<sup>st</sup> and the Enterprise fund had \$2 million more revenues than expenses as of mid-year.

Mr. Przybyla stated that if they are focusing on the General Fund, the revised budget for the year calls for a \$1.6 million deficit. Year to date actual they were showing a \$471,000 surplus. He noted that revenues, as they will see, are slightly less than 50% at mid-year. Expenditures are well under the 50% mark at mid-year. He noted that revenues and expenditures can certainly be seasonal rather than evenly flowing month to month. For example, about 67% of property taxes come in with less expected in the second half of the fiscal year. They don't get monthly checks. They get two big lump sum checks from the County and the bigger portion typically comes in the first half of the fiscal year.

Mr. Przybyla stated that during this fiscal year 16/17, they had some revenues that came in too late to be recognized in 15/16; property tax and sales tax, roughly \$500,000 that came into this year that they couldn't record to last year. That impacted their budget but they hope to finish off the fiscal 16/17 with the balanced budget revenues equaling expenditures.

Mr. Przybyla stated the City Administrator didn't want him to say that he hoped that they will get this so he is providing a little back up to the description of hope. He commented that there is a lot of analysis that has



gone into this. He advised that property tax and sales tax make up \$11.1 million or 60% of the non-departmental revenues and 34% of all General Fund revenues. What they are looking at here is the non-departmental, basically taxes, not the charges for services that the departments have in their departmental budgets. He explained that these are taxes that are used to fund all of the General Fund activities.

Mr. Przybyla stated, as mentioned, about \$580,000 of property and sales tax from last year came in this year. Without that they would be right about at 50% at mid-year. They will see that there is also the cable utility franchise tax and the electric utility franchise tax. Combined they are \$685,000. They've received about \$80,000 so far so in the second half of the year they will get that \$600,000. If they are trying to compare where they are at mid-year, that is why he is trying to show these things that balance one way or the other. He added that they may only receive the other 33% of the current year property tax based on historical receipts from the County.

Mr. Przybyla commented that business license is a seasonal item. That one pretty much has come in for the year. It is done. They see a \$420,000 budget. They brought in \$432,000. They are not going to bring in another \$432,000 because they bill at the beginning of the fiscal year and they received most of those revenues already. He advised that there will be small amounts that come in but for the most part that is done.

Mr. Przybyla stated that interest income is low. They are \$68,000 out of \$400,000 budget. They hope to see that improve in the second half. He advised that they will have to look closer at what is being recorded to bring it closer. He noted that last year they came very close to budget on interest income for the General Fund. They also hope to see more departmental revenue. He restated that what they are looking at here is the non-departmental revenue primarily taxes but they also depend on the departments to bring in their revenues.

Mr. Przybyla stated they can calculate where they are going to end out fiscal year, where they think they're at. For example, if they say let's see if we receive 100% and we only expend 95.3% of the expenditure, that would be a balanced budget. If they come in exactly at 100% of revenues that would be pretty amazing but if they do that and hold the expenditures by 4.7% of budget, then they will have a balanced budget. If they come in at 97.4% of revenues, and he picked 97.4% because that is twice where they're at at mid-year for all of the General Fund, then at 97% of expenditures for the year, revenues will exceed expenditures by \$1.4 million which is kind of close to budget. They are giving their best estimates where they will end up at this time.

Mr. Przybyla stated they just received the report from the audit. He looked at page 90 from the audited financial statements with the auditor and mentioned how close they were to budget here. Their statement was that is phenomenal coming that close to budget and he is glad to quote him on that. Mr. Przybyla stated that they came within \$221,505 of budget on their revenues. That is 0.98% which is pretty darn close. On their expenditures, they came within \$207,000 of budget which is 0.7% and that is pretty darn close.

Mr. Przybyla stated the following is also on page 90. He broke it down into three pieces so they could see it. The auditor mentioned that they brought in \$467,000 more in revenues than expenditures and that they basically broke even. Out of a \$33/\$34 million budget that is pretty close to breaking even. One thing he wants to point out, you look there and you see that there is no original or final budget for this capital lease of \$1.54 million but the auditors count that as revenue to the General Fund. He noted that had an impact. If they didn't have that \$1.54 million which was funding provided for the fire truck and for the new ERP system, they would have had about a \$1.1 million deficit. He stated that these seemed like huge swings but really as a percentage of the budget, they're not that big. Absent the capital lease which was not a budget item, they had a \$1.1 million deficit in FY 15/16 however, if they had received the property tax, sales tax and some CDBG revenues in time, coincidentally its right about \$1.1 million so they would have had a balanced budget even without the \$1.5 million. He commented again that is pretty incredible how close they came and how between all these huge shifts and swings between different accounts, there are thousands of line items in the budget but, they came very close.

Council Member Rodriguez referred to the comment, mentioned twice, that they don't get the revenues in the second half. He asked if that is because when the property tax bills go out, not all property owners send in their amount, the County doesn't receive it in time. He asked why it is that they aren't getting that money in time on the second half of the property taxes or tax rolls.

Mr. Przybyla replied that typically the property tax, if you don't pay it through your mortgage, you can pay it at two different times of the year. Basically, that is when the City gets it when the money comes in to them.

Council Member Rodriguez stated that the first half they get in November and asked if that is when he is saying they get most of your revenue.

Mr. Przybyla agreed and explained that people probably decided to pay both installments in one payment rather than making two.

Council Member Rodriguez stated that the second installment then kind of goes outside their fiscal year. He asked if that is what he is saying typically and that is why they don't receive it in their budget.

Mr. Przybyla replied that there are a lot of pieces. It is not all just one description. There are different types of property tax that could come in and adjustments that come in during the year. By the time they finish doing their final reconciliations some of the property tax could be remitted to the City a little bit late. That was the case. That was a small portion of their total property tax.

City Administrator David Tooley commented that it has only been in the last couple of years that they have been receiving late payments from the County. He noted that is a change and it is something they recognize from a cash flow standpoint.

Council Member Rodriguez stated that had it not been for that, then they are saying that obviously they would have had a balanced budget. In this case they showed a deficit of one point some million dollars for 15/16 and asked if that is correct.

Mr. Przybyla stated for 15/16, with all included, they actually had the \$467,000 surplus. There are a lot of what ifs. When he was looking over the budget with the City Administrator, they could see that their budget for FY 15/16 on the one line item for property tax was low. It was like at 90% of budget instead of being right at 100%. This year they will recognize that money that carried over from last year in this year's budget. It will improve this year's picture but it is not really...some of it is just based on timing.

Mr. Tooley stated it is not unusual to receive a late payment from the state on sales tax. They've had that discussion before and it also affects them on Measure K. He added that there are those who are less charitable then he is who would say that the state is simply making interest on the float while they hold our money. He of course doesn't believe that.

Mr. Przybyla asked if there are any other questions.

Mr. Przybyla stated what they talked about just a second ago was the results. They talked about the non-departmental. Now they are getting down to the departmental just for informational purposes. He advised that he provided the breakdown of the different departments within that. They can see that a lot of these are going to be right at 50%. That is primarily because the income that those departments receive is from Administration and Overhead Allocations so they charge it off to the non-General Fund departments for the services that we all provide to those departments. That will come in regularly. Every month they book a journal entry that brings that in.

Mr. Przybyla commented that they will see that most of the budgets for the departments are under 50%. He noted that the City Council is well under noting that maybe he shouldn't bring that to their attention. One of the things that impacts the budget for the Council, if they are going to get new council members, they will

budget for full benefits. In other words they are assuming that they are going to have a family and that you are going to get health insurance coverage and all those benefits. They budget full employment with full benefits and sometimes they may not need the benefit so it saves the City money. He noted that a lot of that makes up that difference there.

Mr. Przybyla commented that they did note that the Police Department is a little bit low on their revenues. They hope to see more departmental revenue come in from them.

Mr. Przybyla noted that the Fire Department got a chunk of money for providing services for fighting forest fires he believes so they have brought in more than the year's budgeted revenues already. They are 52% of budget so they are going to hold back on expenditures.

Mr. Przybyla commented that they can see Streets are a little bit low on revenues. He noted that a lot of the street funding comes from grant funding and it could just be a matter of not drawing down the full amount for other expenditures yet.

Mr. Przybyla pointed out that Building seems to be ahead of the curve so far and could offset some of the revenue shortfall in other departments. They are doing a bang up job in Building. He commended the Chief Building Official.

Mr. Przybyla reported that Code Enforcement is also below budget on their revenues. He spoke with the Neighborhood Preservation Supervisor Viola Rodriguez who said that right now they are projecting that they may come in about \$100,000 below their original budget projections which is like 10% below that. She also said that they are expecting a savings on expenditures of about 27 so they are right on track. He corrected himself that they are not right on track but...the thing about Code Enforcement is that a lot of that they are doing on a cash basis. When they get money back from the liens that they file on properties, because they were reporting these huge amounts of revenues and then having to write them off in the past, they just decided to count it as the money comes in and they are not sure when the money is going to come in from the liens. He offered to answer any questions on that.

Mr. Przybyla referred to the CDBG noting that they will see how he has matched the 28.2% of revenues to expenditures. He did that for comparative purposes and he believes that he mentioned earlier that the CDBG money came in late also. They have actually received \$987,000 of revenue in CDBG this year but \$600,000 plus of that is from the prior year that recorded in this year. They are trying to compare this year's operations, revenues and expenditures. He advised that will help improve the picture overall for this General Fund for this fiscal year.

Mr. Przybyla referred to the total which shows the 48.7% where he doubled and said if we get this and only spend 95% of the budget then they will have a balanced budget. He corrected himself that he said they would have \$1.4 million deficit with 97% of budget expenditures. He asked if there are any questions on the General Fund. He noted that is really the one they are most concerned about and he wants to make sure he has covered that adequately and answer any questions they might have.

Mr. Przybyla referred to the Enterprise Funds. They are at 56.8% of budget on revenues and they are only at 34% on expenditures. He noted that revenues are higher than 50%. He advised that there is some seasonality of water usage that frontloads the revenues into the first half of the year. He had his administrative analyst look into that and he indicated that he believes in July, August, September, October, that's when a lot of the water use takes place so they bring in more revenues at that time. Mr. Przybyla noted that the expenses are only at 34% of budget. He commented that the primary reason for that is because there are some capital projects in the water fund that are delayed. He noted that only \$430,000 of the \$7.2 million budget for capital projects were completed by mid-year. He stated that it could be that there was more done by mid-year than that but the billing hadn't taken place at that point.

Mr. Przybyla stated that enterprise operating expenses in general are also less than 50% at mid-year. In other words, other than the capital projects, they are keeping their expenditures within budget as of mid-

year and they are keeping capital expenses way under budget. He noted they can see that is the big factor right there, the 21.9% of expenditures in the water fund. He added that they are mostly related to capital projects that will take place at a later time. He commented that even if the capital projects aren't completed during the fiscal year, those budgeted capital project dollars get rolled over into a new year so there will be a timing issue there also from original budgets to what gets added in.

Council Member Rodriguez referred to the capital projects that they are budgeting toward the \$7.2 million. He asked if that has a period of when that money should be used or is that ongoing. He asked if they will continue to roll it over if those capital projects are not completed.

Mr. Przybyla stated he believes the answer to that is that the money will continue to rollover until the project is completed. Depending on the size of the project, hopefully they will get it done within a couple of years.

City Administrator David Tooley commented that Mr. Przybyla has hit it exactly on the key component particularly in their Enterprise Funds. They have very, very large capital projects so instead of doing 10, 20, or 30 \$10,000 projects, and they certainly have some of those, there is a timing issue because their large projects \$1 million, \$2 million, \$3 million tend to take more lead time.

Mr. Przybyla continued with the presentation noting that they see the totals with all the enterprise included. He stated that the airport and the golf course are much smaller components of the Enterprise Funds but they are included in the totals there also.

Mr. Przybyla stated they will talk about escaping the MAIS. He advised that MAIS is their legacy software that they are still using because they are moving over from MAIS to Munis. He noted that is the catchphrase that they had for escaping the MAIS and moving forward with Munis. He stated that the conversion to the ERP (enterprise resource planning) system does present challenges. They went live with the first component of Munis August 1<sup>st</sup> of last year and they are still finding where there are bugs in the system and ironing them out. He advised that the mid-year budget report preparations helped to identify some of those needed corrections but there are no material impacts or corrections expected on their mid-year budget report. He commented that these findings are helpful as they begin their 17/18 budget preparations. He pointed out that this ERP conversion continues to burden staff. He noted that the Planning Manager Chris Boyle and his staff as well as the Community Development Director Dave Merchen have had the pleasure this week of sitting in those meetings. He added that Finance bears a large portion of that burden. He commented that they are still comfortable that they will perform well in the Fiscal Year 16/17 budget. They are looking forward to the challenge of preparing that budget for 17/18 and they expect more fine tuning related to the conversion to Munis as time goes on. As he mentioned earlier, accurate estimates of the 16/17 actual figures are coming from the departments very soon.

Mr. Przybyla moved on to budget amendments. He advised that Parks and Community Services has asked for slight increases for the PG&E budget. He believes it is \$20,000 for that. The reason they gave him is because they replaced ballpark lights and all of a sudden their PG&E bill went up. He noted that about one-third of their ball lights were replaced so that line item needs to be increased. He added that they also asked for a slight increase to contracted services. Then they added a school program they are working with and it will net about \$25,000 of revenue beyond expenses for the General Fund.

Mr. Przybyla stated in Engineering they have about \$5.7 million of capital project budget increases and \$1.1 million was shifting from one project to another.

Mr. Przybyla stated that Finance is asking for \$45,000 in total for Utility Billing because bank fees, contracted services, postage and interest expense have gone up higher than they anticipated. He thinks there is much higher use of credit cards since they added American Express. He stated that could be part of the reason why those fees have gone up but that is split between water, sewer and garbage. He noted that is a very small part of their budgets overall.

Mayor Medellin agreed that it is a small part but if he saw right, it is about \$35,000 in bank fees.

Mr. Przybyla agreed.

Mayor Medellin stated it is a lot.

Mr. Przybyla agreed. They are looking into that to see how they might be able to cut back on those bank fees. It includes such things as credit card fees, armored car services and in talking with the UB (Utility Billing) Supervisor who said that maybe they can cut back the number of pickups that they do with the armored car to cut back on those costs. He noted that another way of offsetting the interest expense is by leaving larger balances in the bank because they offset their bank fees with, last he heard was 0.3% earnings on the revenues that are in there. He stated that it is a matter of a lot of balancing, deciding...well can we get more in our investment portfolio or should we leave it in the bank to keep our bank fees down. He added that it is also likely that they have had a lower cash balance because they've decided they can make more money in investments.

Mayor Medellin stated that it just has a total here but it sounds like they are certainly aware of it and they are looking at different ways to change that.

Mr. Przybyla agreed.

Mr. Przybyla referred to the Fire Department. He stated that one of the things, when he met with the Battalion Chief Jim Forga, is that they realized that they had a \$78,000 lease payment that wasn't put in the budget this year for some reason. Chief Forga, fortunately told him that there is a savings in contracted services because they had anticipated a 5% increase in their contracts to their employees for the entire year. So, it is convenient that they are going to add back that offset for contracted service savings to compensate for that lease payment. He noted that thanks to Chief Forga saving money, they can get that in to the budget without any impact on the General Fund at all. He stated that the total impact on this is only \$2,000 on the General Fund. He added that a good part of that is thanks to Parks and Community Services for bringing the extra \$25,000 from the school contract.

Mr. Przybyla stated that staff's recommendation is for Council to accept the mid-year operational budget as reported and approve the resolution authorizing and approving amendments to the City of Madera Fiscal Year 2016/2017 budget. He offered to answer any questions.

Mayor Medellin thanked Mr. Przybyla for the presentation and asked if there are any questions regarding this presentation.

Council Member Oliver thanked Mr. Przybyla for the thorough and succinct presentation. He stated that obviously they got a recap on budget year 15/16 as well as some actual estimates and numbers for 16/17. He asked Mr. Przybyla if he can share a little bit as to what are the trend lines especially with respect to sales tax that they are looking at over the last two or three years. He asked if it is static, is it on the rise, 3%. He knows a lot of it is crystal ball.

Mr. Przybyla commented if they can tell him what the price of gas is going to be, he can give them a better idea.

Council Member Oliver clarified not by year 2020 but looking back at the actuals in previous years and following that trend line.

Mr. Przybyla commented that there has been a trend line of increasing. He believes for the 16/17 budget there was somewhat of a decrease in the original projection which will be offset by one, the late payment of sales tax that came in from last fiscal year. He noted there is something else that also offsets that but it skipped his mind.



Mr. Przybyla stated the trend is a slight decrease in their original projections. Next year, he can't remember the percentage increase but they are looking at, as projected by MuniServices, over a million dollar increase. He believes it was \$1.9 million of increase next year projected so that should be helpful to them for Fiscal Year 17/18.

Mayor Medellin referred to the allocations. He noted that Mr. Przybyla had talked about the energy costs for new park lights, about \$20,000 but also wastewater treatment is going to increase about \$30,000 if he read correctly. Mayor Medellin advised that Bobby Kahn gave them a report at their EDC (Economic Development Commission) meeting saying that energy costs kind of has a chokehold on the Central Valley. He noted that is a trend that they are going to continue to see he is assuming. He knows nobody here represents PG&E but it is something that they have to allocate more and more funds to energy and those costs are rising. Also, as he looks at their capital improvement budget, there are a lot of Avenue 17 and Sharon Boulevard improvements which is something that the Council had approved in the way of, whether it be incentives or having the Love's project come in soon so they have not seen the fruits of that yet. What he wants to do, if they can, is touch upon the five topics under Looking Forward including what overall impact will Measure K have on the General Fund...that those priorities have been defined for Police and Fire Services. He stated that basically that money is spoken for but he likes when they have those conversations and how do they project changes in the cost of pensions and health care. He stated that obviously, that is going to probably be one of the biggest issues that they are going to have in the months coming on what those costs are going to be. He gets it. He knows they don't want to use a word like hope when it comes to their financial status but there is a lot of crystal ball to what they are doing here as far as what those retail numbers are going to look like over the next six months, 12 months or even two years. He agreed that it is kind of crystal ballish. He does like where he sees them with the expenditures and revenues. So far they seem to be on track so there is some good positive light at the end of that tunnel. He guesses his point is that these five points in looking forward, they always have to have that in the forefront as to how they are going to spend their money, what they are going to spend it on and to be aware of some of these underlying things that if they are not financially sound, it could really get away from them.

Mr. Przybyla agreed.

Mayor Medellin asked Mr. Tooley if he had anything to add.

Mr. Tooley apologized noting that he thought the Mayor was asking a direct question.

Mayor Medellin stated he started out asking a question. He just kind of made a statement but if Mr. Tooley would like to chime in he would appreciate it.

Mr. Tooley commented that he would identify three things as a beginning point for their discussion about budget. The first is an admission, and all of his staff knows this, he starts out by seeing the glass as half empty as opposed to half full. He is just wired that way in terms of his financial thought process. He stated there are two things they should know about their General Fund balance position. The first is that they are obviously going to draw down those funds that were identified from the lease purchase. He advised those are restricted funds so they should anticipate that those are going to go away because they have to be spent on a specific purpose. Secondly, they have done a designation, and he thinks it is identified a little in excess of a million dollars, for their retrospective adjustments on prior year costs on health care. He stated those two alone are going to draw down their fund balance position by about \$2 million over the next couple of years. He added that one of the most important discussions they will have during the budget process is how they deal with their fund balance positions. They talked a little bit about PERS (Public Employees' Retirement System). He noted that becomes a collective bargaining issue. He asked will the City pick up the additional cost of PERS or will they seek to negotiate with their collective bargaining units for them to pick up some portion. They know that PERS is going to go up by approximately 20% over four years and asked how do they plan for that. One of the stories they tell is how do you get a number of rocks in a bottle. You start by putting the big rocks in first. They need to spend some time talking about the big rocks financially and that drives the rest of their budget discussion. With that, he will take his half empty glass and just sit quietly in his spot.

Mayor Medellin stated he is a little more optimistic than that but stated his appreciation for Mr. Tooley's position on that.

Council Member Rodriguez stated if they anticipate these revenues shrinking adding that obviously they have expenditures that continue to stay afloat. He asked what then does the City do as far as when it looks at cutting back. He asked what are the first things it starts cutting fat off of, what departments do they start looking at or what ways do they consider trying to increase more revenue. He noted that obviously they have this Measure K but again as their Mayor mentioned, that those funds are spoken for. He asked what plans the City has to account for that revenue whether it be health care or PERS for that matter.

Mr. Tooley replied that one of the things they are going to hear them saying as an organization all the time is that they make fact driven determinations. He doesn't have enough facts yet to give them a definitive answer on what the plan might look like but the other word that Council Member Rodriguez said is the word plan. They have to be very clear about the outcomes that they want to achieve. They have to be very clear about what impacts that has on their cash flow and their General Fund balance positions, their reserve positions on all of their funds. He stated that there is nothing wrong with drawing down a fund balance position as long as it is part of a plan that defines where you are going to go and how you are going to make use of those resources. As a City, they will recall not too long ago, they adopted a series of policies that define minimum fund balance in reserve positions. He noted that is a safety net. That's the floor and as soon as they start approaching those, ladies and gentlemen, they need to start paying attention. They are a little bit far out at this point because he hasn't looked at his first budget document. Mr. Przybyla hasn't given him his first estimate with regard to forward looking revenues but, they will define that plan and they'll provide choices for them. Mr. Tooley stated they make recommendations and the Council makes decisions.

Council Member Rodriguez thanked Mr. Tooley.

Council Member Oliver stated he definitely appreciates the conversation now and looking far out and trying to be prudent and responsive as possible. He advised that he has a quick question regarding the PERS discount rate. He asked what the phasing is from the 7 ½ to 7% change. He asked if it is over four years as Mr. Tooley mentioned on the anticipated 20% increase in PERS costs or is it a longer timeframe. He asked if they know or have they shared what that looks like.

Mr. Przybyla replied that he has seen those figures. He wants to say it is 25% each year but he could be mistaken on that. He will get back to them on that. He noted that they are definitely phasing it in a piece at a time instead of all at once. What they have done by changing the discount rate by 1%, their actuaries are saying instead of earning this much, to say what their unfunded balance liability is now, we are only going to earn this much which brings your...they saw what Fausto Hinojosa explained tonight.

Council Member Oliver commented that he was just curious as to the phasing of it and the amount of years.

Mr. Tooley stated the material he has read from PERS is that it is a four year phase. He stated they should remember that it is PERS; the answer may change.

Council Member Oliver agreed.

Mayor Medellin asked, even over the four years, if the difference was like an 8-9 million dollar swing.

Mr. Tooley replied the answer is it depends but again it is 20% of payroll and that's a fair chunk of change.

Council Member Rigby commended Mr. Przybyla for a great and thorough job presenting tonight. He wanted to take the opportunity to commend their department heads for doing such a great job of working within their budget as presented to them at the beginning of the year. He asked that they continue the good work.

Council Member Rigby referred to the increasing costs from PG&E and asked the Parks and Community Services Director Mary Anne Seay if this is something that she sees will kind of move towards their Little Leaguers. He knows it is for the babies noting this is a business transaction and asked is it not.

Parks and Community Services Director Mary Anne Seay commented she supposes that will be a question that the Council will answer when staff brings that back to them. It is a delicate balance. They as Parks and Community Services professionals feel strongly that they are here to provide a service. They aren't going to see it on a spreadsheet where they are net zero at the end of the day in this community. She acknowledged that still his point is a good one and with the addition of the Sunrise Rotary lights that will be going in pretty soon, that 40% increase is going to be even more in the coming fiscal year. She questioned what percentage of that utility bill should be borne by the soccer player or the baseball player or the softball player both youth and adults. They have some recommendations that kind of span the gamut and they think that underserved kids in this community, they are going to recommend that the subsidy from the City is higher than adults. She is not answering Council Member Rigby's specific question because she doesn't have a specific answer.

Council Member Rigby stated he didn't mean to put her on the spot but she kind of hit the nail on the head. Without going there, he is thinking about Sunrise Rotary Park because that is a project he would like to see completed soon and he knows she does too and it is going to be. But if this is what it costs to replace lights that they are already using, holy smokes, they are going to add a whole "nother" gamut of lights. He would like to set some type of precedence to where they are not only able to provide the services that they provide with excellence already but like she said, be able to ensure that children that need the opportunities and are enjoying the facilities, get that opportunity and maybe they can find a median where both parties are happy. He knows he buys a lot of Little League tickets. There is money there somewhere.

Ms. Seay commented that the moral of the story could be don't change the light bulbs. They haven't had any resources to do that in her nearly 10 year tenure here. This last year was the first year they were able to do that with General Fund resources and when they did, about 40% of the lights were not working and they saw a 40% increase. That doesn't account for the increases in PG&E that they are expecting.

Council Member Rodriguez referred to Sunrise Rotary. He knows there are some grants coming there. He asked if they have any revenues from either the County or the Unified District at all that participates since they do serve a lot of those kids. He asked if there are any talks with any of these entities.

Ms. Seay replied that they haven't had any discussion with the County. They don't anticipate doing that unless that is the Council's direction. They do have an agreement with the school district. As they know, they have Mount Vista School District on the City's actual property. They pay about \$23,000 in utilities per year. If they will recall, noting that the newer Council Members wouldn't know, but several years ago they went back to the table with Madera Unified to see how they might better collect revenues and it is a matter of what color of money it is so they weren't really able to pay the City rent fees. What they did is that they crafted a three year plan whereby the first year they resurfaced the gym floor and the second year they painted the interior of the gym and the third year they painted the exterior of the building. All that had a value of somewhere in the neighborhood of \$75,000-\$100,000 over the three year span. Annually they do collect utility rate from Madera Unified, about \$23,000-\$25,000 at that site.

Council Member Rigby thanked Ms. Seay for answering his question. He expressed kudos again to the way they are budgeting already but he was just kind of curious. He looks forward to some of those suggestions.

Mayor Medellin stated he thinks that means stay under budget. He thinks that is what Council Member Rigby is trying to say. He thanked Ms. Seay.

Mayor Medellin stated there are two things he would like to add. One is that this will be fact driven. With all due respect to recommendations, the Council has to make these decisions based on cold hard facts. Whether it is energy usage or what have you in each department, in order for them to really be fiscally

responsible, they need those facts. But of course, they are always going to listen to recommendations from each department.

Mayor Medellin stated that next he would like to commend his colleagues on the engagement. He stated that it is never too soon to start talking about budget talks. He knows this is just a mid-year and that they have plenty more discussions to come down the pike. He appreciates everybody's involvement and engagement in wanting to make this the best budget, stretch their dollar so to speak, the best way they can. He looks forward to those meetings. He looks forward to more engagement and questions and involvement from his colleagues so that they can represent the citizens and the taxpayer the best that they can.

Mayor Medellin stated if there is nothing else on this topic, he will move to council reports starting with Council Member Robinson.

City Attorney Brent Richardson advised that there is a resolution before them.

Mayor Medellin apologized.

**ON MOTION BY COUNCIL MEMBER OLIVER AND SECONDED BY COUNCIL MEMBER RODRIGUEZ, ITEM E-2, RES. NO. 17-44 WAS ADOPTED UNANIMOUSLY BY A VOTE OF 7-0.**

**RES. NO. 17-44            A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MADERA, CALIFORNIA, AUTHORIZING AND APPROVING AMENDMENTS TO THE CITY OF MADERA FISCAL YEAR 2016/2017 BUDGET**

Mayor Medellin thanked Mr. Richardson for that.

#### **F.        COUNCIL REPORTS**

Council Member Robinson reported that he attended the Kick Butt Day at the Housing Authority's Kennedy Complex along with Councilman Holley. He even had his blood test and blood pressure test. He advised that it came out pretty good 116 over 69.

Mayor Pro Tem Foley Gallegos reminded Council and everybody out there that this Saturday is their Tire Amnesty to come out and just root their guys and gals out that are going to be collecting tires to make their City a little bit more cleaner.

Council Member Rigby stated he wanted to take this opportunity noting that he sent the Community and Development Director Dave Merchen an email earlier. He just wants to put it out there since they are talking Enterprise Fund and budgets coming up. He spent some time with MID (Madera Irrigation District) and he just kind of wants to begin...he doesn't know what the process is if it is a conversation, if it is a roundtable discussion, if it's the possibility of what it looks like to begin to maybe set aside funding for a joint recharge project either. He just kind of wants the GSP (Groundwater Sustainability) process to sort of begin. He knows when Mr. Merchen brought it before them last year the GSA's (Groundwater Sustainability Agency) and the formations of them, he thinks it was recommended that they were going to start one in this manner. They see somewhere in the future merging with other GSA's. He kind of wants to get that started. He just wanted to put that on staff's radar that that is something he is really interested in. He gets that it is a long way down the line but he just kind of wants to put it out there on their radar, joint recharge project, begin to work alongside MID. He doesn't know if Mr. Randall has any ideas. He would like to be a part of that process. He just kind of wants to put it in front of staff again. He would just be kind of curious as they look at the Enterprise Fund what sort of space they have to even begin to set aside funding for something like that sort of project, for infrastructures that could help them. He is not a weather man and he has no idea how much more type of rainy seasons they are going to have like this but he would be interested. They were talking about all the other big capital projects that they already have on the table; maybe if he could

reserve one for 10 years down the road to kind of begin to pump up some of this water that they see coming their way. It is just a conversation that he would like to have.

Mayor Medellin stated he thinks it is a great idea and he thinks they should start that conversation sooner rather than later. He thanked Council Member Rigby for bringing that up.

Council Member Rodriguez reported that he had an opportunity to be at the Central Regional Robotics at Madera South. He is not sure if any of them attended that. They had a booth there with the Greater Madera Kiwanis. One of the topics that came up of course is possibly losing the Central Regional there at Madera South because of the lack of funds to be able to sustain that. He knows that can impact some of the local vendors there because this is an event that takes place...it is a four day event, Thursday to Sunday. It is a multi-national event so they get a lot people from different parts of the country and/or world that come down to these types of events. If they don't know much about it, they tried to do something a couple years back with Madera Greater Kiwanis to try to get awareness that this is something that potentially could be lost here in Madera. He stated that it is a big event and if they haven't really set their eyes out on it, he would ask that they please consider that. He doesn't know that the City might be able to do anything here as far as talks to the...they wanted to have a conversation with the principal Alan Hollman which at one point was the director of Madera Robotics. It is a really good opportunity because it brings a lot of business here. He is not sure if there is a big impact. He doesn't know the numbers, the data. The City does collect a lot of that sales tax within that event and it would be something to look at. He thinks it could still affect a lot of the vendors especially with that four day event. He stated it is a good opportunity to have that here. He knows that Clovis is fighting for it as well and he is sure that they can bring the revenue. He thinks it is anywhere from \$60,000-\$100,000. It looks like Google provides the majority of that grant but that could potentially be lost here in the next couple of years and asked how do they supplement for that money. He would ask some of his colleagues to please join them in a roundtable; not form a quorum but at least one or two that might be able to have talks with Principal Hollman and see what they as a community...he noted that it is not a Madera Unified deal. This is a community type of deal and he hopes that the City might consider something. Maybe his colleagues might be able to have that conversation as well.

Mayor Medellin thanked the City Manager David Tooley noting that they have another City Leadership Academy that just started on Monday. He had the pleasure of welcoming their new class with Councilman Oliver. He looks forward to the weeks to come where each one of the departments are highlighted and they get to give this new group of folks a little eye opening experience as to what they get to do in their fun time.

Mayor Medellin reported that he also had a chance to speak with the Association of Realtors today which went very, very well.

#### **G. CLOSED SESSION**

There are no items for this section.

#### **ADJOURNMENT**

The meeting was adjourned by Mayor Medellin at 7:25 p.m.

#### **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

**City of Madera**

Council Meeting Of	December 20th, 2017
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:** 12/20/2017

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

November 28th, 2017 to December 11th, 2017

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

General Warrant:	15658-15879	\$ 1,095,637.86
Wire Transfer	Union Bank Payroll and Taxes	\$ 654,171.22
Wire Transfer	SDI	\$ 2,039.80
Wire Transfer	Cal Pers	\$ -

Respectfully submitted,



Tim Przybyla  
Financial Services Director

**CITY OF MADERA**  
**REGISTER OF AUDITED DEMANDS FOR BANK #1-UNION BANK GENERAL ACCOUNT**  
**December 11th, 2017**

CHECK	PAY DATE	ISSUED TO	DESCRIPTION	AMOUNT
15658	12/01/2017	ADMINISTRATIVE SOLUTIONS INC.	CITY PAID RETIREE PRESCRIPTION BILL 12/17 - SKEELS	159.80
15659	12/01/2017	ADMINISTRATIVE SOLUTIONS INC.	CITY PAID RETIREE MEDICAL BILL DECEMBER 2017	1,199.15
15660	12/01/2017	ALERT-O-LITE	2017 HOMECOMING PARADE	500.00
15661	12/01/2017	ALL VALLEY ADMINISTRATORS	MEDICAL & CHILD CARE EXP ACCT 12/01/2017 PAYROLL	992.53
15662	12/01/2017	AMERICAN MOBILE SHREDDING	SHREDDING SERVICES	280.00
15663	12/01/2017	ORAL E MICHAM INC	REFUND DEPOSIT FOR METER #7	1,606.27
15664	12/01/2017	AT&T	PD PRIVATE LINE SVS 10/19 - 11/18	748.88
15665	12/01/2017	AT&T	10/17 CALNET 3 SVS 9391026403	896.36
15666	12/01/2017	BARNES & THORNBURG	Airport Monitoring Group	4,950.00
15667	12/01/2017	DAVID J. BOYLE	MAX Bus Shelter and Amenities	69,717.65
15668	12/01/2017	BSK ASSOCIATES	WWTP PERMIT COMPLIANCE LAB 11/02/17	39.00
15669	12/01/2017	CALIFORNIA DEPARTMENT OF JUSTICE	FINGERPRINT APPS	185.00
15670	12/01/2017	CALIFORNIA DEPARTMENT OF JUSTICE	BLOOD ALCOHOL ANALYSIS JUL-OCT 2017	4,410.00
15671	12/01/2017	CALIFORNIA DEPARTMENT OF TRANSPORTATION	SHARED COSTS	58.68
15672	12/01/2017	KEVIN MIZNER	2017 TRAINING MGRS - JOSIAH ARNOLD	50.00
15673	12/01/2017	CEDAR VETERINARY HOSPITAL, INC	VETERINARY SERVICES	168.93
15674	12/01/2017	CITY OF MADERA	CLOTHES WASHER REBATE - APPLY TO ACCT 5799156	75.00
15675	12/01/2017	CITY OF MADERA	CLOTHES WASHER REBATE - APPLY TO ACCT 9894479	75.00
15676	12/01/2017	COLONIAL LIFE & ACCIDENT INSURANCE CO	E700482-3 FOR 12/01/2017 PAYROLL	1,042.57
15677	12/01/2017	COMCAST	CITY INTERNET CONNECTION 11/15-12/14/17	1,372.25
15678	12/01/2017	COMCAST	09/17 SVS 8155500320092096	128.24
15679	12/01/2017	COMCAST	11/17 SVS 8155500320092096	133.51
15680	12/01/2017	CONCENTRA MEDICAL CENTERS	DOT TESTING	241.50
15681	12/01/2017	COVANTA ENERGY LLC	SPECIAL WASTE	697.76
15682	12/01/2017	CYRUN	Renewal of Alliance maintenance	50,000.00
15683	12/01/2017	DC FROST ASSOCIATES, INC	SPARE PARTS	467.46
15684	12/01/2017	ENTENMANN-ROVIN CO	BADGES	258.28
15685	12/01/2017	EUROFINS EATON ANALYTICAL, INC.	WATER SAMPLES	1,485.00
15686	12/01/2017	FORENSIC NURSE SPECIALISTS, INC.	FRESNO SART	900.00
15687	12/01/2017	FOSS, DAN	PER DIEM SLI - SESSION 8	224.00
15688	12/01/2017	FRESNO CITY COLLEGE	POLICE ACADEMY REGISTRATION - PARKING PERMIT	632.00
15689	12/01/2017	GUARDIAN WESTERN SWEEPING INC.	MONTHLY POWER SWEEPING - INTERMODAL	537.00
15690	12/01/2017	HERC RENTALS	Misc. equipment rental	1,586.95
15691	12/01/2017	J'S COMMUNICATIONS	KNOB	76.05
15692	12/01/2017	JAM SERVICES INC	ELECTRICAL EQUIPMENT AND SUPPLIES	39,009.78
15693	12/01/2017	JLB TRAFFIC ENGINEERING, INC.	CONDUCT PEDESTRIAN/VEHICULAR SAFETY EVALUATION	7,307.36
15694	12/01/2017	JORGENSEN COMPANY	FIRE EXT SERVICE	225.79
15695	12/01/2017	KAISER FOUNDATION HEALTH PLAN	PRE-EMPLOYMENT EXAM	2,945.00
15696	12/01/2017	KER'S GAS & LUBE, INC.	PD CAR WASHES	280.00
15697	12/01/2017	LIEBERT CASSIDY WHITMORE	LEGAL FEES	175.00
15698	12/01/2017	LIEBERT CASSIDY WHITMORE	LEGAL FEES	7,154.55
15699	12/01/2017	LINCOLN FINANCIAL	LIFE AND LTD DECEMBER 2017	8,151.74
15700	12/01/2017	MADERA ANIMAL HOSPITAL	VETERINARY SVS	282.63
15701	12/01/2017	MADERA CLEANERS AND LAUNDRY INC.	YOUTH CENTER MAT SERVICE	32.30
15702	12/01/2017	MADERA COUNTY E D C	REIMBURSEMENT FOR 1ST QTR SALARIES AND EXPENSES	851.69
15703	12/01/2017	MADERA COUNTY TREASURER	OCTOBER 2017 PARKING PENALTIES	112.50
15704	12/01/2017	MADERA COUNTY TREASURER	SEPTEMBER 2017 PARKING PENALTIES	225.00
15705	12/01/2017	MADERA TRIBUNE	RFP 201718-03	174.44
15706	12/01/2017	MADERA UNIFORM & ACCESSORIES	UNIFORMS FOR POLICE DEPARTMENT	3,673.59
15707	12/01/2017	MAMMOTH OXYGEN	POOL-CO2	1,416.57
15708	12/01/2017	N.P.C.-ORCHARD TRUST COMPANY	PLAN #340227-02 FOR 12/01/2017 PAYROLL	1,925.10
15709	12/01/2017	N.P.C.-ORCHARD TRUST COMPANY	PLAN #340227-01 FOR 12/01/17 PAYROLL	10,230.07
15710	12/01/2017	NOLAN MCGUIRE CONSTRUCTION	14-CalHome-9862 218 S. K St.	32,737.00
15711	12/01/2017	ONTRAC	OVERNIGHT SHIPPING	21.54
15712	12/01/2017	NISHIMOTO, DOROTHY	CUSTOMER REGISTERED UNTIL 2019 - PERMIT #4359	50.00
15713	12/01/2017	PACIFIC GAS & ELECTRIC	10/17 SVS 9920095153-3	31,137.33
15714	12/01/2017	AVILA, ERIKA	PARK DEPOSIT REFUND	50.00
15715	12/01/2017	BEAVERS, AMANDA	FACILITY DEPOSIT REFUND	100.00
15716	12/01/2017	CARRENO-GARCIA, HIPOLITO	FIELD DEPOSIT REFUND	50.00
15717	12/01/2017	ESTRADA, ANA MARIA	PARK DEPOSIT REFUND	50.00
15718	12/01/2017	GIL, EDUARDO	SPORT CANCELLATION	45.00
15719	12/01/2017	MADERA COUNTY FOOD BANK	PARK DEPOSIT REFUND	50.00
15720	12/01/2017	MIRELEZ, ANGELA	PARK DEPOSIT REFUND	50.00
15721	12/01/2017	PAIR, APRIL	PARK DEPOSIT REFUND	50.00
15722	12/01/2017	PENA, JAQUELINE	PARK DEPOSIT REFUND	50.00
15723	12/01/2017	PEREZ, DIEGO	PARK DEPOSIT REFUND	50.00
15724	12/01/2017	RAMIREZ, MARIA	FACILITY DEPOSIT REFUND	100.00
15725	12/01/2017	RANCHO CUCAMONGA MARCHING BAND	FACILITY DEPOSIT REFUND	300.00
15726	12/01/2017	ROMAN, JASMIN	PARK DEPOSIT REFUND	50.00

15727	12/01/2017	VILLAFAN, ANGELICA	PARK DEPOSIT REFUND	50.00
15728	12/01/2017	PETTY CASH - POLICE DEPT.	PETTY CASH REIMBURSEMENT	1,784.70
15729	12/01/2017	PHOENIX GROUP INFO SYS	CITATIONS OCTOBER 2017	234.30
15730	12/01/2017	PHOENIX GROUP INFO SYS	CITATIONS SEPTEMBER 2017	261.30
15731	12/01/2017	PREFERRED ALLIANCE, INC	PRE-EMPLOYMENT EXAMS	168.00
15732	12/01/2017	PRINCIPAL LIFE INSURANCE COMPANY	DECEMBER 2017 DENTAL INSURANCE	17,672.43
15733	12/01/2017	PROMINENT SYSTEMS, INC.	Disposal of spent carbon	6,245.00
15734	12/01/2017	PROVOST & PRITCHARD CONSULTING GROUP	PERMIT COMPLIANCE TESTING	258.50
15735	12/01/2017	REGENCE BLUECROSSS BLUESHIELD OF UTAH	CITY PD RETIREE PRES BILL CHUMLEY DECEMBER 2017	146.00
15736	12/01/2017	REGENCE BLUECROSSS BLUESHIELD OF UTAH	CITY PD RETIREE MED BILL CHUMLEY DECEMBER 2017	186.00
15737	12/01/2017	RON'S TOWING & ROAD SERVICE	TOW SVS	45.00
15738	12/01/2017	SERVICEMASTER BY J&C BROWN	PUBLIC WORKS OFFICE CARPET CLEANING	217.10
15739	12/01/2017	STATE WATER RESOURCES CONTROL BOARD	PERMIT FEE - BIKE TRAIL AT GATEWAY AND UPRR	1,300.00
15740	12/01/2017	STATE WATER RESOURCES CONTROL BOARD	ANNUAL PERMIT FEE	21,344.00
15741	12/01/2017	STATE WATER RESOURCES CONTROL BOARD	T1 DISTRIBUTION EXAM FEE - OSCAR SOLIS	50.00
15742	12/01/2017	STATE WATER RESOURCES CONTROL BOARD	T1 OPERATOR EXAM FEE - JOEY TYLER	50.00
15743	12/01/2017	STATE WATER RESOURCES CONTROL BOARD	WATER DISTRIBUTION CERTIFICATE - C. O'HARO	70.00
15744	12/01/2017	SUPERIOR VISION INC.	DECEMBER 2017 VISION INSURANCE	2,507.94
15745	12/01/2017	TESEI PETROLEUM, INC.	FUEL	25,339.07
15746	12/01/2017	TESEI PETROLEUM, INC.	DIGESTER HEATING	1,934.86
15747	12/01/2017	TRANSUNION RISK & ALTERNATIVE DATA SOL.	DATABASE ACCESS OCTOBER 2017	111.00
15748	12/01/2017	TUCK N ROLLERS	WAITING ROOM CHAIRS FOR POLICE DEPARTMENT	1,274.50
15749	12/01/2017	ALLEN RICHARD AND JANET	Utility Billing Credit Refund	110.81
15750	12/01/2017	BROWN ANNIE MAE	Utility Billing Credit Refund	92.19
15751	12/01/2017	CITY OF MADERA ORCOLLINS KAYLA AND JAMES	Utility Billing Credit Refund	151.22
15752	12/01/2017	COLLINS LORI	Utility Billing Credit Refund	85.52
15753	12/01/2017	FLINT GENEVIEVE AND DONNA LEE CASE	Utility Billing Credit Refund	273.79
15754	12/01/2017	GREWAL HARVINDER S	Utility Billing Credit Refund	188.12
15755	12/01/2017	KLOMP WILLIAM E	Utility Billing Credit Refund	89.69
15756	12/01/2017	MACEDO UBALDO	Utility Billing Credit Refund	13.97
15757	12/01/2017	MADRID ROBERT	Utility Billing Deposit Refund	5.90
15758	12/01/2017	MORALES BERNARDO AND DOMINGA A OR CITY OF MADERA	Utility Billing Credit Refund	181.82
15759	12/01/2017	PRICE JOHN	Utility Billing Deposit Refund	22.60
15760	12/01/2017	RAMIREZ CANDELARIA	Utility Billing Credit Refund	151.67
15761	12/01/2017	RODRIGUEZ MIKE M	Utility Billing Deposit Refund	4.29
15762	12/01/2017	SALCIDO LAURA OR CITY OF MADERA	Utility Billing Credit Refund	151.33
15763	12/01/2017	SANABRIA BLANCA ROSA	Utility Billing Credit Refund	215.93
15764	12/01/2017	SHEIKHKHOONI ALEXANDRA	Utility Billing Credit Refund	151.75
15765	12/01/2017	SOITO LESTER AND ROSALVA	Utility Billing Credit Refund	91.96
15766	12/01/2017	TERRAZAS BIANCA OR CITY OF MADERA C/O FOX PROPERT	Utility Billing Deposit Refund	66.25
15767	12/01/2017	VIZCARA ADOLPH	Utility Billing Credit Refund	113.34
15768	12/01/2017	ZARRAGOZA LUIS	Utility Billing Credit Refund	81.61
15769	12/01/2017	UNITED HEALTHCARE INSURANCE COMPANY	CITY PAID UNITED HEALTH CARE DECEMBER 2017	283,444.12
15770	12/01/2017	US BANK CORPORATE PAYMENT SYSTEMS	10/17 CAL-CARD CHARGES	117,580.20
15771	12/01/2017	VERIZON WIRELESS	PD AIR CARDS SEP 11 - OCT 10	114.03
15772	12/01/2017	VERIZON WIRELESS	PW AIR CARDS OCT 11 - NOV 10	114.03
15773	12/01/2017	VERIZON WIRELESS	PW AIR CARDS OCT 11 - NOV 10	114.03
15774	12/01/2017	VERIZON WIRELESS	COUNCIL IPAD SVC OCT 11 - NOV 10	304.08
15775	12/01/2017	WILLDAN FINANCIAL SERVICES	CFD FEES FOR NOVEMBER 2017	807.99
15776	12/01/2017	YAMABE & HORN ENGINEERING	17-207 VARBELLA MAP & PLAN CHECK	2,460.00
15777	12/01/2017	ZEE MEDICAL SERVICE CO.	MEDICAL SUPPLIES	46.94
15778	12/08/2017	ACRO SERVICE CORPORATION	TEMPORARY DRAFTSMAN: SHAWN GAR	2,272.32
15779	12/08/2017	ADMINISTRATIVE SOLUTIONS INC.	FUNDS ON DEPOSIT FOR MEDICAL CLAIMS 12/17	40,000.00
15780	12/08/2017	AKEL ENGINEERING GROUP, INC.	PROFESSIONAL ENGINEERING SERVICE	38,214.15
15781	12/08/2017	CLARK, ALLAN	REFUND REMAINING DEPOSIT FOR HANGAR 94	50.00
15782	12/08/2017	AT&T	11/17 CALNET 3 SVS 9391031562	2,057.94
15783	12/08/2017	C B MERCHANT SERVICES	CONTRACTED SERVICES FOR COLLECTION FEES	4.77
15784	12/08/2017	CALIFORNIA DEPARTMENT OF TRANSPORTATION	SHARED COSTS	108.13
15785	12/08/2017	CITY OF MADERA	MULCH REBATE APPLY TO ACCT 9918358	45.78
15786	12/08/2017	CITY OF MADERA	MISAPPLIED PAYMENT SHOULD HAVE GONE TO A/R ACCT	116.28
15787	12/08/2017	COMCAST	11/22- 12/21 SVS 8155500320322006	86.13
15788	12/08/2017	CONCENTRA MEDICAL CENTERS	DOT TESTING	184.50
15789	12/08/2017	DATAPROSE, LLC	NOVEMBER 2017 STATEMENTS/ NEWLETTER/ 48HR	11,421.55
15790	12/08/2017	DE LAGE LANDEN FINANCIAL SERVICES INC.	Computer Lease Payment	8,934.80
15791	12/08/2017	EVERGREEN LAWN CARE & MAINTENANCE, INC.	GRP 1 DOWNTOWN MAINTENANCE NOVEMBER 2017	14,720.00
15792	12/08/2017	EWING IRRIGATION PRODUCTS	SEED	62.73
15793	12/08/2017	FIRE SAFETY SOLUTIONS, LLC	FIRE PROTECTION ENG SVS 11/15/17-11/30/17	9,318.75
15794	12/08/2017	MADERA RADIO DISPATCH, INC.	TOWER RENT	310.24
15795	12/08/2017	MADERA TRIBUNE	P.C. NOTICE DEC.	214.20
15796	12/08/2017	MADERA TRIBUNE	ADVERTISEMENT FOR RFP 201718-04	52.38
15797	12/08/2017	MADERA TRIBUNE	TIRE AMNESTY ADVERTISEMENT	567.00
15798	12/08/2017	MCKENZIE, DEBRA	PER DIEM FTA WORKSHOPS	296.00
15799	12/08/2017	LAW OFFICES OF GREGORY L. MYERS	LATEEF V. CITY OF MADERA - FILE NO. 000531001	121.00

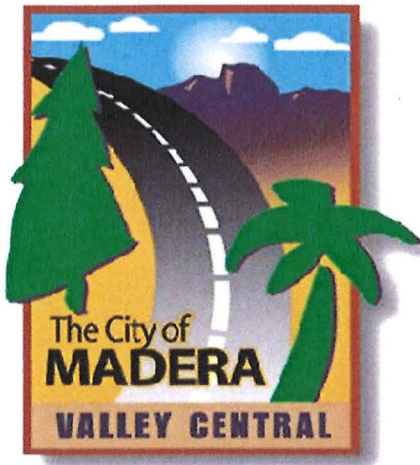


15800	12/08/2017	LAW OFFICES OF GREGORY L. MYERS	LATEEF V. CITY OF MADERA - FILE NO. 000531001	121.00
15801	12/08/2017	BELTRAN, BART	TURF REPLACEMENT REBATE - 3160 DOUBLETREE WAY	1,000.00
15802	12/08/2017	PACIFIC GAS & ELECTRIC	11/17 SVS 3819620697-3	15,745.54
15803	12/08/2017	PIERCE CONSTRUCTION	Remove and replace damaged asphalt	23,737.02
15804	12/08/2017	ROCKWELL ENG. & EQ. CO., INC.	MACHINERY AND HARDWARE, INDUST	11,501.89
15805	12/08/2017	SAN FRANCISCO PROJECT OWNER LLC	PER DIEM FTA WORKSHOPS - DEBRA MCKENZIE	660.20
15806	12/08/2017	SOUTHERN COMPUTER WAREHOUSE, INC.	Desktop replacement tablets	18,908.06
15807	12/08/2017	SPARKLETT'S	LAB & DRINKING WATER	204.88
15808	12/08/2017	TERRAFORM POWER, LLC.	11/17 ELECTRIC UTILITIES SVS	9,019.91
15809	12/08/2017	SYNAGRO WEST, INC.	MISCELLANEOUS SERVICES, NO. 1	5,649.04
15810	12/08/2017	AFB FUTURE INVESTMENTS LLC	Utility Billing Credit Refund	151.33
15811	12/08/2017	ALSHOAIBI NASSER	Utility Billing Credit Refund	115.14
15812	12/08/2017	ARMAS RIGOBERTO RAMOS	Utility Billing Credit Refund	184.05
15813	12/08/2017	ARSLAN YOLA	Utility Billing Credit Refund	666.36
15814	12/08/2017	AYERS ROSEMARY	Utility Billing Deposit Refund	76.19
15815	12/08/2017	BACON CHARLOTTE AND TODD	Utility Billing Credit Refund	147.23
15816	12/08/2017	BENCHMARK COMMUNITIES	Utility Billing Credit Refund	168.82
15817	12/08/2017	CABELLO DEANNA OR CITY OF MADERA	Utility Billing Credit Refund	150.93
15818	12/08/2017	CABRERA JAIME	Utility Billing Credit Refund	148.89
15819	12/08/2017	CASTILLO YAVIN	Utility Billing Credit Refund	214.72
15820	12/08/2017	CENTRAL VALLEY CAPITAL	Utility Billing Deposit Refund	65.98
15821	12/08/2017	CITY OF MADERA OR FOUSE KEVIN JOHN	Utility Billing Credit Refund	224.09
15822	12/08/2017	CITY OF MADERA OR REYES MORALES AGUSTINA ROJAS SAN	Utility Billing Credit Refund	151.33
15823	12/08/2017	CITY OF MADERA OR VALDEZ LETICIA AND MAJIN-ALVARAD	Utility Billing Credit Refund	151.14
15824	12/08/2017	CONTRERAS CURTIS JR	Utility Billing Credit Refund	222.72
15825	12/08/2017	CRABTREE JACK AND SARAH	Utility Billing Credit Refund	230.97
15826	12/08/2017	CYPREXX SERVICES LLC	Utility Billing Credit Refund	271.37
15827	12/08/2017	DWIGHT GARRETT OR CITY OF MADERA	Utility Billing Credit Refund	151.19
15828	12/08/2017	EGBERT APRIL OR CITY OF MADERA	Utility Billing Credit Refund	39.03
15829	12/08/2017	ESPINOSA MARIA	Utility Billing Credit Refund	1.30
15830	12/08/2017	EWALD JERRY AND TERRI C/O NEWTON PROPERTY MGMT	Utility Billing Deposit Refund	79.42
15831	12/08/2017	FERIA BENITO	Utility Billing Deposit Refund	38.39
15832	12/08/2017	FLORES BENJAMIN OR CITY OF MADERA	Utility Billing Credit Refund	195.86
15833	12/08/2017	FLORES MARY AND CARMEL OR CITY OF MADERA	Utility Billing Credit Refund	152.61
15834	12/08/2017	GARCIA VALENTIN M AND MICHELLE ONTIBEROZ	Utility Billing Credit Refund	235.22
15835	12/08/2017	GILL AMANVIR K AND MANPREET	Utility Billing Credit Refund	294.25
15836	12/08/2017	GLORY OF ZION MINISTRIES/JOYCE L LANE AND KENNETH	Utility Billing Credit Refund	309.96
15837	12/08/2017	GLYNN JAMES A	Utility Billing Deposit Refund	26.00
15838	12/08/2017	HARRIS SARAH	Utility Billing Credit Refund	81.11
15839	12/08/2017	HORN GABRIEL KEN	Utility Billing Deposit Refund	13.68
15840	12/08/2017	JAIME JOHN JR	Utility Billing Credit Refund	34.94
15841	12/08/2017	JAMES MITZI MABEL	Utility Billing Credit Refund	53.59
15842	12/08/2017	JUAREZ EZEQUIEL	Utility Billing Credit Refund	230.10
15843	12/08/2017	KULWINDER GILL	Utility Billing Deposit Refund	82.04
15844	12/08/2017	LEE JORDAN	Utility Billing Credit Refund	1,134.24
15845	12/08/2017	LOPEZ PEDRO ARANJO	Utility Billing Credit Refund	22.15
15846	12/08/2017	MADERA MANAGEMENT COMPANY INC	Utility Billing Deposit Refund	61.80
15847	12/08/2017	MEYERS CORI L C/O NEWTON PROPERTY MANAGEMENT	Utility Billing Deposit Refund	200.70
15848	12/08/2017	MOHAMED HAYAT AND MAGED MOHAMED	Utility Billing Deposit Refund	70.24
15849	12/08/2017	MONTES EMMANUEL	Utility Billing Credit Refund	56.81
15850	12/08/2017	MOORE AMANDA	Utility Billing Credit Refund	40.02
15851	12/08/2017	MUNOZ SETH	Utility Billing Credit Refund	14.83
15852	12/08/2017	MUSSACK SUSAN AND STEPHEN	Utility Billing Credit Refund	130.64
15853	12/08/2017	NEWTON PROPERTY MANAGEMENT CO CLAIRE OZAETA	Utility Billing Deposit Refund	241.18
15854	12/08/2017	NUNEZ JOSE	Utility Billing Deposit Refund	11.61
15855	12/08/2017	O'NEIL KATLYN	Utility Billing Credit Refund	32.17
15856	12/08/2017	PATTERSON EULIS	Utility Billing Deposit Refund	32.41
15857	12/08/2017	PENA MARIA ELENA OR CITY OF MADERA	Utility Billing Credit Refund	51.09
15858	12/08/2017	PENA NORGE C/O NEWTON PROPERTY MGMT	Utility Billing Deposit Refund	26.85
15859	12/08/2017	PEREZ CATALINA	Utility Billing Credit Refund	138.38
15860	12/08/2017	PESTORICH HOLDINGS	Utility Billing Credit Refund	28.83
15861	12/08/2017	PESTORICH HOLDINGS	Utility Billing Deposit Refund	148.93
15862	12/08/2017	PISTORESI STEVE	Utility Billing Deposit Refund	207.30
15863	12/08/2017	RAMIREZ FLORA ALONSO	Utility Billing Deposit Refund	13.88
15864	12/08/2017	RAMIREZ JR RICHARD OR CITY OF MADERA	Utility Billing Credit Refund	151.50
15865	12/08/2017	REGALADO MIGUEL ANGEL	Utility Billing Credit Refund	150.00
15866	12/08/2017	REYES FROYLAN MEJIA	Utility Billing Credit Refund	20.28
15867	12/08/2017	RICHEY STEPHEN	Utility Billing Credit Refund	143.29
15868	12/08/2017	ROSALES RENE AND JULIA OR CITY OF MADERA	Utility Billing Credit Refund	164.25
15869	12/08/2017	SALAS ELIZABETH	Utility Billing Credit Refund	159.98
15870	12/08/2017	SANABRIA BLANCA ROSA	Utility Billing Credit Refund	4.50
15871	12/08/2017	SAUCEDA DAVID A	Utility Billing Credit Refund	40.04
15872	12/08/2017	SLAUGHTER RICHARD AND MARGARET	Utility Billing Credit Refund	117.10

15873 12/08/2017 SRAN SUNDEEP OR THE CITY OF MADERA  
 15874 12/08/2017 THOMAS JAMES W  
 15875 12/08/2017 TORRES LILIA  
 15876 12/08/2017 WHITE HAWK PROPERTIES, A CA CORPORATION  
 15877 12/08/2017 YOUNG DANIELLE C/O JACQUE AND COMPANY  
 15878 12/08/2017 VERIZON WIRELESS  
 15879 12/08/2017 WASTEWATER SOLIDS MANAGEMENT, INC.

Utility Billing Credit Refund 150.43  
 Utility Billing Deposit Refund 23.21  
 Utility Billing Deposit Refund 47.79  
 Utility Billing Credit Refund 181.40  
 Utility Billing Deposit Refund 38.02  
 CITY CELL PHONE CHARGES OCT 11 - NOV 10 4,732.79  
 Digester 1 Cleaning 82,295.40

Bank # 1 - Union Bank General Account Total 1,095,637.86



## REPORT TO CITY COUNCIL

MEETING DATE: December 20, 2017

AGENDA ITEM NUMBER: B-3

Approved By:

  
PUBLIC WORKS DIRECTOR

  
Fol CITY ADMINISTRATOR

**SUBJECT:** Bi-Weekly Water Conservation Report for November 20th through December 10th

**RECOMMENDATION:** Staff recommends that the Council review the attached bi-weekly report of water conservation activities and progress in reducing residential water consumption.

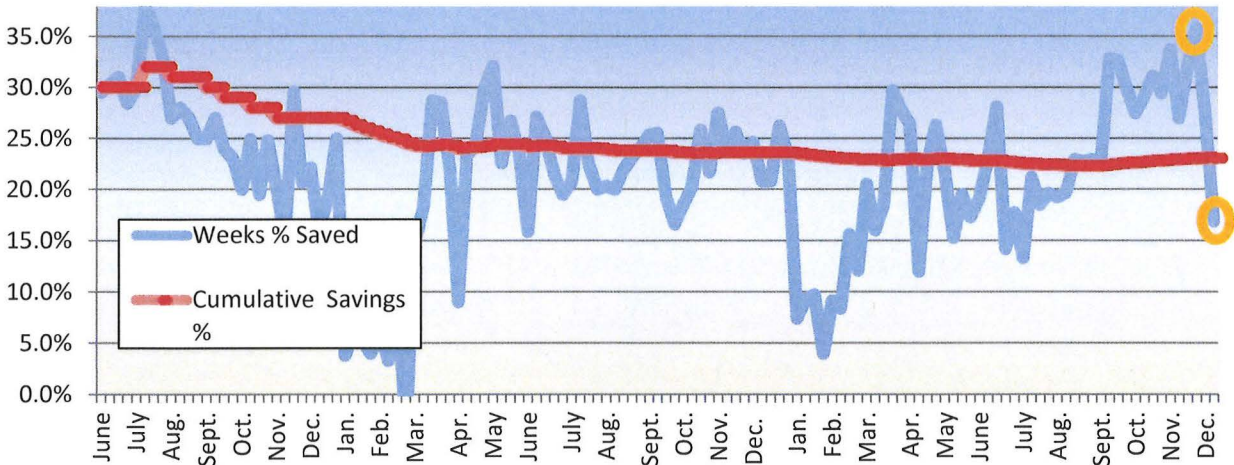
**BACKGROUND:** This report addresses the four different areas of focus: Water Conservation & Education, Water Patrol activity, Water Meter maintenance activities and information on the overall capacity of the water wells, the amount of production, and reserve production capacity.

**WATER CONSERVATION:** As illustrated below, the City's water conservation rate decreased from 29.5% last bi-weekly report to 22% this reporting period. The monthly conservation rate for December thus far is down slightly from 23.6 % in 2016 to 23% in 2017. Below is the most current water conservation data.

Bi-Weekly
Nov.- Dec. 20 <sup>th</sup> -10 <sup>th</sup>
<b>22%</b>

Monthly
December 1 <sup>st</sup> – 10 <sup>th</sup>
<b>22%</b>

Cumulative
June 1 <sup>st</sup> , 2015 Dec. 10 <sup>th</sup> , 2017
<b>23%</b>



**WATER PATROL:** The water patrol staff made a total of 93 individual public contacts. Below is the most current enforcement data.

ENFORCEMENT			
Individual Contacts	93	1 <sup>st</sup> offenses (\$75)	18
Verbal Warnings	3	2 <sup>nd</sup> offenses (\$200)	0
Correction Notices	11	3 <sup>rd</sup> or more offense (\$500)	0

Staff is continuing to test and train remaining staff on the system in the new water citation entry system. As previously reported, this system enables patrol staff to enter citation information electronically on tablets from the field then process the citations and notices and schedule follow-up inspections as needed.

#### **WATER METERS:**

The water meter staff performed various repairs and/or replacements at 20 properties. Staff also programed new meters to the automatic read system at 9 properties. In addition the department has been working with Utility Billing and Sensus to troubleshoot and address some meters that are not reading in the automatic read system.

Customer concern investigations were conducted at 8 properties. The investigations resulted in discovery of leaks at 5 properties and notifications of large usage due to irrigation issues at 2 properties.

#### **REBATE PROGRAM:**

The increased rates in the rebate opportunities went into effect December 1<sup>st</sup>. The Water Conservation Department has had a significant increase of inquiries into the program and received and processed approximately 10 new applications for various rebates at the new rates in the first few days. We anticipate increased response and applications in the weeks and months to come.

A press release regarding the new rebate program rates has been issued and the information has been posted on social media, the city website and flyers were inserted in the customer billings. The rebate information has also been distributed to local vendor contacts and additional outreach is planned for this program in the near future.

**SYSTEM CAPACITY:** Attached is a table and chart for November 20<sup>th</sup> thru December 3<sup>rd</sup> which shows the daily quantity of water pumped and performance of the City's system of water wells and its ability to provide fire flow. The system has continued to produce adequate flows to meet our peak demand and maintain reserve fire flow capacity.

**FINANCIAL IMPACT:** The expenses for implementing and administering these water conservation 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.



CITY OF MADERA  
DEPARTMENT OF PUBLIC WORKS  
WATER DIVISION

**STATUS REPORT November 20th DECEMBER 3rd, 2017**  
**WATER PRODUCTION AND RESERVE FIRE FLOW CAPABILITY**

Dates	Day	Peak Temp	MG Pumped	Peak Hour	Lowest Pressure*	Lowest Tank Storage **	Wells Available	Wells On During Peak Hours	Wells in Reserve During Peak Hours	Reserve GPM at Peak	Reserves Meets Fire flow for			
											Residential 1,500 GPM	Commercial 2,500 GPM	Industrial 3,500 GPM	Hospital 4,500 GPM
11/27/2017	Mon	61	7.414	9pm-10pm	45	780,000	14	3	11	13720	Yes	Yes	Yes	Yes
11/28/2017	Tues	62	5.846	9pm-10pm	41	780,000	14	6	8	9686	Yes	Yes	Yes	Yes
11/29/2017	Wed	59	5.529	10pm-11pm	46	780,000	14	7	7	8776	Yes	Yes	Yes	Yes
11/30/2017	Thurs	63	7.417	3am-4am	42	820,000	14	7	7	8776	Yes	Yes	Yes	Yes
12/1/2017	Fri	63	8.073	8pm-9pm	45	820,000	14	5	9	10827	Yes	Yes	Yes	Yes
12/2/2017	Sat	62	5.89	10am-11am	46	780,000	14	5	9	10827	Yes	Yes	Yes	Yes
12/3/2017	Sun	61	5.499	9pm-10pm	45	780,000	14	5	9	11107	Yes	Yes	Yes	Yes
12/4/2017	Mon	57	5.108	6pm-7pm	25	780,000	14	5	9	10507	Yes	Yes	Yes	Yes
12/5/2017	Tue	57	6.045	10pm-11pm	45	680,000	14	6	8	10286	Yes	Yes	Yes	Yes
12/6/2017	Wed	62	5.892	10pm-11pm	46	780,000	14	4	10	12307	Yes	Yes	Yes	Yes
12/7/2017	Thu	62	5.242	6pm-7pm	48	780,000	14	5	9	11196	Yes	Yes	Yes	Yes
12/8/2017	Fri	66	4.948	12pm-1pm	48	780,000	14	4	10	13626	Yes	Yes	Yes	Yes
12/9/2017	Sat	64	6.403	12pm-1pm	48	780,000	14	4	10	12426	Yes	Yes	Yes	Yes
12/10/2017	Sun	64	6.262	10pm-11pm	48	780,000	14	5	9	11196	Yes	Yes	Yes	Yes

\* Goal is to keep system above 30 psi., below 20 cause regulatory issue.

\*\* Elevated tank has a 1,000,000 gallon maximum capacity.

18 **Total Wells**

4 **Wells Not Available**

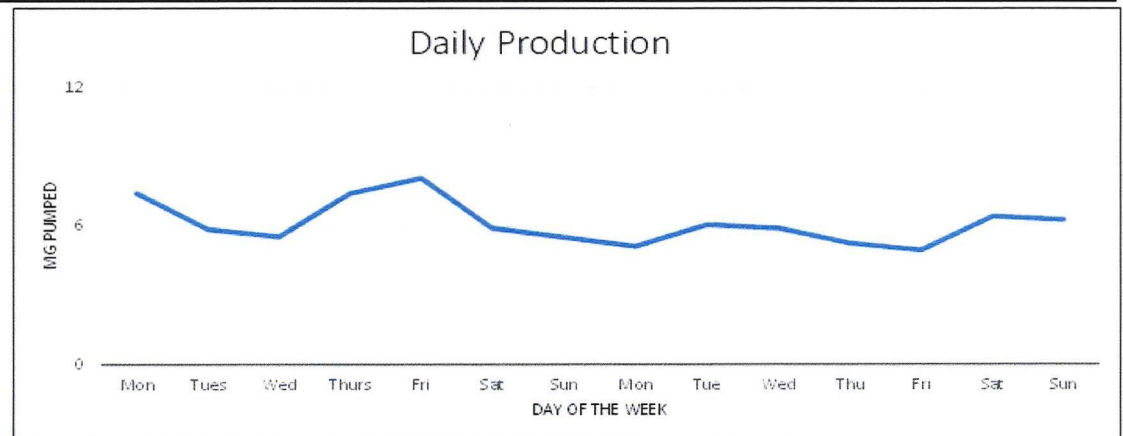
#16 Being Retrofitted for Submersible Pump to Gain 500 gpm

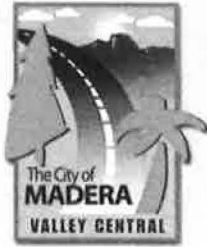
#20 Air intrusion

#26 Pulled as of 11/2/2017

#27 Redevelopment in process

14 **Number of Wells Available**





## REPORT TO CITY COUNCIL

COUNCIL MEETING OF December 20, 2017  
AGENDA ITEM NUMBER B-4

A handwritten signature in black ink, appearing to be "Mary Anne Seay".

REPORT BY: Director of Parks & Community Services,  
Mary Anne Seay

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

APPROVED BY: FOR THE CITY ADMINISTRATOR

### SUBJECT:

**CONSIDERATION OF A RESOLUTION ACCEPTING GRANT FUNDING FROM KAISER FOUNDATION HOSPITALS (KFH) FOR THE MADERA HEAL ZONE III PROJECT, APPROVING THE GRANT AGREEMENT WITH KFH AND AUTHORIZING THE CITY ADMINISTRATOR TO EXECUTE THE AGREEMENT AND RELATED DOCUMENTS ON BEHALF OF THE CITY.**

**AND**

**CONSIDERATION OF A RESOLUTION AMENDING THE FY 2017 – 18 PARKS AND COMMUNITY SERVICES BUDGET TO RECOGNIZE THE PROCEEDS OF THE GRANT AND TO APPROPRIATE FUNDS TO THE SPECIFIED ACCOUNTS.**

### RECOMMENDATIONS:

There are three actions being recommended by staff. Staff Recommends:

1. Council adopt the resolution approving an Agreement with Kaiser Foundation Hospitals for administration of the Madera HEAL Zone III Grant.
2. Council authorize the City Administrator to execute the Agreement on behalf of the City.
3. Council adopt the resolution approving amendments to the FY 2017-18 Parks and Community Services Budget to recognize the proceeds of the Grant and to appropriate funds to be expended on the HEAL Zone III program.



## **BACKGROUND:**

In March of 2011, Parks and Community Services Department (PCS) staff met with representatives from Kaiser Permanente to discuss opportunities for improved partnership between agencies. In addition to discussing other potential future grant opportunities, the Kaiser team encouraged the City to submit an application for their HEAL (Healthy Eating Active Living) Zone Initiative, a statewide program intended to reduce obesity and improve community wellness within a pre-defined geographical area. In June of 2011 the City was awarded \$155,214 over a three year period (\$51,738 per year) to be used for HEAL Zone activities.

In July of 2014 PCS submitted an application for \$24,500 of Kaiser Permanente's Northern California Community Benefits Programs funding. The objective of the funding request was to obtain resources to support the continuation of HEAL Zone activities. The City received an award letter announcing Kaiser's intent to fully fund the HEAL Zone continuation project (entitled HEAL 2) at the requested amount for the period of October 1, 2014 through March 1, 2015.

More recently, PCS leadership invited the newly seated Kaiser representative to Madera to inform her about the rich programming and services offered to Maderans and to determine if there could be additional funding opportunities. She suggested that PCS apply for funding not to exceed \$50,000. PCS staff submitted a grant request of \$50,000 to fund our Heal Zone III (HZIII) initiative on October 13, 2017. The suite of programs under the HZIII umbrella will provide Maderans of all ages with access to recreation space at various City parks and centers, trained staff, materials and tools to help them maintain a lifestyle that incorporates the principles of healthy eating and active living. Staff was notified on November 29, 2017 that the application for HZIII was successful and the City would be awarded the full \$50,000 request.

## **DISCUSSION:**

The HZIII grant application described a program designed to build on the successes of the previous Madera HEAL Zone initiatives and leverage momentum to further efforts to promote access to healthy food choices and provide opportunities to engage in physical activity. The scope of the project is two-fold: 1) to provide increased access for City residents to physical activity opportunities at community centers, parks and trails; and 2) to increase access to healthy, affordable foods and decrease access to unhealthy food. The satisfaction of the two scope objectives is part of the daily work that PCS performs through provision of sports and recreation programming and through general health and wellness outreach services.

Specific activities under the grant include:

1. Expand access to facilities and organized recreational programming.
2. Provide additional training to Program Leaders to better engage Maderans in age appropriate physical activities and healthy eating programming.
3. Document and report attendance at City provided organized recreational and fitness activities.
4. Provide stipends to Madera residents to help defray the cost of fee-based recreational programming.

### **FINANCIAL IMPACT:**

The revenue from the Kaiser grant was not anticipated during the formation of the FY 2017-18 PCS budget. The grant revenue and associated additional costs need to be recognized and appropriations need to be made to specified accounts. The grant is based on activities to be provided from adoption of the Agreement to November 30, 2018. Therefore the revenue and expenses will be budgeted at \$25,000 in the current FY 2017-18 Fiscal Year and \$25,000 in the upcoming 2018-19 Fiscal Year.

The recommended actions provide General Fund relief through payment of salaries and benefits of existing staff, estimated at \$15,000 per year for the current and upcoming Fiscal Years.

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

The recommended actions support the following Vision 2025 strategies and actions:

- Action 121.8:** Promote and encourage walking within the City.
- Action 121.10:** Add facilities and amenities for the public.
- Strategy 404:** Community Wellness: Promote increased community wellness.
- Strategy 411:** Recreational Opportunities: Enhance and expand recreational activities available to Maderans.
- Action 415.2:** Continue involvement and coordination of programs between jurisdictions, organizations, and faith-based educational programs.
- Action 415.3:** Increase funds for recreation.

RESOLUTION NO. 17 - \_\_\_\_\_

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF  
MADERA, CALIFORNIA ACCEPTING GRANT FUNDING FROM  
KAISER FOUNDATION HOSPITALS (KFH) FOR THE MADERA  
HEAL ZONE III PROJECT, APPROVING THE GRANT AGREEMENT  
WITH KFH AND AUTHORIZING THE CITY ADMINISTRATOR TO  
EXECUTE THE AGREEMENT AND RELATED DOCUMENTS ON  
BEHALF OF THE CITY.**

**WHEREAS**, the City of Madera Parks & Community Services Department provides physical activity programs for City residents of all ages, and outreach services within the community to promote healthier lifestyle choices; and

**WHEREAS**, Kaiser Foundation Hospitals has provided grant funding through its Northern California Community Benefits Programs that supports these activities; and

**WHEREAS**, Kaiser Foundation Hospitals has prepared an Agreement for the grant funding which will provide the City \$50,000 for the period of November 30, 2017 through November 30, 2018 to be used in support of the HEAL ZONE III program activities in Madera; and

**WHEREAS**, the Agreement is in the best interests of the City, Kaiser Foundation Hospitals and the citizens of Madera.

**NOW THEREFORE, THE CITY 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 with Kaiser Foundation Hospitals related to the HEAL ZONE III Grant Program, 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.
3. The City Administrator is authorized to execute the Agreement on behalf of the City.
4. This resolution is effective immediately upon adoption.

\* \* \* \* \*

RESOLUTION NO. 17-\_\_\_\_\_

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF  
MADERA, CALIFORNIA AMENDING THE FY 2017 – 18 PARKS  
AND COMMUNITY SERVICES BUDGET TO RECOGNIZE THE  
PROCEEDS OF A KAISER FOUNDATION HOSPITALS GRANT  
AND TO APPROPRIATE FUNDS TO SPECIFIED ACCOUNTS**

**WHEREAS**, the City of Madera Parks & Community Services Department provides physical activity programs for City residents of all ages, and outreach services within the community to promote healthier lifestyle choices; and

**WHEREAS**, Kaiser Foundation Hospitals has provided grant funding through its Northern California Community Benefits Programs that supports these activities; and

**WHEREAS**, the Kaiser grant revenue has not been recognized in the FY 2017-18 Parks and Community Services Budget; and

**WHEREAS**, City staff would like to amend the FY 2017-18 Parks and Community Services Budget to reflect sufficient appropriations that fully recognize the grant revenue.

**NOW, THEREFORE, BE IT RESOLVED** that the City Council of the City of Madera hereby resolves, finds and orders as follows:

1. The above recitals are true and correct.
2. The appropriate FY 2017-18 Budget accounts are hereby amended as per Exhibit AA attached.
3. The City Clerk is directed to forward a copy of this resolution to the Director of Finance who shall take all necessary steps to implement the amendments.
4. This resolution is effective immediately upon adoption.

\* \* \* \* \*

**EXHIBIT AA****CITY OF MADERA****Appropriation Adjustment:****Consultant Services Agreement with MUSD for FIT and Foster Youth**

<b>FUND</b>	<b>ORG CODE</b>	<b>OBJECT CODE</b>	<b>DESCRIPTION</b>	<b>(+)</b>	<b>(-)</b>
<b><u>PARKS AND COMMUNITY SERVICES - RECREATION</u></b>					
	10206200	4434	Grants		25,000.00
	10206200	5005	Salaries/Part-Time	2,776.00	
	10206200	5304	Workers Compensation	245.00	
	10206200	5305	Medicare Tax - Employers Share	42.00	
	10206200	5307	Deferred Comp/Part-Time	104.00	
	10206200	5309	Unemployment Insurance	83.00	
	10206200	6412	Advertising/Other	1,250.00	
	10206200	6480	Program Expense	2,500.00	
	10206200	6530	Conference/Training/Education	500.00	
	10206200	6532	Maintenance/Other Supplies	2,500.00	
				<b><u>10,000.00</u></b>	<b><u>25,000.00</u></b>

Note:



Deborah J. Hemker, RN, MBA  
Senior Vice-President/Area Manager

Smita Rouillard, MD  
Physician-in-Chief

Lynn Campama, RN, MA  
Medical Group Administrator

Kaiser Permanente Fresno Medical Center  
7300 North Fresno Street  
Fresno, California 93720-2942  
(559) 448-4500

October 26, 2017

Ms. Mary Anne Seay  
Director, Parks and Community Services  
City of Madera - Parks and Community Services  
205 West 4th Street  
Madera, CA 93637

Re: Grant Award Letter for Grant Number 20658853

Dear Ms. Seay:

On behalf of Kaiser Permanente's Northern California Community Benefit Programs, we are pleased to inform you that a grant in the amount of \$50,000.00 has been awarded to City of Madera ("Grantee"). The purpose of these funds is to support the Heal Zone III (the "Grant").

Kaiser Permanente has a 70-year history and our mission includes improving the health of the communities we serve. As a nonprofit integrated healthcare delivery organization, we make investments in our communities. We believe in supporting organizations like yours that make a difference in people's lives.

**Grant Period and Reporting**

The Grant period (or term of the Grant) is: 11/30/2017 to 11/30/2018 and a progress report is due: 5/31/18 and a final report is due: 12/31/18. All required reports must be submitted electronically at [https://www.grantrequest.com/SID\\_946/Default.asp?SA=AM](https://www.grantrequest.com/SID_946/Default.asp?SA=AM)

**Documents to Sign and Send Back**

Please review the enclosed Grant Agreement (pages 1-4) and Communications Guidelines (page 5) which describe the terms and conditions of your grant. In order to receive your payment, **please sign and return this award letter and the attached Grant Agreement promptly. Mail both signed documents to:**

Kaiser Permanente – Public Affairs  
Attn: Rich Wasrud  
7300 North Fresno  
Fresno, CA 93720

If you have questions or require additional information, please contact your grant manager, **Marie Sanchez at Fresno-Community-Benefit@kp.org.**

  
\_\_\_\_\_  
Rob Veneski  
Public Affairs Director

10.26.17  
Date



**Deborah J. Hemker, RN, MBA**  
Senior Vice-President/Area Manager

**Smita Rouillard, MD**  
Physician-in-Chief

**Lynn Campama, RN, MA**  
Medical Group Administrator

**Kaiser Permanente Fresno Medical Center**  
7300 North Fresno Street  
Fresno, California 93720-2942  
(559) 448-4500

**ACCEPTED AND AGREED**

---

**Mr. David Tooley**  
City Administrator

---

**Date**

20658853



**Kaiser Foundation Hospitals, Northern California Region**  
**- Grant Agreement -**

In addition to the specific terms of the Grant Award Letter for Grant Number 20658853, Kaiser Foundation Hospital's ("KFH") award of this Grant, managed by the KFH Northern California Community Benefit Programs Division, is contingent upon Grantee's compliance with the following terms and conditions, and Grantee agrees to all these terms and conditions. Together, the Grant Award Letter and these terms and conditions are "the Agreement."

**1. Tax-Exempt Status**

Grantee is a (i) tax-exempt organization currently recognized by the Internal Revenue Service ("IRS") as a public charity described in section 501(c)(3), (8), (10) or (19) or 501(k) or 509(a)(1), (2), or (3) of the Internal Revenue Code of 1986, as amended (the "Code") or (ii) a local, state or federal government agency. If Grantee is a public charity as described in (i), then Grantee represents and warrants that

- Grantee's tax-exempt status under the Code has not been revoked or modified since the issuance of the IRS determination letter provided to KFH and shall not be revoked or modified during the term of this Grant; and
- there is no issue presently pending before any office of the IRS that could result in any proposed changes to Grantees' tax-exempt status under the Code; and
- Grantee shall immediately notify KFH if Grantee's tax-exempt status is revoked, suspended or modified during the term of this Grant.

**2. Expenditure of Funds**

This Grant must be used for the project identified in the Grant Award Letter, as described in the Grantee's proposal and related correspondence, and may not be expended for any other purposes without KFH's prior written approval. If the Grant is intended to support a specific project or to provide general support for a specific period, any portion of the Grant unexpended at the completion of the project at the end of the period shall be returned immediately to KFH, unless otherwise agreed by KFH in writing. Grantee may not expend any Grant funds for any purpose that is not charitable or educational, for any political or lobbying activity, or for any purpose other than one specified in Section 170(c)(2)(b) of the Code. Grantee must obtain prior written approval from KFH for changes to budgetary allocations that amount to 10% or more of the total budget of the Grant award or for changes to the Grant period.

Grantee may not use any portion of this grant in connection with the enrollment of individuals in any Qualified Health Plan or non-Qualified Health Plan. If Grantee serves as a Certified Enrollment Entity or Navigator funded by the California Health Benefit Exchange (Covered California), Grantee will fully comply with any applicable state and federal statutes, regulations, and sub-regulatory guidance requiring disclosure of receipt of this funding to Covered California and consumers receiving application assistance from Grantee's personnel.

**Kaiser Foundation Hospitals, Northern California Region**  
**- Grant Agreement -**

**3. No Assignment or Delegation**

Grantee may not assign, or otherwise transfer, its rights or delegate any of its obligations under this Grant without prior written approval from KFH.

**4. Records and Reports**

Grantee is required to keep a record of all receipts and expenditures relating to this Grant and to provide KFH with written reports summarizing the progress made, as detailed on KFH's reporting requirements outline. KFH may also require additional interim reports. Grantee's reports should describe its progress in achieving the purposes of the Grant and include a detailed accounting of the uses or expenditure of all Grant funds. Grantee also agrees to provide any other information reasonably requested by KFH. If Grantee obtains any audited financial statements covering any part of the Grant period, Grantee shall provide a copy to KFH as well. Grantee is required to keep the financial records with respect to this Grant, along with copies of any reports submitted to KFH, for at least four years following the year in which all Grant funds are fully expended.

**5. Required Notification**

Grantee is required to provide KFH with immediate written notification of: (1) any changes in its tax-exempt status; (2) its inability to expend the Grant for the purposes described in the Grant Award Letter; (3) any expenditure from this Grant made for any purpose other than those for which the Grant was intended; (4) any modification of the budget, Scope of Work or timeline; and (5) any significant changes in Grantee's leadership or staffing.

**6. Reasonable Access for Evaluation**

Grantee is expected to actively participate in the evaluation of Kaiser Permanente's Community Benefit Program, including KFH's evaluation of Grantee's project within that program. At KFH's request, Grantee will permit KFH and its representatives to conduct site visits and have reasonable access during regular business hours to Grantee's files, records, accounts, personnel and clients or other beneficiaries for the purpose of making financial audits, verifications or program evaluations as KFH deems necessary or appropriate concerning this Grant award.

**7. Publicity**

Whenever possible, Grantee shall obtain KFH's prior written or oral consent of any proposed publicity concerning this Grant prior to the release of such publicity. When acknowledging this Grant, Grantee will incorporate the following text: *"The project is supported by Kaiser Permanente Northern California Community Benefit Programs."*

KFH may include information regarding this Grant, including the amount and purpose, photographs provided by Grantee, Grantee's logo or trademark, or other

**Kaiser Foundation Hospitals, Northern California Region**  
**- Grant Agreement -**

information or materials about Grantee's organization and activities, in KFH's periodic public reports, newsletters, online channels, and news releases.

**8. Right to Modify or Revoke Payments**

Payments made under this Grant are contingent upon Grantee's compliance with the terms of this Agreement. KFH reserves the right to discontinue, modify or withhold any payments to be made under this Grant award or to require a total or partial refund of any Grant funds if, in KFH's sole discretion, such action is necessary: (i) because Grantee has not fully complied with the terms and conditions of this Grant, including without limitation, Grantee's loss of tax-exempt status or Grantee's use of Grant funds for purposes other than those designated; (ii) to protect the purpose and objectives of the Grant or any other charitable activities of KFH or the Kaiser Permanente Medical Care Program; or (iii) to comply with the requirement of any law, regulation, or regulatory agency policy applicable to Grantee, KFH or this Grant.

**9. Termination**

KFH may terminate this Grant for convenience upon 30 days' written notice to Grantee and may terminate this Grant immediately for the reasons specified in Section 8 or for Grantee's engagement in willful misconduct or negligence.

**10. Independent Contractors**

With respect to administration of this Grant, the parties understand and agree that each is at all times acting and performing as an independent contractor with respect to the other. Except as expressly set forth in this Agreement, neither party, nor any of its employees, shall be construed to be the agent, employee or representative of the other for any purpose, or liable for any acts or omissions of the other.

**11. Compliance**

Grantee shall (i) maintain, in full force and effect, all required governmental or professional licenses and credentials for itself, its facilities and its employees and all other persons engaged in work in conjunction with this Grant, and (ii) perform its duties and obligations under this Agreement according to industry standards and in compliance with all applicable laws. As an organization with numerous contracts with the federal government, KFH and its affiliates are subject to various federal laws, executive orders and regulations regarding equal opportunity and affirmative action. This Section constitutes notice that Grantee may be required to comply with the following Federal Acquisition Regulations (each a "FAR") at 48 CFR Part 52, which are incorporated herein by reference: (a) Equal Opportunity (April 2002) at FAR 52.222-26; (b) Equal Opportunity for Special Disabled Veterans, Veterans of the Vietnam Era, and Other Eligible Veterans (Sept. 2006) at FAR 52.222-35; (c) Affirmative Action for Workers with Disabilities (June 1998) at FAR 52.222-36, and (d) Utilization of Small Business Concerns (May 2004) at FAR 52.219-8. In addition, Executive Order 13495 concerning the obligations of federal contractors and

**Kaiser Foundation Hospitals, Northern California Region**  
**- Grant Agreement -**

subcontractors to provide notice to employees about their rights under Federal labor laws, or its successor, shall be incorporated herein by reference.

**12. Miscellaneous**

This Agreement shall be governed by the laws of the State of California. This Agreement may be executed in one or more counterparts, each of which shall be deemed to be one and the same instrument. Grantee may not assign any right, duty or obligation under this Agreement without prior written approval from KFH. Any change of ownership or control of Grantee shall be deemed an assignment. This Agreement shall be binding upon and inure to the benefit of the parties and their respective, permitted successors and assigns. This Agreement, including any exhibits and attachments (all of which are incorporated into this Agreement by this reference), is the entire agreement of the parties with respect to the subject matter herein, and supersedes any and all other agreements, promises, negotiations or representations, whether oral or written. This Agreement, including exhibits and attachments, may not be amended except in a writing signed by each party.

**ACCEPTED AND AGREED by duly authorized officers of KFH and Grantee:**

**KFH**

**Grantee:**

Kaiser Foundation Hospitals  
Fresno

City of Madera

**By:**

  
Rob Veneski

**By:**

Mr. David Tooley

**Title:** Public Affairs Director

**Title:** City Administrator

**Date:**

10-26-17

**Date:**

**Kaiser Foundation Hospitals, Northern California Region**  
**– Communications Guidelines –**

Congratulations on your Kaiser Permanente Northern California Region grant. We appreciate the opportunity to partner with you and to help others learn about your important work. Please review the information below concerning communications and publicity and contact your grant manager if you have any questions.

**How to acknowledge your grant.** To make it easy to communicate about your grant, we have prepared language describing our partnership. This language can be used for newsletters, websites, or other communications. *Please use this description when acknowledging your Kaiser Permanente grant.* You can also find this text on our grantee website at [kp.org/communitybenefit/ncal/forgrantees](http://kp.org/communitybenefit/ncal/forgrantees).

**Short credit:**

*The project is supported by Kaiser Permanente Northern California Community Benefit Programs.*

**Longer credit:**

**About the Kaiser Permanente Northern California Community Benefit Grants Program**

*Kaiser Permanente's community involvement uniquely pairs grant funding with 65 years of clinical expertise, medical research, and volunteerism to support prevention-focused, evidence-based programs that are expanding access to care and creating healthy environments. Kaiser Permanente recently awarded LifeLong Medical Care a \$85,000.00 grant that will help more people in this community get access to the resources they need to lead a healthy life. For more information about Kaiser Permanente's work in the community, visit [www.kp.org/communitybenefit/ncal](http://www.kp.org/communitybenefit/ncal).*

**Logo.** If you would like to use a Kaiser Permanente logo, please contact your grant manager. Tell them your preferred file type (JPEG or EPS) and color (blue or black). As a nonprofit organization, the Kaiser Permanente logo cannot be used on materials that imply endorsement of legislation or a candidate.

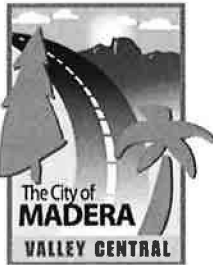
**Promoting your Kaiser Permanente grant.** Your new grant is an excellent time to tell the story of your important work—to your partners, the community, and the media. There are many ways to communicate, including via a press release, newsletter, Web site, social media, and donor communications. If you are interested in doing outreach or promotion, our communications team may be available to help. Please contact your grant manager to discuss this further.

**Collecting stories about your work.** Personal stories and testimonials are particularly effective ways to illustrate the value of your work—for fundraising, donor and board communications, and grant reports. The reporting requirements for this grant include capturing and relaying at least one story about your work, but we also appreciate your sharing stories with us at any point.

**Free online training resources.** At [www.kp.org/communitybenefit/ncal/forgrantees](http://www.kp.org/communitybenefit/ncal/forgrantees) you will find a "story capture sheet" and storytelling tips. This special website for our grantees has many other useful resources, including trainings and resource lists on storytelling, messaging, social media, and more.

**Questions?** For further information or questions, please contact your grant manager or send an email inquiry to: [Denice.Y.Alexander@kp.org](mailto:Denice.Y.Alexander@kp.org).

## Report to City Council

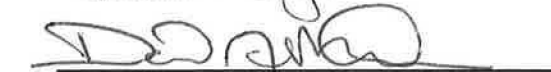


Council Meeting of December 20, 2017

Agenda Item Number B-5

Approved by:

  
Department Director

  
For City Administrator

### **Consideration of a Minute Order Approving Settlement of a claim with Nationwide Insurance Company for Property Damage.**

#### **RECOMMENDATION**

Staff recommends Council provide authority to settle the City's claim against Nationwide Insurance Company on behalf of their insured Matthew Bianchi for \$5,062.90.

#### **HISTORY**

On August 28, 2017, Matthew Bianchi was involved in a motor vehicle accident involving damage to City property. Mr. Bianchi was found at-fault in the vehicle accident.

#### **SITUATION**

Mr. Bianchi is insured by Nationwide Insurance Company. On August 28, 2017, he entered the roadway on to Flacon Drive from a private property. Mr. Bianchi had a container of orange juice between his legs that spilled as he entered the roadway. He took his attention off the roadway to try and stop the orange juice from spilling. When he looked up, his vehicle had struck a fire hydrant. Upon the impact, his vehicle's front and side airbags deployed. The airbags impaired Mr. Bianchi's vision which caused him to strike the Madera Municipal Airport fence.

The Madera Police Department was called to the scene and determined Mr. Bianchi was at-fault. He caused the collision by violating CVC 22107, unsafe turning movement. Based on the MPD Report #17M-07089, an associated factor was Mr. Bianchi's inattention due to the spilled orange juice and his attempt to stop the spill.



The City is in receipt of two damage reports from the Public Works Department. The total cost associated with replacing the fire hydrant was \$3,953.26. The following allocations determined the fire hydrant's total cost: personnel hours worked \$696.08, City vehicles and equipment used \$654.24, and material used \$2,602.94. The total cost associated with replacing the Madera Municipal Airport fence was \$1,109.65. The following allocations determined the total cost for the fence: personnel hours worked \$374.26, City vehicles and equipment used \$198.31, and material used \$537.07.

It is recommended by Staff, Council provide authority to settle this claim with Nationwide Insurance Company in the amount of \$5,062.90 to replace the fire hydrant and airport fence.

#### **FISCAL IMPACT**

Reimbursement for replacing the fire hydrant will be designated to the Water Division Refunds and Reimbursement account in the amount of \$3,953.26. Reimbursement for replacing the Madera Municipal Airport fence will be designated to the Airport Division Refund and Reimbursement account in the amount of \$1,109.65.

#### **VISION MADERA 2025 PLAN**

Settlement of claims is not included in the Vision Madera 2025 vision and action plan, nor is the requested action in conflict with the plan.



Date: 10/26/17  
To: [REDACTED]  
From: [REDACTED]  
Subject: Property Damage Report

*Reports are to be filed as soon as possible after damage is discovered.*

LOCATION: Falcon Dr  
PROPERTY DAMAGED: Fire Hydrant  
DESCRIPTION: Fire hydrant struck by vehicle.  
ESTIMATED TIME/DATE OF OCCURRENCE: 8/28/2017 at 10:59  
REPORTING PARTY: PD

\*\*\*\*\*

**Re: PARTY CAUSING DAMAGE**

NAME: Mathew Bianchi	ADDRESS:
PHONE:	VEHICLE INVOLVED:
INSURANCE CARRIER:	LICENSE PLATE #:

CITATION OR POLICE REPORT #: 17M-07089

Please provide a complete list of all City employees (including standby) and the hours worked:

Name	Title	Hours	Rate	Total Cost
[REDACTED]	WSW 3	8.0	33.29	266.32
[REDACTED]	WSW 1	8.0	26.86	214.88
[REDACTED]	WSW 1	8.0	26.86	214.88
				0.00
	TOTAL			696.08

Please provide a complete list of all City vehicles and equipment used and the hours they were used:

Equipment	Hours	Rate	Total Cost
Backhoe #4701	8.0	49.10	392.80
Utility Truck #2006	8.0	16.34	130.72
Utility Truck #2001	8.0	16.34	130.72
			0.00
			0.00
TOTAL			654.24

Please provide a complete list of materials used and the cost for the material.  
(Cost should include any tax, shipping, handling, etc.)

Material	# of Units	Cost Per Unit	Total Cost
Waterous Firehydrant	1	2058.75	2,058.75
Firehydrant extention kit	1	186.69	186.69
bags of concrete	12	4.00	48.00
6" single bolt compression coupler	1	111.12	111.12
			0.00
			0.00
			0.00
Subtotal			2,404.56
8.25% CA SalesTax			198.38
TOTAL			2,602.94

**Total Costs: 3,953.26**

Any recovery should be credited to the : Water Division.

CC: [REDACTED]

Date: 10/16/17  
To: [REDACTED]  
From: [REDACTED]  
Subject: Property Damage Report

*Reports are to be filed as soon as possible after damage is discovered.*

LOCATION: Falcon Dr .5 miles from Yeager Dr  
PROPERTY DAMAGED: Fire hydrant/approximately 30 feet of chain link fence  
DESCRIPTION:  
ESTIMATED TIME/DATE OF OCCURRENCE: 10:59/Monday 8/28/2017  
REPORTING PARTY: Madera police dept. Thomas Burns

\*\*\*\*\*

**Re: PARTY CAUSING DAMAGE**

NAME: Mathew Micheal Bianchi	ADDRESS: [REDACTED] [REDACTED] [REDACTED]
PHONE: [REDACTED]	VEHICLE INVOLVED: GMC CYN
INSURANCE CARRIER: Nationwide	LICENSE PLATE #: [REDACTED]

CITATION OR POLICE REPORT #: 17M-07089

Please provide a complete list of all City employees (including standby) and the hours worked:

Name	Title	Hours	Rate	Total Cost
	Maint. Tech	8.0	28.37	226.96
	Maint. 1	6.0	24.55	147.30
				0.00
				0.00
	TOTAL			374.26

Please provide a complete list of all City vehicles and equipment used and the hours they were used:

Equipment	Hours	Rate	Total Cost
3/4 ton ford utility truck unit #2005	5.0	16.34	81.70
JD 5520 tractor w/loader unit #332	1.0	24.79	24.79
Case 580 Back hoe unit #398	2.0	45.91	91.82
			0.00
			0.00
TOTAL			198.31

Please provide a complete list of materials used and the cost for the material.  
(Cost should include any tax, shipping, handling, etc.)

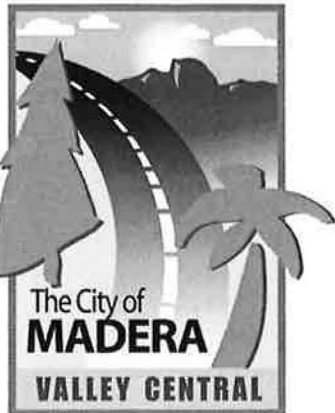
Material	# of Units	Cost Per Unit	Total Cost
80# Sakrete concrete mix	8	3.90	31.20
12"x 48" tube for concrete	2	14.97	29.94
2 3/8" x 10' f.w. galv. Posts	2	40.00	80.00
2"x 9ga x7' chain link fabric 50 foot roll	1	350.00	350.00
8 1/2" x 9ga steel ties 1 pack	1	5.00	5.00
			0.00
			0.00
Subtotal			496.14
8.25% CA SalesTax			40.93
TOTAL			537.07

**Total Costs: 1,109.64**

Any recovery should be credited to the : Airport Division.

CC: Aaron Huggins

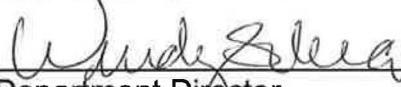
## REPORT TO CITY COUNCIL

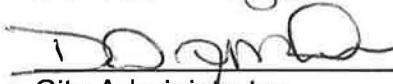


Council Meeting of December 20, 2017

Agenda Item Number B-6

Approved by:

  
Department Director

  
City Administrator

### **Consideration of a Minute Order Rejecting a Claim filed by Maribel Shaw.**

#### **RECOMMENDATION**

It is recommended Council reject the claim filed by Maribel Shaw. The City will send a rejection notice to Carl E. Douglas, the Attorney representing the claimant.

#### **HISTORY**

A claim was filed on November 30, 2017, by Maribel Shaw, individually and as a Successor-in-Interest to the Estate of Sergio Valdovinos. The claimant is alleging that each of the Police Officers who were present negligently, carelessly, and/or mistakenly pointed a loaded firearm at Mr. Valdovinos and subsequently fired their weapon causing death to Mr. Valdovinos.

#### **SITUATION**

The claim arises from an officer involved shooting that occurred June 16, 2017 on Wessmith Way in Madera.

Ms. Shaw alleges that "as a legal result of her husband's death" she suffers from severe, emotional and financial pain, injury, and damages resulting from the loss of the love, comfort, companionship, society, care, assistance, protection, and financial and moral support of her husband. The claimant further alleges because of her suffering that she incurred damages all in the amount to be determined according to proof at trial, within the jurisdiction of the Unlimited Civil Court. In her capacity as the Successor-in-Interest to the Estate of Sergio Valdovinos, Ms. Shaw seeks economic compensation for punitive damages from the moment Mr. Valdovinos was first injured until a moment before he died, all in an amount to be determined according to proof at trial, within the jurisdiction of the Unlimited Civil Court.

Ken Wilkerson, AIMS, is recommending the claim be taken to council for consideration of rejection. Staff concurs with his recommendation.

**CONSISTENCY WITH THE VISION MADERA 2025 PLAN**

Rejection of claims filed under Government Code §910 is 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.



# DOUGLAS / HICKS

A T T O R N E Y S   A T   L A W

5120 W. Goldleaf Circle / Suite 140 / Los Angeles, CA 90056-1660

Phone: 323.655.6505 / Fax: 323.927.1941

www.douglashickslaw.com

CARL E. DOUGLAS  
carl@douglashickslaw.com

JAMON R. HICKS  
jamon@douglashickslaw.com

November 28, 2017

**Via Certified Mail**

City of Madera  
City Clerk's Office  
205 W. 4<sup>th</sup> Street  
Madera, CA 93637

RECEIVED  
City of Madera City Clerk  
By: [Signature]  
Date: 11/30/17

Dear Sir/ Madame:

**AMENDED CLAIM FOR DAMAGES PURSUANT  
TO CAL. GOVERNMENT CODE § 910, et seq.**

A. **The name and address of the claimants are as follows:**

Maribel Shaw, individually and as Successor-in-Interest to the Estate of Sergio Valdovinos. The original Claim for Damages in this matter was received on November 13, 2017.

B. **The Post Office Address to which the persons presenting the Claim desires notice to be sent:**

Carl E. Douglas, DOUGLAS / HICKS LAW, 5120 W. Goldleaf Circle, Suite 140, Los Angeles, CA 90056-1661

C. **The date, place and other circumstances of the occurrence or transaction which gave rise to the claim asserted:**

On or about June 16, 2017, at about 6:00 p.m., at or near 804 Wessmith Way in Madera, California 93638, Sergio Valdovinos ("Mr. Valdovinos") was confronted by officers employed by the Madera Police Department who threatened to hit, strike and shoot Mr. Valdovinos, and did in fact hit, struck, and shot Mr. Valdovinos several times. As a result of this assault and battery, Mr. Valdovinos sustained serious injury and damages to his mind and body, and eventually died.

City of Madera  
Claim for Damages  
November 28, 2017  
Page -2-

When officers first confronted Mr. Valdovinos prior to the shooting, it was clear, or through the exercise of reasonable skill, training and diligence should have been clear, that Mr. Valdovinos was then suffering from some mental disease or mental illness crises. Indeed, officers were called to the scene responding to a call about a man who apparently was suffering from some mental breakdown or mental crises. The officers had no reason to believe that Mr. Valdovinos was armed, dangerous, or created a serious threat to anyone's physical safety. The Claimant is informed and believes that each of the involved officers knew Mr. Valdovinos as a peaceable man who had a long history of suffering from some type of mental disease or illness.

The City failed to properly train each of the involved officers on state mandated guidelines based on the Peace Officers Standards and Training program on the alternative ways of detaining citizens who were then in the midst of some mental disease or mental health crisis, rather than by using deadly force. Alternatively, each of the involved officers failed to implement the training they had received from the City concerning less than lethal ways of interacting with citizens who were then in the midst of some mental disease or mental health crisis, rather than by using deadly force.

The Claimant also alleges that each of the police officers wrongfully shot Mr. Valdovinos after negligently, carelessly, and/or mistakenly concluding that Mr. Valdovinos posed an imminent threat of death or serious bodily injury to their safety, necessitating the use of deadly force against him.

Alternatively, each of the officers who were present negligently, carelessly, and/or mistakenly pointed a loaded firearm at Mr. Valdovinos. The gun then accidentally fired and Mr. Valdovinos died of the gunshot wounds to his body.

At all times relevant, Mr. Valdovinos did nothing to justify this use of serious and deadly force against him. He was not armed with any deadly weapon when he was shot and had not posed any reasonable threat of death or serious bodily injury to any of the involved police officers or any other person, so as to justify this use of deadly force against him. Mr. Valdovinos was known to each of the involved police officers who was present, as a peaceable man who was then likely suffering from some mental disease or illness.

The Claimant is informed and believes that Mr. Valdovinos did not die immediately after being assaulted, battered, and shot by the involved police officers. Instead, he was alive for several minutes as police officers handcuffed him after he was shot. It was clear, or through the exercise of reasonable diligence should have been clear, that Mr. Valdovinos was then in immediate need of medical attention. Nevertheless, each of the involved police officers who arrived on the scene, wrongfully, intentionally, and/or with deliberate indifference to Mr. Valdovinos's rights and safety, failed to immediately summon medical assistance to the scene to attend to his injuries.



City of Madera  
Claim for Damages  
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This delay in seeking medical assistance demonstrated a conscious disregard for Mr. Valdovinos's medical condition, and was a contributing factor in his death. For these reasons, Ms. Shaw seeks economic damages as part of his survival action claim on behalf of the Estate of Sergio Valdovinos, in an amount to be determined according to proof at trial.

Mr. Valdovinos was a Hispanic-American male. None of the police officers who assaulted, battered, and shot him was Hispanic. The Claimant is informed and believes that because of implicit bias, each of the unknown police officers wrongly assumed Mr. Valdovinos presented a deadly threat to them and then assaulted, battered and shot him several times as a result. Consequently, the Claimant is informed and believes that Mr. Valdovinos had not posed any objectively reasonable threat to anyone, but was shot and killed on account of his Hispanic race and heritage. Consequently, each police officer's use of force under these circumstances was calculated, intentional, excessive, unlawful, malicious, oppressive, and/or with a deliberate indifference to Mr. Valdovinos's rights, justifying the imposition of punitive damages against the individual police officers, all in an amount to be determined according to proof at trial.

At all relevant times mentioned here, Taylor and each of the involved police officers were employees of the City of Madera and the Madera Police Department, were working under color of law, and within the course and scope of their employment with the City of Madera.

The Claimant also contends that the City of Madera negligently trained these police officers as to the appropriate circumstances and techniques when using deadly force, leading to the actions and failures to act as alleged here. The actions and inactions described here are unfortunately parts of a long-standing custom, habit, and practice of members of the Madera Police Department to use deadly force in an unreasonable and/or excessive manner.

The Claimant is further informed and believes that each of the involved police officers at the scene described above has conspired, and continues to conspire to hide and distort the true facts concerning this incident. This conspiracy is furthered by each of the involved police officers preparing false and misleading reports, as well as providing false and misleading statements concerning the true nature of their interaction with Mr. Valdovinos, the circumstances leading up to his being assaulted, battered, and shot, and their delay in summoning medical assistance to treat Mr. Valdovinos's injuries.

Based on the actions and failures to act by each of the police officers as described above, the Claimant will bring causes of action for wrongful death and survival action - negligence, wrongful death and survival action - battery, false imprisonment, negligence in several different respects, conspiracy, violation of federal civil rights, and violation of the state civil rights and state anti-discrimination laws.

City of Madera  
Claim for Damages  
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D. **General Description of the Indebtedness, Obligation, Injury, Damage, or Loss so far as is presently known:**

Mirabel Shaw is the legal wife of Sergio Valdovinos. They were married on July 8, 2011. As a legal result of her husband's death, Ms. Shaw has suffered severe, emotional, and financial pain, injury, and damages resulting from the loss of the love, comfort, companionship, society, care, assistance, protection, and financial and moral support of her husband. She has had to treat with mental health professionals to help her deal with her suffering and has incurred damages all in an amount to be determined according to proof at trial, within the jurisdiction of the unlimited civil court, and not less than ***Twenty-five Dollars (\$25,000.00)***.

In her capacity as the Successor-in-Interest to the Estate of Sergio Valdovinos, Ms. Shaw seeks economic compensation for punitive damages from the moment Mr. Valdovinos was first injured until a moment before he died, all in an amount to be determined according to proof at trial, within the jurisdiction of the unlimited civil court and not less than ***Twenty-five Thousand Dollars (\$10,000,000.00)***.

E. **The Name(s) of the Public Employee(s) causing the injury, damage or loss:**

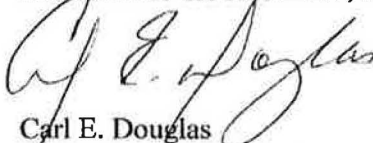
Unknown police officers employed by the City of Madera.

F. **The Amount Claimed:**

For Mirabel Shaw, individually, the claim is valued at an amount to be determined according to proof at trial, within the jurisdiction of the unlimited civil court, and not less than ***Twenty-five Thousand \$25,000.00)***.

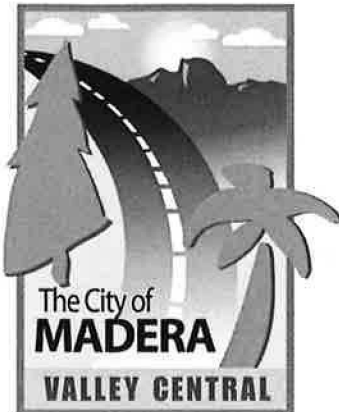
For Mirabel Shaw, as Successor-in-Interest to the Estate of Sergio Valdovinos the claim is valued at an amount to be determined according to proof at trial, within the jurisdiction of the unlimited civil court, and not less than ***Twenty-five Thousand Dollars (\$10,000 .00)***.

**DOUGLAS / HICKS LAW, APC**



Carl E. Douglas  
Attorneys for Claimants,  
Mirabel Shaw, individually and as Successor-in-Interest to  
the Estate of Sergio Valdovinos

## REPORT TO CITY COUNCIL



Council Meeting of December 20, 2017

Agenda Item Number B-7

Approved by:

  
Department Director

  
For City Administrator

### **Consideration of a Minute Order Rejecting a Claim filed by F. Loduca Co.**

#### **RECOMMENDATION**

It is recommended Council reject the claim filed by F. Loduca Co. The City will send a rejection notice to Albert M. Ellis, the Attorney representing the claimant.

#### **HISTORY**

A claim was filed on November 30, 2017, by F. Loduca Co. The claimant is alleging the City of Madera failed to pay the remaining balance due on a job he was contracted to do.

#### **SITUATION**

The claimant alleges he entered into a contract with the City of Madera for the construction of a bike path project known as the Laurel Street Bike Path, Project No. PK 12. The claimant alleges he complied with all obligations required of it under the contract, obligating the respondent, the City of Madera to pay in accordance with the contract's terms. The claimant alleges the City paid a portion of its obligation on May 12, 2017 and since that time has failed and refused to pay the remaining balance due. The claimant has listed the following in damages suffered: Pumping of storm water, off haul of dirt, re-grading as a result of flooding, other labor and work provided pursuant to the City's request and interest on unpaid billing. The claimant's alleged damages exceed \$10,000.00.

The City's Engineering Department disputes invoices submitted by the claimant. At this time staff is recommending the claim be rejected as filed.

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

Rejection of claims filed under Government Code §910 is 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.

**Claim Against City of Madera**  
(Govt. Code § 911.2 subd. (a).)

RECEIVED

City of Madera City Clerk

By Pulvariz

Date: 11/30/17

**Claimant's Name & Address:**

F. Loduca Co.  
[REDACTED]  
[REDACTED]

**Address To Which Correspondence Should Be Sent:**

Albert M. Ellis  
Hakeem, Ellis & Marengo,  
A Professional Law Corporation  
3414 Brookside Road, Suite 100  
Stockton, California 95219

**Date, Place, Circumstances Giving Rise to Claim:**

The claimant entered into a contract with the City of Madera for the construction of a bike path project known as the Laurel Street Bike Path, Project No. PK 12. Claimant complied with all obligations required of it under the contract, obligating the respondent City of Madera ("City") to pay in accordance with the contract's terms. The City paid a portion of its obligations on May 12, 2017 and since that time has failed and refused to pay the remaining balance due.

**General Description of Damages Incurred:**

Claimant has suffered damages for the following:

1. pumping of storm water;
2. off-haul of dirt;
3. re-grading as a result of flooding;
4. other labor and work provided pursuant to the City's request;
5. interest on unpaid billing


**Names of Public Employees Causing Damage:**

Claimant is unaware of specific individuals responsible for the failure to pay, however, the employees involved with the project include Jerry Martinez

**Amount Claimed:**

Claimant's damages exceed \$10,000.00, and the claim if brought before the Superior Court would be an "unlimited civil case."

Dated: November 20, 2017

  
\_\_\_\_\_  
Albert M. Ellis, Attorney for Claimant






## REPORT TO CITY COUNCIL

[Return to Agenda](#)

**Council Meeting of:** December 20, 2017

**Agenda Number:** B-8

**Approved by:**

  
\_\_\_\_\_  
Department Director

  
\_\_\_\_\_  
for City Administrator

**SUBJECT:**

**CONSIDERATION OF A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MADERA, CALIFORNIA, APPROVING AN AGREEMENT BETWEEN THE CITY OF MADERA AND THALES CONSULTING, INC. TO PREPARE AND FILE THE CITY'S FINANCIAL TRANSACTIONS REPORT, THE FINANCING AUTHORITY SPECIAL DISTRICT REPORT, AND THE ANNUAL TRANSIT REPORT FOR FISCAL YEARS 16/17, 17/18 AND 18/19 AND AUTHORIZING THE MAYOR TO EXECUTE THE THREE-YEAR AGREEMENT**

**RECOMMENDATION:**

Staff recommends that the City Council of the City of Madera adopt the resolution approving the three-year agreement between the City and Thales Consulting, Inc. and authorizing the Mayor to execute the agreement.

**DISCUSSION/BACKGROUND:**

Every City and Special District is required to report its financial transactions annually to the State Controller's Office. In addition, we are required to file a Financing Authority Special District Report and an Annual Transit Report. The City may elect to file the reports through an independent auditor, via consultant, or even by using city staff themselves. In reviewing the options available it is felt that hiring a consultant continues to be our best and most cost efficient method for the preparation of the necessary reports. Thales Consulting, Inc. has prepared the subject reports for the City since 2012. The previous agreement with Thales Consulting, Inc. expired after preparation of the FY 15/16 report.

Review and selection was done in accordance with the City's purchasing policies as it relates to the hiring of consultants for this type of work. Thales has offered us a ten percent discount on the Financial Transactions Report if we sign a three-year contract with them. That amounts to an annual saving of \$300 from what we have paid them in the past. Based upon our findings it is requested that the Council approve an agreement with Thales Consulting to prepare the required reports for the Fiscal Years 16/17, 17/18 and 18/19 and authorize the Mayor to execute the agreement for three years with Thales Consulting.

**FISCAL IMPACT:**

The Cost to prepare the reports is \$3,900.00 per fiscal year and \$4,200 has been appropriated for the Fiscal Year 16/17 reports in the current budget for the Finance Department in the Contracted Services account. Therefore, the approval of this agreement will result in an annual savings of \$300 to the General Fund in Fiscal Years 2017/2018, 2018/2019 and 2019/2020 for the reports that are included in the agreement.

**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 economic resources to provide adequate City services and prepare for future growth.

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

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MADERA,  
CALIFORNIA, APPROVING AN AGREEMENT BETWEEN THE CITY OF  
MADERA AND THALES CONSULTING, INC. TO PREPARE AND FILE  
CITY'S FINANCIAL TRANSACTIONS REPORT, THE FINANCING  
AUTHORITY SPECIAL DISTRICT REPORT, AND THE ANNUAL  
TRANSIT REPORT FOR FISCAL YEARS 16/17, 17/18 AND 18/19 AND  
AUTHORIZING THE MAYOR TO EXECUTE THE THREE-YEAR  
AGREEMENT**

WHEREAS, the City of Madera has a responsibility to provide certain reports relating to financial transactions, financing authority and transit to the State of California, and

WHEREAS, the firm of Thales Consulting Inc. has agreed to provide the necessary reporting services in accordance with the terms of the Agreement; and

WHEREAS, Thales Consulting, Inc. has considerable experience in preparing the reports for the City; and

WHEREAS, the prices proposed for services as indicated in the agreement from Thales Consulting, Inc. are found to be fair and reasonable.

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 between the City of Madera and Thales Consulting, Inc., in an amount not to exceed \$3,900 per year, 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 Thales Consulting, Inc.
4. The resolution is effective immediately upon adoption.

\*\*\*\*\*



# THALES CONSULTING INC.

Solutions for Government

Thales Consulting Inc.  
980 Ninth Street  
Sixteenth Floor, PMB 1604  
Sacramento, CA 95814  
(530) 979-1648

December 07, 2017

City of Madera  
205 West 4th Street  
Madera, CA 93637

Tim Przybyla:

Effective December 20, 2017 this letter will serve as an agreement between The City of Madera ("City") and Thales Consulting Inc ("Consultant"). Both parties agree to the following:

Thales Consulting Inc. will prepare three State Controller Reports for the City of Madera. The City agrees to pay Thales Consulting Inc. a sum of four thousand two hundred US dollars (\$4,200) upon transmission of the following June 30, 2017 reports to the State Controller's Office under a one year term.

Cities Financial Transactions Report	\$3,000*
Financing Authority Special District Report	\$ 400
Annual Transit Report	\$ 800

\*If the City agrees to a three year term, the price of the Cities Financial Transactions report is decreased by 10% resulting in an annual contract price of \$3,900 US dollars per year.

The City will submit to Thales Consulting Inc. (at 980 Ninth Street, 16th Floor, PMB 1604, Sacramento, CA 95814) prior year's work papers (when applicable) and required current year data no later than two weeks before the said reports are due.

**Assignment.** Consultant agrees not to assign, convey or transfer its interest in this Agreement to any other entity without the prior written consent of The City, which consent shall not be unreasonably withheld.

**Indemnification.** Contractor 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 Contractor's performance of its obligations under this agreement or out of the operations conducted by Contractor, including the City's active or passive negligence, except for such loss or damage arising from the sole negligence or willful misconduct of the City. In the event the City indemnitees are made a party to any action, lawsuit, or other adversarial proceeding arising from Contractor's performance of this agreement, the Contractor shall provide a defense to the City indemnitees, or at the City's option, reimburse the City indemnitees their costs of defense, including reasonable legal counsels' fees, incurred in defense of such claims.

THALES CONSULTING INC.

Services and Materials to be Furnished by The City: Thales Consulting Inc. shall provide guidance to The City in determining the data required for the services hereunder. The City further agrees to provide all data specifically requested, including documentation and information to Thales Consulting Inc. in a timely manner. Thales Consulting Inc. shall assume all data so provided is correct. Thales Consulting Inc. shall make its best effort to file the reports in a timely manner. Thales Consulting Inc. shall not be liable for reports that cannot be filed as a result of inadequate data or data provided in an untimely manner.

Third Parties: The City and Thales Consulting Inc. are the only parties to this Agreement and are the only parties entitled to enforce its terms. Nothing in this Agreement gives, is intended to give, or shall be construed to give or provide, any right or benefit, whether directly or indirectly or otherwise, to third persons.

Thales Consulting's Liability If Audited: Thales Consulting Inc. will assume without incurring liability therefore that all financial and statistical information provided by The City and its client's employees or representatives is accurate and complete. Any subsequent disallowance of funds paid to the respective local government under the claims for whatever reason is the sole responsibility of the local government.

Termination: Either party shall have the right to terminate this Agreement if the other party is in default of a material obligation hereunder and such default is not cured within thirty (30) days of receipt of a notice from the non-defaulting party specifying such default. Among other things and without limitation, timely payment of invoices shall be considered a material obligation hereunder. In the event this Agreement is terminated for any reason, The City shall pay Thales Consulting Inc. within thirty (30) days of termination for all work performed and expenses incurred up through the effective date of termination.

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:

✦ **\$2,000,000 General Liability** (including operations, products and completed operations) per occurrence, \$4,000,000 general aggregate, for bodily injury, personal injury and property damage, including without limitation, blanket contractual liability. Coverage shall be at least as broad as Insurance Services Office (ISO) Commercial General Liability coverage form CG 00 01. General liability policies shall be endorsed using ISO form CG 20 10 that the City and its officers, officials, employees and agents shall be additional insureds under such policies.

✦ **\$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.

If you agree with the terms above, please sign and date below.

Thales Consulting Inc.

City of Madera, Mayor

Joe Stimac

Andrew J. Medellin





[Return to Agenda](#)

## REPORT TO CITY COUNCIL

Approved By:

  
Department Director

Council Meeting of December 20, 2017

Agenda Item Number B-9

  
For City Administrator

**SUBJECT: CONSIDERATION OF RESOLUTION APPROVING A GRANT OF EASEMENT AGREEMENT WITH THE COUNTY OF MADERA FOR AN EASEMENT NEEDED TO CONSTRUCT A PORTION OF THE GATEWAY/UPRR TRAIL UNDERCROSSING, AUTHORIZING THE MAYOR TO SIGN THE AGREEMENT ON BEHALF OF THE CITY AND AUTHORIZING THE CITY CLERK TO EXECUTE AND CAUSE TO BE RECORDED, A CERTIFICATE OF ACCEPTANCE**

**RECOMMENDATION:**

Staff recommends that City Council adopt Resolution 17- \_\_\_\_\_

1. Approving the Grant of Easement and Agreement for use by the City in constructing a portion of the Gateway/UPRR Trail Undercrossing.
2. Authorizing the Mayor to sign the agreement on behalf of the City.
3. Authorizing the City Clerk to execute the Certificate of Acceptance for said easement and cause it to be recorded.

**SUMMARY:**

In order to complete right-of-way acquisition for the Vern McCullough River Trail Gateway/UPRR Undercrossing project, an easement is required from Madera County for a 0.275 acre parcel of property above the Fresno River just south of the County Maintenance Yard. The Mayor sent a letter on behalf of the City to the County with a request for the easement on September 20, 2017. The County Board of Supervisors unanimously approved granting the easement via an easement agreement at their November 7, 2017 meeting.

**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)

**DISCUSSION:**

The Easement Agreement specifies the terms for granting the easement. Generally, the City agrees to maintain the easement area, assume responsibility for any damage to the County's property resulting from the easement, and not to interfere with use by and operations of the County's adjacent property. Furthermore, the City agrees to reimburse the County for costs incurred with processing this Easement Agreement not to exceed \$1,000.

**FINANCIAL IMPACT:**

There is no General Fund impact from the recommended action. The costs associated with processing this easement will be paid from funds previously budgeted for the project. Although there are no direct General Fund impacts related to this action, any new project is subject to long term maintenance costs. Staff estimates annual maintenance costs to be approximately \$4,800.00 per year.

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

The recommended actions support the following Vision Madera 2025 strategies:

**Strategy 401** – Develop and promote Madera as a walkable community with an emphasis on improving the quality of the natural resources.

**Strategy 404** – Community Wellness: Promote increased community wellness.

**Strategy 411** – Recreational Opportunities: Enhance and expand recreational activities available to Maderans.

**Strategy 121** – Multi-modal transportation: “. . . ensure safe, affordable and convenient transportation modes for residents . . .”

**RESOLUTION NO. 17 –**

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MADERA,  
CALIFORNIA, APPROVING A GRANT OF EASEMENT AND AGREEMENT WITH  
THE COUNTY OF MADERA FOR AN EASEMENT NEEDED TO CONSTRUCT A  
PORTION OF THE GATEWAY/UPRR TRAIL UNDERCROSSING, AUTHORIZING  
THE MAYOR TO SIGN THE AGREEMENT ON BEHALF OF THE CITY AND  
AUTHORIZING THE CITY CLERK TO EXECUTE AND CAUSE TO BE RECORDED,  
A CERTIFICATE OF ACCEPTANCE**

**WHEREAS**, the City has planned and programmed funding for a project to construct a portion of the Fresno River Trail at Gateway Drive and UPRR Undercrossing Project, hereinafter called "Project"; and

**WHEREAS**, a portion of the Project requires acquisition of an easement across property located west of Gateway Drive north of the Fresno River; and

**WHEREAS**, property owner, **COUNTY OF MADERA, A POLITICAL SUBDIVISION OF THE STATE OF CALIFORNIA**, has granted to the City an easement for trail, sidewalk, and related public utility purposes, and necessary fixtures and appurtenances related to the Project subject to the terms and conditions outlined in the Grant of Easement and Agreement; and

**WHEREAS**, the City Engineer has certified to this Council that the easement as 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 Grant of Easement and Agreement, 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 accompanying Grant of Easement and Agreement 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  
and When Recorded Mail to:

City of Madera  
205 West 4th Street  
Madera, CA 93637

Space above this line for Recorder's use only  
No recording fee pursuant to Government Code § 6103

## GRANT OF EASEMENT AND AGREEMENT

THIS GRANT OF EASEMENT AND AGREEMENT, made this 7<sup>th</sup> day of Nov., 2017, by and between the COUNTY OF MADERA, hereinafter referred to as "Grantor", and the CITY OF MADERA, hereinafter referred to as "Grantee".

WHEREAS, Grantee desires to acquire a certain easement ("Easement") in a portion of Grantor's property (APN 013-120-011), (the "Land"), which easement is described in Exhibit "A" and depicted on Exhibit "B" for a recreational trail easement ("Easement Area") for use in connection with Grantee's Fresno River Trail Gateway Drive and UPRR Undercrossings Project (the "Project") and Grantor is prepared to grant the Easement, subject to the terms hereof.

NOW, THEREFORE,

1. Grantor hereby grants to Grantee an easement over, under, through and across the Land located as described in Exhibits A and B for so long as the Easement Area is used exclusively for trail, sidewalk, and related public utility purposes, and necessary fixtures and appurtenances related to the Project.

2. Grantee shall maintain the Easement Area together with any improvements constructed or installed thereon by Grantee or associated with Grantee's use of the Easement Area. The operation and maintenance of such improvements and of the Easement Area shall be at Grantee's sole cost and expense.

3. This Easement is subject to all existing liens, encumbrances, covenants, conditions, restrictions, reservations, contracts, leases and licenses, easements, and rights of way pertaining to the Land, whether or not of record. The use of the word "grant" shall not imply any warranty on the part of the Grantor with respect to the Easement or the Easement Area.

4. Grantee shall comply with all applicable laws, ordinances and regulations, including but not limited to all applicable state, federal, and municipal regulatory, environmental and safety requirements at Grantee's sole cost and expense.

5. Grantee shall not use, deposit or permit the use or deposit of any hazardous material or toxic waste or other harmful substances on the Land or on any other real property of Grantor adjacent to the Easement Area.

6. Grantee shall not interfere with the use by and operation and activities of Grantor on its adjacent property, and Grantee shall use such routes and follow such construction schedule and procedures on Grantor's property, as determined by Grantor, as result in the least damage and inconvenience to Grantor.

7. Grantee shall be responsible for any damage to Grantor's property or that of third parties resulting from any exercise of the rights herein granted, including but not limited to soil erosion, subsidence or damage resulting therefrom. Grantee shall promptly repair and restore at Grantee's sole cost and expense, to its original condition, as determined by Grantor and to Grantor's satisfaction, any of Grantor's property, including, but not limited to, roads, utilities, buildings, parking lots, and fences that may be altered, damaged or destroyed in connection with the exercise of the Easement or use of the Easement Area.

8. The Grant of Easement is made on the express condition that Grantor is to be free from all liability by reason of injury or death to persons or injury to property from whatever cause

arising out of Grantee's, its contractors', agents', officers', members', employees', invitees', or licensees' exercise of rights granted pursuant to this Easement or use of the Easement Area or of the improvements or personal property of Grantee thereto or thereon, including any liability for injury or death to the person or property of Grantee, its contractors, agents, officers, members, employees, invitees, or licensees or to any property under the control or custody of Grantee. Grantee hereby covenants and agrees to defend and indemnify Grantor, its officers, employees, agents, invitees, and guests and save them harmless from any and all liability, loss, costs, or obligations on account of, or arising out of, any such injury or losses causes or claimed to be caused by the exercise of the Easement or use of the Easement Area by Grantee or others, or in any way arising out of the Project at any time, however occurring, other than those caused solely by the willful or negligent acts or omissions of Grantor.

9. Grantor may terminate this Easement and all of the rights granted herein any time after notification in writing from Grantee that the Easement is no longer needed for its intended use by Grantee. In the event of such termination, the Easement shall be quitclaimed from Grantee to Grantor, without expense to Grantor, and any and all interest in Grantor's Land conveyed in this Easement shall automatically revert to Grantor or its assigns and successors, without the necessity of any further action to effect said reversion. On demand by Grantor, Grantee shall promptly remove any and all improvements it installed in, on, under or above the Easement Area. At the option of Grantor, all such improvements shall become the personal property of Grantor at no cost to Grantor.

10. Grantee alone shall pay any and all taxes, charges or use fee(s) levied by any governmental agency against Grantee's interest in the Easement Area, as a result of the Easement herein granted. Grantee shall not cause liens of any kind to be placed against the Easement Area

or any of Grantor's real property.

11. This instrument contains the entire agreement between the parties relating to the rights herein granted and the obligations herein assumed. Any oral representations or modifications concerning this instrument shall be of no force or effect except in a subsequent modification in writing, signed by the party to be charged.

12. Grantee shall be fully responsible for all Grantor's costs which are reasonably incurred in connection with granting this Easement (not to exceed \$1,000, for Grantor's surveying and legal costs) and shall promptly pay such costs upon receiving an invoice from Grantor.

13. This instrument shall bind and inure to the benefit of the respective successors and assigns of the parties hereto.

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

GRANTOR: COUNTY OF MADERA

By: Max Pulgar  
Its: Chairman of Board of Supervisors

GRANTEE: CITY OF MADERA

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

Its: \_\_\_\_\_

*[Signatures must be notarized.]*

Approved as to Legal Form:  
COUNTY COUNSEL

By Dale E. Bacigalupi Digitally signed by: Dale E. Bacigalupi  
DN: CN = Dale E. Bacigalupi email =  
dbacigalupi@lozanosmith.com C = US  
Date: 2017.10.31 15:22:24 -0800

ACCOUNT NUMBERS:

---

CONTRACTING PARTIES:

COUNTY OF MADERA

CITY OF MADERA

TITLE OF CONTRACT:

## GRANT OF EASEMENT AND AGREEMENT

**EXHIBIT "A"**

## EXHIBIT A

A part of the Southwest Quarter of Section 13, Township 11 South, Range 17 East, Mount Diablo Base and Meridian, lying between State Freeway 99 and Gateway Drive and north of the Fresno River, City of Madera, California, as shown on Caltrans right-of-way drawing, District VI, Madera County, Route 4, Sheets 1 and 3, dated October 1956 and June 1958, and further described as follows:

Commencing at the West Quarter Corner of Section 13, Township 11 South, Range 17 East, Mount Diablo Base and Meridian; thence South  $0^{\circ}32'08''$  West on the Section Line, 120.73 feet to a point on the western boundary of the Gateway Drive right-of-way; thence southeasterly on said right of way line South  $43^{\circ}38'50''$  East, 1003.51 feet; thence continuing southeasterly 854.31 feet along a tangent arc to the right having a radius of 8000 feet and a central angle of  $6^{\circ}07'06''$ ; thence continuing southeasterly 804.99 feet along said arc to the right having a radius of 8000 feet and a central angle of  $5^{\circ}45'55''$  to THE TRUE POINT OF BEGINNING of this description (bearings and distances quoted from Grant Deed recorded December 3, 2010 as Document Number 2010034892, Official Records of Madera County);

Thence along the Southerly Boundary of said Grant Deed North  $69^{\circ}42'15''$  West 203.98 feet;

Thence North  $13^{\circ}36'01''$  East 57.77 feet;

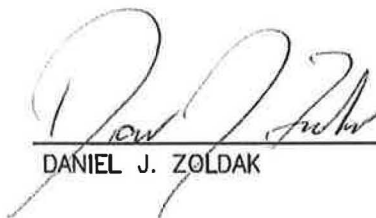
Thence South  $76^{\circ}23'59''$  East 61.74 feet;

Thence North  $13^{\circ}36'01''$  East 50.38 feet to a point on a nontangent curve, concave to the Southwest, with a radius of 8000.00 feet and a central angle of  $01^{\circ}22'56''$ , the radial line of which bears North  $56^{\circ}02'12''$  East, said point also being on the Southwesterly right of way of Gateway Drive;

Thence along said curve and Southeasterly right of way of Gateway Drive 192.99 feet to the POINT OF BEGINNING.

CONTAINING 11,992 square feet / 0.275 acres, more or less.



  
DANIEL J. ZOLDAK  
10/24/17  
DATE



**EXHIBIT “B”**

WEST 1/4 CORNER, SEC. 13  
T. 11 S., R 17 E., M.D.B.M.  
POINT OF COMMENCEMENT

S0°32'08"W 120.73'

S43°38'50"E 1003.51'

R=8000.00' Δ=6°07'06" L=854.31

SOUTHWESTERLY RIGHT OF WAY  
OF GATEWAY DRIVE

N13°36'01"E  
57.77'

RADIAL  
N56°02'12"E

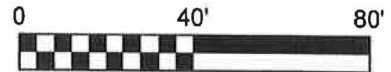
N13°36'01"E  
50.38'

S76°23'59"E 61.74'

R=8000.00' Δ=5°45'55" L=804.99

R=8000.00' Δ=01°22'56" L=192.99'

N69°42'15"W 203.98'



Scale : 1" = 40'

GATEWAY DRIVE

POINT OF BEGINNING



INDICATES AREA PUBLIC USE EASEMENT  
11,992 SF / 0.275 AC

OWNER: MADERA COUNTY



PREPARED BY:  
LARS ANDERSEN & ASSOCIATES, INC.  
4694 W. JACQUELYN AVENUE  
FRESNO, CA. 93722  
PHONE: (559) 276-2790  
FAX: (559) 276-0850

*Daniel J. Zoldak* 10/24/17  
DANIEL J. ZOLDAK DATE

EXHIBIT "B"

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                     )  
                                                          ) ss.  
COUNTY OF MADERA                     )

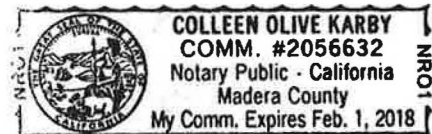
On NOV 14, 2017, before me, Colleen Olive Karby, a notary public, personally appeared Max Rodriguez, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signatures on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

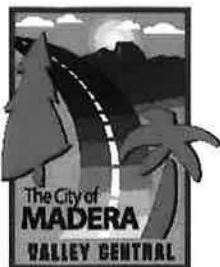
I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

(Seal)

Colleen Olive Karby





# REPORT TO THE CITY COUNCIL

COUNCIL MEETING OF December 20, 2017

AGENDA ITEM NUMBER B-10

APPROVED BY

GRANT ADMINISTRATOR

For CITY ADMINISTRATOR

**SUBJECT: Consideration of a Resolution Approving a Lease Agreement with First Transit, Inc. For Its Office at the Intermodal Facility and Authorizing the Mayor to Execute the Agreement on Behalf of the City**

## RECOMMENDATION:

Staff recommends Council adopt the attached resolution approving a lease agreement with First Transit, Inc. for its office at the Intermodal Facility and authorizing the Mayor to execute all related documents.

## DISCUSSION:

On July 19, 2017, the City and First Transit, Inc. (FT) agreed to a one-year extension of the Agreement for Management and Operation of Madera Transit Services (Agreement), our community's public transportation system: the Madera Area Express (MAX). This agreement contained a number of provisions, including a requirement that FT occupy office space at the Madera Intermodal Facility. (*Exhibit A: Agreement 4 Operating Facility p.2 & 3. CITY RESPONSIBILITIES p.6 (B)*). This lease agreement would allow First Transit, Inc. occupancy of the Intermodal Facility to conduct such transit services. The lease term would begin on January 1, 2018 and conclude on December 31, 2018. In addition, it allows for the agreement to contain updated insurance and indemnity language which has been updated by the City since the previous lease was executed.

## FINANCIAL IMPACT:

The negotiated lease requires the Lessee to pay all building, internal maintenance and utility costs to operate the office and bus dispatch. There is no expense to the City's General Fund. The lease will generate \$10,920 for MAX, based on a rate of \$910/month per the agreement. The lease will not impact the General Fund because this activity falls exclusively within the transportation budgets.

## **VISION MADERA 2025 CONSISTENCY:**

Approval of the lease agreement with First Transit, Inc. will most directly support the goals of **Strategy 121** by assisting with the development of citywide multi-modal transportation options to ensure safe, affordable, and convenient transportation modes for residents and businesses within Madera.

## **Exhibit A**

**Agreement for Management and Operation of**

**Madera Transit Services**

**and**

**Memorandum of Extension of Agreement**

**AGREEMENT FOR MANAGEMENT AND OPERATION  
OF  
MADERA TRANSIT SERVICES**

This Agreement made and entered into this 6th day of, August 2014 by and between the CITY OF MADERA, a public agency, hereinafter referred to as "City," and First Transit, Inc., hereinafter referred to as "Contractor" for management and operation of the City of Madera Transit System's fixed-route (MAX) and dial-a-ride services (DAR).

WHEREAS, City and Contractor desire to contract for the performance by Contractor of the transit system work and services described in accordance with the terms of Request for Proposal for Management and Operation of City of Madera Transit Services RFP No. 201314-04 ("RFP") attached hereto as Exhibit "A" and incorporated herein as though set forth in full. The Contractor has responded to the Request for Proposals ("RFP"), Best and Final Offer, and all subsequent attachments, as accepted by the City to perform these needed services as indicated in the response attached hereto as Exhibit "B" and incorporated herein as though fully set forth. The City desires to have the Contractor perform the work in accordance with the RFP and the response thereto prepared by the Contractor. The work to be performed in accordance with Exhibit "A" and Exhibit "B" is hereinafter referred to as "Transit Services."

NOW, THEREFORE, in consideration of the premises and of the services to be performed by Contractor, and of the compensation to be paid therefore by City, it is HEREBY MUTUALLY AGREED as follows:

**1. TERM OF AGREEMENT:** The Agreement shall be for a period of three (3) years with the option to extend annually thereafter by written mutual consent, not to exceed two (2) additional one(1) year periods. Contract Year 1 will begin July 1, 2014 through June 30, 2015. Contract Year 2 will be July 1, 2015 through June 30, 2016. Contract Year 3 will be July 1, 2016 through June 30, 2017 unless extended as provided for in the following paragraph, or terminated as provided for in Section 11 of this Agreement.

Upon completion of the full term of this agreement, the parties may extend the term of this agreement, upon mutual written agreement, on a month-to-month basis up to a maximum of six (6) months. The parties shall agree to such extensions at least thirty (30) days prior to the termination date of this Agreement, including any new economic terms.

**2. SCOPE OF WORK:**

A. Contractor Responsibilities: Contractor agrees that for the term of this Agreement it will be responsible for the following in the operation of City transit services:

- 1). **Management:** During the term of this Agreement, Contractor shall provide sufficient executive and administrative personnel specializing in transportation services as shall be necessary and required to perform its duties and obligations under the terms hereof.
- 2). **Day-to-Day Operation:** Contractor management and/or supervisory personnel shall be available to provide adequate supervision of the day-to-day operation of transit services, including dispatching, field supervision, and complaint management Monday through Sunday during designated hours of operation.
- 3). **Americans with Disabilities Act (ADA) Compliance:** Contractor shall be responsible for administration of City's Americans with Disabilities Act (ADA) Program as it relates to services provided under this Agreement. Such responsibilities shall include the eligibility certification and application process, including distribution of applications; receiving completed eligibility applications; reviewing completed applications; rendering an initial determination of eligibility, and referring the applicant to another source such as a physician or a City official for further review if applicable. The City ADA Policy shall set sufficient guidelines to allow Contractor to administer the ADA eligibility certification process in accordance with such Policy. The City ADA Policy shall be the sole responsibility of City.



4). **Operating Facility:** Contractor shall establish an operations and dispatching headquarters within the city using the City's Intermodal Transportation Facility unless otherwise approved by City. Contractor shall relocate its operations to a proposed new transit administration facility, if completed during the contract period.

5). **Personnel** Contractor shall employ and supervise all personnel, including drivers, dispatchers, managers, customer service representative and other personnel needed to operate and maintain the service provided by Contractor under this Agreement. Dispatchers and customer service representatives shall have some bilingual skills (communicate in Spanish and English; i.e., ability to understand simple directions, addresses and times). Consideration should be given to bilingual drivers who understand simple directions in English/Spanish. Qualified supervisory personnel shall be available during all hours of operation.

No employee or designee of the Contractor shall continue to be so employed on any work under these specifications that is found to be intemperate, troublesome, rude, disorderly, inefficient, or otherwise objectionable, as determined by Grants Administrator or designee. Contractor shall be responsible for hiring and discharging personnel employed by the Contractor to perform its obligations hereunder. However, City shall have the right to request Contractor to remove from service to City any employee who, in City's sole discretion, is deemed unsuitable for the performance of transportation service for City; provided that City shall make such request in writing, state the reasons therefore and include any supporting documentation, and provided further that such request does not violate applicable local, state or federal laws, rules or regulations.

6). **Telephones:** **CONTRACTOR** shall provide, at a minimum, a telephone system that has the capability to monitor hold time for the CITY's customers and place them in queue. While on hold, the system shall provide customers with information regarding services offered while waiting for a dispatch/reservation person to quickly handle their needs. The system shall record calls for review, as needed, and shall allow for reviewing calls with staff as an instructional tool to provide improved customer service. Other options shall include ACD (automatic call distribution), IVR (Interactive Voice Response), call length monitoring, hold time tracking, and ride status notification (text, call or email).

Contractor shall provide a minimum of four telephone lines---two (2) incoming telephone lines for customer communications and service requests on a rollover system and two (2) additional business lines. Public information such as brochures and websites shall direct those making transit related inquiries to call a specific telephone number(s), used only for this service. Contractor shall also provide Telecommunications Device for the deaf (TDD) capability and equipment and telephone reservations capabilities per Americans with Disabilities Act requirements. Contractor shall install all equipment and make fully operational the specified telephone system within sixty (60) days of initiation of this Agreement.

7). **Uniforms:** Contractor shall provide uniforms for vehicle operators in conformance with standards mutually agreed upon by the City and Contractor.

8). **Driver Training Program:**

a. **Hiring:** Contractor drivers shall complete Contractor's Standard Employment Application, have a three-year check of driving records, successfully complete Contractor's Driver's Test and successfully complete in-service training.

b. **California Vehicle Code Compliance:** Contractor shall comply with California vehicle Code Section 1801.1 (Pull Notice Program) and Section 12804.6 (bus operator certificates).

c. **Driver Safety Program:** Contractor shall implement a continuing driver safety program that shall include defensive-driving course work, specialized assistance to elderly and disabled passengers and daily vehicle maintenance checks.

d. **Driver Sensitivity Training Program:** Contractor shall implement a continuing driver sensitivity training program focusing on the importance of passenger

relations and to ensure drivers respond appropriately to all customers, especially elderly and disabled passengers. Drivers shall assist in loading and unloading of elderly or ambulatory disabled passengers and in carrying parcels or personal effects in accordance with City policies and procedures as provided by City in writing to Contractor.

e. **Driving Record Notification:** Contractor shall be responsible for immediately notifying the City of any drivers who are identified in the State's Pull Notice Program.

9). **Daily Logs:** Drivers shall maintain appropriate documentation to show number of passengers, mileage, and fuel usage by vehicle for both DAR and MAX. Dispatcher shall maintain appropriate documentation to show point of origin/destination, time of call for immediate service requests, time of pickup/drop off for each completed trip, no-shows and cancellations, subscription service requests, customer service forms and trip refusal log for Dial-A-Ride services. Trip/farebox reconciliation documentation shall be maintained for both DAR and MAX by dispatch and shall be submitted to City on a daily basis in the format of a Trip/Fare Reconciliation Form. Driver information, with the exception of ridership, shall be submitted to City on a monthly basis in the format of a Daily Service Log, which will be submitted with the payment invoice for the previous month's service. This invoice and the Daily Service Logs shall be submitted to the City no later than the tenth working day of the month. Contractor shall maintain records for the duration of the Agreement. Contractor shall ensure that vehicle service hours shall be directly traceable by operator trip sheets that will be provided to the City upon request.

10). **Compliance with Federal, State and Local Requirements:** Contractor shall comply with all applicable Federal State and Local requirements, including drug and alcohol testing and reporting requirements and ADA mandates. Contractor shall make available to City a copy of its Drug and Alcohol Testing Policies and Procedures. Certifications made by the Contractor as part of their RFP response are incorporated into this Agreement and in effect for the duration of the Agreement.

11). **Charter Service:** Contractor shall not operate charter service using City vehicles without prior written consent from City. Charter service will be provided in accordance with FTA regulations.

12). **Ticket Distribution:** Contractor shall distribute tickets to appropriate outlets; sell tickets, as agreed upon by City, at Intermodal Transportation Facility; and collect, record and return all tickets and money received as fares. Ticket data shall be provided on a monthly basis.

13). **Fare Collection:** Contractor shall perform fare reconciliation and accounting on a daily basis and all fare revenue shall be taken to a banking institution or City Finance Department daily, as directed by the City. Fare revenue shall include cash fares, tickets and pass sales, and any other revenue collected by Contractor. Daily fare revenue deposits shall be accompanied by appropriate reconciliation documentation satisfactory to the City. Contractor shall collect data for specific analysis as may be requested by the City.

14). **Internal Financial Controls:** Contractor shall maintain sound internal controls over all tickets and monies collected through ticket sales and farebox collections in cooperation with and subject to periodic audits by the City Finance Department.

15). **Invoicing and Billing:** Contractor shall submit detailed monthly invoices and/or billings to the City for reimbursement of services rendered. Contractor shall invoice City monthly for all charges due to Contractor pursuant to this Agreement and no later than the 15<sup>th</sup> of the month after the service for the prior month has been provided. All monthly and hourly

rates billed to the system will be included in the City's invoice. Costs are a part of and not in addition to rates defined in Section 6 (a) and (b). Contractor monthly invoices shall be submitted with a Monthly Report with sufficient operating detail to allow the City to verify all charges.

16). **Marketing and Public Relations:** Contractor shall provide technical assistance, assist in marketing and promotional activities, distribute promotional materials in vehicles by drivers, and perform liaison services as requested by the City.

17). **Insurance:** Contractor shall maintain required and appropriate insurance coverage, as detailed in the Insurance and Indemnification section of the RFP, including documentation of coverage to City and provide the City with certificates certifying that Contractor has liability insurance and comprehensive and collision insurance for each vehicle as required by the City. Contractor shall provide documentation of any changes to insurance coverage including changes resulting from additions of vehicles to the City's transit fleet or from taking buses out of service.

18). **Equipment and Vehicle Maintenance and Management:** City shall provide all vehicles, radios, fuel and fareboxes required for the provision of the services as identified in the Scope of Work identified in this Agreement and the associated RFP. The City shall service City vehicles unless otherwise directed by City. Vehicles shall be parked in a location(s) to be provided by City or as designated by City. Contractor shall assist City with maintenance of vehicles and radios. Specifically, Contractor shall be responsible for the following:

a. Contractor employees will flag regular preventative maintenance intervals and will notify appropriate City Fleet Maintenance staff in a timely manner to ensure compliance with all CHP requirements. Contractor will make arrangements with Fleet Maintenance staff to schedule vehicles for needed repairs and preventive maintenance. Contractor will optimize the scheduling of vehicles for preventive maintenance and other repairs so as not to impede the effective delivery of service. Contractor shall provide City access to its maintenance records upon request.

b. Contractor will allow City to inspect vehicles upon request. Contractor will notify appropriate City Fleet Maintenance staff of all vehicle repairs and towing needs as required and reasonable, but in no way shall Contractor staff cause unnecessary, frivolous repairs to be made. Failure of Contractor to notify City Fleet Maintenance staff of needed repairs and preventive maintenance in a timely manner will be considered negligent and could result in contract penalties in the form of reduced reimbursement in the amount of such repairs caused by such neglect.

c. Contractor will coordinate with City Fleet Maintenance staff to operate a satisfactory preventive maintenance, bus cleaning and major component rebuilding/replacement program and providing for repair and maintenance of all City owned or provided equipment, including, but not limited to buses, two-way radios, wheelchair lifts and fareboxes. This includes, but is not limited to, ensuring the repair or replacement of buses and equipment by City in an expeditious manner if such buses or equipment are damaged or destroyed during the term of this Agreement.

d. Contractor shall clean vehicles daily including all interior litter and debris. Exterior of all vehicles shall be washed a minimum of once weekly, but at such frequency as may be required to maintain a clean, inviting appearance. Contractor will do a detail or more thorough exterior and interior cleaning on each transit vehicle on a monthly basis, and Contractor will maintain a log showing the monthly detail cleaning for each vehicle. City will inspect buses monthly to evaluate bus cleaning performance for the purpose of accessing incentives and/or penalties consistent with performance standards provided in the RFP as Exhibit 5 - City of Madera Transit Performance Standards, Incentives and Penalties.

- e. Contractor shall inspect vehicles daily for cleanliness and safe mechanical condition.
- f. Contractor shall maintain the radio base station in good working condition and communicate with City to advise staff of maintenance requirement for radios on City-owned transit vehicles.
- g. Contractor will cooperate with City to ensure that all vehicles and equipment used in the operation of DAR and MAX services are maintained at a level that will meet and pass all required CHP inspections. Contractor shall be responsible for assuring timely CHP inspections of all applicable vehicles.

19). **Accident Incident and Complaint Procedures:** Contractor shall develop, implement, and maintain formal procedures, subject to City review and approval, to respond to accidents, incidents, service interruptions, and complaints. Such occurrences to be addressed include, but are not necessarily limited to, vehicle accidents, passenger injuries, passenger disturbances, in-service vehicle failures, lift failures of buses in service, fixed-route buses operating more than ten (10) minutes behind schedule, and DAR buses operating more than thirty (30) minutes behind schedule. Contractor shall maintain a formal log of all complaints and track resolution.

All traffic accidents involving transit system vehicles, irrespective of injury, shall be reported to the City of Madera Police Department, Madera County Sheriff's Office or Highway Patrol, as appropriate. Contractor will advise such agency of the accident and request a police unit to investigate the accident. CITY transit staff shall be notified in writing by Contractor of all accidents and incidents resulting in loss or damage to City property within three (3) working days. In cases involving injury, Contractor shall notify City transit staff immediately upon receipt by Contractor of such information. Contractor shall document total number of accidents on the Monthly Report to City.

20). **Conferring and Coordinating:** Contractor shall meet, confer, and coordinate with City on a frequent basis, as reasonably determined by City.

21). **Other Duties:** Contractor shall perform all other work as may be necessary to comply with the requirements of this Agreement.

22). **Dispatching Software:** Contractor shall install Trapeze Simpli Transport dispatching software with enhanced functions, including a data plan for a minimum of eight (8) buses. Contractor shall provide a minimum of sixteen (16) tablets (including replacements) and eight (8) mounts that are fully utilized and functional during the contract period. Contractor shall install all equipment and make fully operational the Trapeze Simpli Transport software inclusive of enhancements within sixty (60) days of initiation of this Agreement. Contractor shall be responsible for compatibility of the Trapeze Simpli Transport system with expansion of the fleet.

23). **On-Board Video Surveillance Cameras:** Contractor shall be responsible for the operation and maintenance of on-board video surveillance camera equipment on City transit vehicles. Contractor shall be responsible for managing the video surveillance data. City shall provide any required notice to riders and placards shall be placed on vehicles with notice of recording.

24). **Records and Reports:** Contractor shall maintain, at a minimum, the operations records referenced in the RFP as Exhibit 6 - City of Madera Reporting Requirements of the RFP, including the following for DAR and MAX:

- a. Daily ridership by vehicle
- b. Daily ridership by wheelchair-bound passengers
- c. Daily mileage by vehicle
- d. Daily vehicle service hours by vehicle

- e. Trip log from each vehicle operator
- f. Dispatch records showing times for:
  - Receipt of service requests
  - Pickup point/drop-off point
  - Pickup assignment made
  - Actual pickup
  - Variance between promised times and actual pickup times
  - Actual delivery of passenger
- g. On-time performance
- h. Trip denials
- i. ADA eligibility certifications and trip requests/denials

A monthly operating report will summarize the data collected daily. This report will present the data by vehicle, service area and total system basis and will include a statement of existing or potential problems and suggested solutions. **Contractor** will record and report trip data for City and County areas pursuant to City direction. **Contractor** will maintain dispatcher's trip sheets and daily logs for review by City. All major vehicle accidents (those resulting in bodily injury) or on-the-job personnel injury accidents (those resulting in hospitalization) shall be reported as soon as practicable to City.

### 3. **CITY RESPONSIBILITIES:**

The City, as the owner of the service, shall establish overall management and operational policy for the service. The City will periodically consult with Contractor on operational issues affecting service.

- A. **Fuel:** City shall provide fuel through a City designated fueling facility during the period of this Agreement for Dial-A-Ride and MAX services. Contractor shall have access to a Fuel Management Delivery System that shall be mutually acceptable to both parties. This fuel shall be used exclusively for Dial-A-Ride and fixed route operations. City and Contractor records regarding miles traveled and fuel consumption will be exchanged if either party desires.
- B. **Office Facility:** City shall lease space to Contractor in the City's Intermodal Transportation Facility for operation of City's transit services, including space for dispatch, office and vehicle parking. The terms of such lease shall be provided in a separate agreement with City. City shall provide office furniture for its transit program at the Intermodal Transportation Facility sufficient to ensure smooth delivery of service. Office furniture deemed unnecessary, unsightly or undesirable may be removed at City's request. City may provide needed enhancements to the Intermodal Transportation Facility space occupied by City transit services without prior approval of Contractor. All furniture provided by City shall remain City property upon any termination of this Agreement. Contractor will not be prohibited by this Agreement from supplementing space at the City's Intermodal Transportation Facility with additional space at Contractor's expense. Contractor shall relocate to the proposed new Transit Administration and Maintenance Facility should construction be completed during the contract period.
- C. **Routing and Scheduling:** City shall provide routing and scheduling directives for fixed-route service. **Contractor** shall provide routing and scheduling for Dial-A-Ride.
- D. **Bus Stops and Bus Shelters:** City shall provide bus stops, bus shelters, and related amenities.
- E. **Maintenance:** City shall maintain, repair, and replace City-owned vehicles, including parts and labor.
- F. **Tickets/Passes and Schedules:** City shall coordinate with Contractor to develop tickets, passes and DAR and MAX schedules/brochures for distribution by Contractor.



- G. **Advertising and Marketing:** City shall coordinate with Contractor to develop, promote, and distribute advertising and promotional transit materials.
- H. **Payment:** City shall ensure payment of proper charges within thirty (30) days after Contractor submission of the monthly invoice and/or billing.
- I. **California Highway Patrol (CHP) Fees:** City shall provide payment for appropriate and necessary CHP inspection fees.
- J. **Vehicles:** City shall provide all vehicles required for provision of the services under this Agreement.

4. **RECORDS AND REPORTS:** Contractor shall maintain, at a minimum, the operations records referenced in the RFP as Exhibit 6 - City of Madera Reporting Requirements in the RFP and including the following for DAR and, MAX:

- A. **Daily ridership by vehicle**
- B. **Daily ridership by wheelchair-bound passengers**
- C. **Daily mileage by vehicle**
- D. **Daily vehicle service hours by vehicle**
- E. **Trip log from each vehicle operator**
- F. **Dispatch records showing times for:**
  - 1). Receipt of service requests
  - 2). Pickup point/drop-off point
  - 3). Pickup assignment made
  - 4). Actual pickup
  - 5). Variance between promised times and actual pickup times
  - 6). Actual delivery of passenger
- G. **On-time performance**
- H. **Trip denials**
- I. **ADA eligibility certifications and trip requests/denials**

A monthly operating report will summarize the data collected daily. This report will present the data by vehicle, service area and total system basis and will include a statement of existing or potential problems and suggested solutions. Contractor will record and report trip data for City and County areas pursuant to City direction. Contractor will maintain dispatcher's trip sheets and daily logs for review by City. All major vehicle accidents (those resulting in bodily injury) or on-the-job personnel injury accidents (those resulting in hospitalization) shall be reported as soon as practicable to City.

5. **MAXIMUM OBLIGATION:** City agrees to pay Contractor for its services as described herein:

A. The price to be paid by City to Contractor for fixed-route service, Madera Area Express/MAX, and Dial-A-Ride shall not exceed the amounts as outlined below:

- 1). For the period **July 1, 2014 through June 30, 2015**, Nine-Hundred Eight Thousand, Eight-Hundred Forty Dollars (\$908,840), for a maximum of 15,200 $\pm$  15% vehicle service hours for MAX and 13,600 $\pm$  15% vehicle service hours for Dial-A-Ride.

**Note:** Costs after FY14/15 are based on an estimated annual CPI increase of two percent (2%) each year. Effective July 1 of each contract year, actual rates shall be adjusted to no more than the CPI annual change as of May of each year but in no event shall exceed three percent (3%). Rates shall not be decreased.

- 2). For the period **July 1, 2015 through June 30, 2016**, an estimated Nine-Hundred Twenty-Seven Thousand, Seventeen Dollars (\$927,017), for a maximum of 15,200  $\pm$ 15% vehicle

- service hours for MAX and 13,600  $\pm 15\%$  vehicle service hours for Dial-A-Ride. Actual costs shall be based on an agreed upon CPI between the CITY and **CONTRACTOR**.
- 3). For the period **July 1, 2016 through June 30, 2017**, an estimated Nine-Hundred Forty-Five Thousand, Five-Hundred Fifty-Seven Dollars (\$945,557) for a maximum of 15,200  $\pm 15\%$  vehicle service hours for MAX and 13,600  $\pm 15\%$  vehicle service hours for Dial-A-Ride. Actual costs shall be based on an agreed upon CPI between CITY and **CONTRACTOR**.
  - 4). For the period (**Option Year 1**) **July 1, 2017 through June 30, 2018**, an estimated Nine-Hundred Sixty-Four Thousand, Four-Hundred Sixty-Eight Dollars (\$964,468) for a maximum of 15,200  $\pm 15\%$  vehicle service hours for MAX and 13,600  $\pm 15\%$  vehicle service hours for Dial-A-Ride. Actual costs shall be based on an agreed upon CPI between CITY and **CONTRACTOR**.
  - 5). For the period (**Option Year 2**) **July 1, 2018 through June 30, 2019**, an estimated Nine-Hundred Eighty-Three Thousand, Four-Hundred Twenty-Four Dollars (\$983,424) for a maximum of 15,200  $\pm 15\%$  vehicle service hours for MAX and 13,600  $\pm 15\%$  vehicle service hours for Dial-A-Ride. Actual costs shall be based on an agreed upon CPI between CITY and **CONTRACTOR**.

Effective July 1 of each contract year beyond FY2014-15, rates shall be adjusted to no more than the Consumer Price Index (CPI) annual change as of May of each year but in no event shall exceed three percent (3%). Contractor's total proposed costs for "Year 1, FY2014-15" will be considered a firm price. Effective July 1<sup>st</sup> of each contract year beyond Year 1, Contractor's actual "Cost per Revenue Hour" rate shall be adjusted to no more than the national Consumer Price Index (CPI) annual change as of May of each year but in no event shall exceed three percent (3%). For purposes of this AGREEMENT, "CPI" shall mean the CPI published by the Bureau of Labor Statistics of the U.S. Department of Labor, All Urban Consumers, U.S. City Average (1982-84=100), "All items less food and energy." The Contractor must have written City concurrence of the CPI to be used for annual increases through the duration of the Contractor's Agreement with the City. The Contractor and City must agree to the CPI to be used prior to Contractor invoicing and City reimbursement in the new fiscal year.

Additional vehicle service hours may be operated upon the written request of the City and such additional service shall be in excess of the maximum obligation amount(s) as established therein. City shall pay Contractor for such additional service at the appropriate fixed hourly rate as established in Section 6(a) of this Agreement. Reduced vehicle service hours may be scheduled upon the written request of the City, and such reductions shall reduce the maximum obligation of the City referenced above. In such case, the fixed hourly rates and fixed monthly fees provided in Section 6, Price Formula, will not be changed. The fixed hourly rate, however, may be renegotiated in the event vehicle service hours agreed upon in Section 6(a) are increased or reduced cumulatively by more than fifteen percent (15%).

All payments from City to Contractor for future services are contingent on and subject to the availability of State Transportation Development Act (TDA) funds, Federal Transit Administration (FTA) funds, and any other related transit funds to continue the services herein described. City cannot obligate funds beyond the current fiscal year. It is the intent of the City to pay Contractor for all services operated. City shall notify Contractor in the event that such funds will become unavailable or insufficient for the provision of service, such that Contractor does not operate service for which City cannot pay. Notwithstanding any other provision of this Agreement, no City General Fund monies shall be encumbered or otherwise obligated. City may terminate this Agreement if TDA, FTA, or any other transit-related funds are not available or insufficient.

**6. PRICE FORMULA:** Effective July 1 of each contract year beyond FY2014-15, all rates shall be adjusted to no more than the Consumer Price Index (CPI) annual change as of May of each year but in no event shall exceed three percent (3%). Rates shall not be decreased. Annually, new rates shall be agreed



upon, in writing, by the CITY and **CONTRACTOR** prior to invoicing by **CONTRACTOR**. Payment by City shall be computed as follows:

**A. Vehicle Service Hourly Rate**

1). For the period July 1, 2014 through June 30, 2015, the cost per vehicle service hour is \$23.45 for MAX and Dial-A-Ride. Contractor's total proposed costs for "Year 1, FY2014-15" will be considered a firm price. Effective July 1 of each contract year beyond Year 1, Contractor's actual "Cost per Revenue Hour" rate shall be adjusted to no more than the national Consumer Price Index (CPI) annual change as of May of each year but in no event shall exceed three percent (3%). For purposes of this AGREEMENT, "CPI" shall mean the CPI published by the Bureau of Labor Statistics of the U.S. Department of Labor, All Urban Consumers, U.S. City Average (1982-84=100), "All items less food and energy." The Contractor must have written City concurrence of the CPI to be used for annual increases through the duration of the Contractor's Agreement with the City. The Contractor and City must agree to the CPI to be used prior to Contractor invoicing and City reimbursement in the new fiscal year.

2) "Vehicle Service Hours" for fixed-route service shall be defined as the total number of hours operated while in revenue service commencing when the bus stops at the first designated stop and ends at the last designated stop, excluding deadhead time to and from the yard, designated lunch breaks, and fueling time. "Vehicle Service Hours" for Dial-A-Ride shall be defined as the total number of hours and fraction thereof operated in quarter hour increments while in revenue service from the first passenger "pick-up" to the time of the last passenger "drop-off" per vehicle per driver, specifically excluding any driver preparation time; paid or unpaid driver break periods; lunch periods; deadhead time either to or from the yard; driver exchange periods; fueling time, road calls or any such period that the driver and vehicle are not specifically engaged in the "pick-up", transport, or "drop-off" of revenue passengers. Such exclusions shall not include travel time between passenger "pick-ups/drop-offs."

3) "First Passenger Pick-Up" shall be defined as the driver's actual arrival time or the "scheduled" pick-up time, whichever is later, except in instances when the passenger actually boards the bus and is transported prior to the "scheduled" pick-up time. If the passenger actually boards the bus and is transported prior to his/her "scheduled" pick-up time, the time the passenger actually boards the bus shall be designated as the "first passenger pick-up."

**B. Fixed Monthly Fee**

1) For the period July 1, 2014 through June 30, 2015, the fixed monthly fee is \$19,454. Contractor's total proposed costs for "Year 1, FY2014-15" will be considered a firm price. Effective July 1 of each contract year beyond Year 1, Contractor's actual "Fixed Monthly Fee" rate shall be adjusted to no more than the national Consumer Price Index (CPI) annual change as of May of each year but in no event shall exceed three percent (3%). Rates shall not be decreased. For purposes of this AGREEMENT, "CPI" shall mean the CPI published by the Bureau of Labor Statistics of the U.S. Department of Labor, All Urban Consumers, U.S. City Average (1982-84=100), "All items less food and energy." The Contractor must have written City concurrence of the CPI to be used for annual increases through the duration of the Contractor's Agreement with the City. The Contractor and City must agree to the CPI to be used prior to Contractor invoicing and City reimbursement in the new fiscal year.

**7. INVOICES:** Contractor shall submit the invoices to City as follows:

- A. Contractor shall invoice City monthly for all charges due to Contractor pursuant to this Agreement and no later than the 15<sup>th</sup> of the month after the service for the prior month has been provided. All monthly and hourly rates billed to the system will be included in the City's invoice. Costs are a part of and not in addition to rates defined in Section 6 (a) and (b).

- B. Contractor monthly invoices shall be submitted with a Monthly Report with sufficient operating detail to allow the City to verify all charges.
- C. Vehicle service hours shall be directly traceable by operator trip sheets that will be provided to the City upon request. Hourly and fixed costs shall be computed weekly and submitted monthly.

8. **PAYMENT:** All payments by City shall be made monthly after the service for the prior month has been provided. City shall make payment no more than thirty (30) days from receipt of invoice. City's standard policy is to pay by voucher or check within two (2) working days after each City Council meeting at which time payments may be authorized, provided that City receives the invoice at least fourteen (14) working days prior to the City meeting date. In the event City fails to make a payment on any sums due hereunder, and such sums remain unpaid for 30 days following receipt of the invoice by City, Contractor shall be entitled to: a) charge interest on unpaid amounts at the rate of 1.5% per month or the maximum statutory amount, whichever is greater; and/or b) terminate service under this Agreement until all amounts due have been paid in full. In the event of a repeated delinquency by City, Contractor shall have the right to request a deposit or payment bond from City before resuming service. Contractor shall be entitled to, without limitation, court costs, litigation expenses and attorneys' fees incurred in any attempt to collect unpaid amounts due under this Agreement. If City disputes any items on an invoice for a reasonable cause, City may deduct that disputed item from the payment, but shall not delay payment for the undisputed portions. City shall notify **Contractor** within fifteen (15) working days after receipt of invoice by City of the amounts and reasons for such deletions. City shall assign a sequential reference number to each deletion. Payments shall be by voucher or check payable to and mailed first class to:

First Transit, Inc.  
222192 Network Place  
Chicago, IL 60673

9. **CONTROL:**

- A. All services rendered by Contractor under this Agreement shall be subject to control of City.
- B. City shall not interfere with the management of Contractor's normal internal business affairs and shall not attempt to directly discipline or terminate Contractor employees. City may advise Contractor of any employee's inadequate performance that has a negative effect on the service being provided, and Contractor shall take prompt action to remedy the situation. In extreme cases, City may request removal of a Contractor employee from performance under this Agreement, for example, on the basis of a driver's history in regards to driving records or abuse of DAR and/or MAX patrons. City shall make such request in writing, state the reasons therefore and include any supporting documentation. Such request shall not violate applicable local, state or federal laws, rules or regulations.

10. **CHANGES:** In the event City orders changes from this Agreement and/or the description of services in the Scope of Work or for other causes orders additional Contractor work not contemplated hereunder, additional compensation shall be allowed for such extra work. This additional compensation shall be negotiated between City and Contractor.

11. **CONTRACT RE-NEGOTIATION:** This Agreement may be re-negotiated at any time during the period of this Agreement, in the event the City determines that a new scheduling, pickup or route system, or personnel levels, etc., may be cost-effective or necessary for efficient and effective operation of services. In this event, parties shall meet prior to any proposed service or contract changes to determine contract and payment schedules. Any new terms or conditions shall be agreed to in writing.

12. **QUALIFICATION FOR FUTURE CONTRACTS:** As a result of having entered into this Agreement, **Contractor** shall not be penalized or disqualified from bidding subsequent transportation management and operation programs under the jurisdiction of City.

13. **SUCCESSION:** This Agreement shall be binding on and inure to the benefit of the heirs, executors, administrators and assigns of the parties hereto.

14. **TERMINATION:**

A. **Termination for Default:** All the terms, conditions, and covenants of this Agreement are considered material, and in the event Contractor breaches or defaults in the performance of any such terms, conditions, or covenants which are to be kept, done or performed by it, City shall give Contractor thirty (30) days written notice either by certified mail or by personal service, describing such breach or default, and if Contractor fails, neglects or refuses for a period of more than thirty (30) days after receipt thereof to remedy, or cure such breach or default or is not diligently pursuing a cure, then City without further notice, may cancel this Agreement. In the event of termination of this Agreement as hereinabove specified, City shall have the right to take immediate possession of all buses, equipment, and facilities provided to Contractor by City. In the event the Agreement is terminated, all pertinent data prepared for the MAX and Dial-A-Ride services shall be made available to City without additional cost. Telephone number(s) for Dial-A-Ride and MAX will stay with the City.

B. **Termination for Convenience:** Either party may terminate this Agreement in whole or in part at any time giving written notice to the other party by certified mail or personal delivery. If a party elects to terminate this Agreement, such party shall give the other party thirty (30) days prior written notice of said termination. Contractor shall be paid its reasonable and necessary costs on work performed to the date of termination of service. Contractor compensation shall be governed by section 6 - Price Formula. Contractor shall promptly submit its termination claim to City for payment. If Contractor has any property in its possession belonging to City, Contractor shall account for the same and shall dispose of it in the manner directed by City.

C. **Rights of City upon Termination or Expiration of Agreement and Waiver of Claims:** Upon expiration or earlier termination of this Agreement, City shall have the right to provide the services by means of its own employees, buses, or equipment, or pursuant to contract with other carrier(s) or otherwise, along the route and within the service area operated by Contractor as provided in this Agreement.

D. For all undisputed payments, in the event City is delinquent in paying Contractor for undisputed payments by more than fifteen (15) days and has received a statement by certified mail, then Contractor may serve a notice of its intent to suspend operations at least seven (7) calendar days subsequent to the receipt of notice by City. If City does not correct the delinquency or if its parties do not agree to arbitrate the dispute under the provisions of this Agreement, then Contractor may suspend operations without further notice or penalty on the date indicated by the notice.

15. **PERFORMANCE BOND:** Contractor will be responsible for the submission of a performance bond prior to the initiation of service. The bond shall be renewed on an annual basis, and the amount of the bond shall be equal to twenty percent (20%) of the fixed cost component for the given year as identified in service contract. The bond shall be a performance bond or a certificate of deposit issued in the name of the "City of Madera." Other performance bond arrangements are subject to the approval of City. Contractor shall maintain the performance bond during the life of the Agreement.

16. **LIQUIDATED DAMAGES:** Contractor's failure to perform contractual service obligations shall result in the assessment of liquidated damages at the rate of \$100.00 per day for each day of non-compliance/non-performance of administrative reports and at a rate up to \$500.00 per day for operational non-compliance/non-performance except as otherwise specifically identified in the RFP as Exhibit 5 - City of Madera Transit Performance Standards, Incentives and Penalties of the RFP referenced in this Agreement in which case the later shall govern. City shall assess liquidated damages within ninety (90) days of the alleged failure or forfeit its right to assess such liquidated damages. No liquidated damages shall be assessed for service failures resulting from factors outside the scope of control of Contractor, including, but not limited to, weather, road construction or traffic delays.

**17. COMMUNICATIONS:** All notices hereunder and communications with respect to this Agreement shall be effective upon the mailing thereof by registered or certified mail, return receipt requested, and postage prepaid to the persons named below:

If to City: Grants Administrator  
CITY OF MADERA  
205 West 4th Street  
Madera, California 93637  
(559) 661-3690

If to **Contractor:** Contract Administrator  
**First Transit, Inc.**  
(use local address)

with a copy to: General Counsel  
**First Transit, Inc.**  
600 Vine Street, Suite 1400  
Cincinnati, OH 45202

**18. INFORMATION AND DOCUMENTS:** All information, data, reports, records, maps, and survey results as are existing, available, and necessary for carrying out work as outlined in the Scope of Work and Agreement hereof, shall be furnished to Contractor without charge by City, and City shall cooperate in every way possible to carry out the work without undue delay.

**19. PROPRIETARY RIGHTS:** All inventions, improvements, discoveries, propriety rights, patents and copyright made by Contractor under this Agreement shall be made available to City with no royalties, charges or other costs but shall be owned by Contractor. All manuals prepared by Contractor under this Agreement shall be made available to City at no charge but shall be owned by Contractor and shall not be copied, disclosed, or released to City or City's representative or participating organization without prior written consent of Contractor. Reports are excluded from this provision and shall be owned by City. Contractor, however, shall have the right to print and issue copies of these reports. Contractor may make presentations and releases relating to the project. City shall approve papers and other formal publications before they are released.

**20. FORCE MAJEURE:** Contractor shall not be held responsible for losses, delays, failure to perform or excess costs caused by events beyond the control of Contractor. Such events may include, but are not restricted to acts of God; fire; epidemics; earthquake; flood or other natural disaster; acts of the government; riots; strikes; picketing; labor disputes; labor shortages; war; civil disorder; and unavailability of fuel. No payment, however, shall be made by City to Contractor for such time that service is not provided.

**21. SHORTAGES AND DELAYS:** In the event that City fails to provide or delays providing items as herein provided, then **Contractor** shall not be responsible for any delays or resulting decline in the quality of service.

**22. EMERGENCY PROCEDURES:** In the event of a major emergency such as an earthquake, dam failure, or man-made catastrophe, Contractor shall make transportation and communication resources available to the degree possible for emergency assistance. If the normal line of direct authority from City is intact, Contractor shall follow instruction of City. If the normal line of direct authority is broken, and for the period while it is broken, Contractor shall make best use of transportation resources following to the degree possible the direction of an organization such as the police, Red Cross, or National Guard, which appears to have assumed responsibility. Emergency use of transportation may include evacuation, transportation of injured, and movement of people to food and shelter. Contractor shall be reimbursed in accordance with the normal "Price Formula" and "Payment" or, if the normal method does not cover the types of emergency services involved, then on the basis of fair, equitable and prompt reimbursement of Contractor's actual costs. Reimbursement for such emergency services shall be over and above "Maximum Obligation" of this Agreement. Immediately after the emergency condition ceases, Contractor shall re-institute normal



transportation services. City agrees to indemnify, hold harmless and defend Contractor, its directors, officers, employees and agents from and against every claim or demand which may be made by any person, firm or corporation, or any other entity resulting from or arising in connection with Contractor providing emergency services to the City. City also agrees to provide insurance for evacuation service at the levels otherwise applicable to this contract.

**23. INTERRUPTION OF SERVICE:** In the event service required to be performed by Contractor under this Agreement is interrupted for any cause, and scheduled service is discontinued for more than forty-eight (48) hours, City shall have the right forthwith to take temporary possession of all facilities, buses and equipment provided to Contractor by City, and the facilities and equipment supplied by Contractor for the purpose of continuing the service which Contractor has agreed to provide in order that the City can preserve and protect the public interest and welfare. In the event the City does take possession of said Contractor-supplied facilities and equipment, Contractor shall be reimbursed by City for the actual cost of the temporary use of said facilities and equipment that normally would have been incurred by Contractor. City shall have the right to possession of such facilities and equipment and to render the required service until Contractor can demonstrate to the satisfaction of the City that required services can be resumed by Contractor, provided that such temporary assumption of Contractor's obligation under this Agreement shall not be continued by the City for more than one-hundred twenty (120) days from the date such operations were undertaken. Should Contractor fail to demonstrate to the satisfaction of the City that required services can be resumed by Contractor prior to the expiration of the aforementioned one-hundred twenty (120) days, this Agreement shall terminate and the rights and privileges granted in the Agreement shall be cancelled. During the period in which the City has temporarily assumed the obligations of Contractor under this Agreement, City shall pay costs and expenses applicable to said period, and Contractor shall not be entitled to receive payment as provided for in Section 6 herein. Any payments due Contractor for performance under this Agreement for services rendered during a partial monthly period shall be paid to Contractor.

**24. AUDIT:** Contractor shall permit the authorized representatives of City, County of Madera, California Department of Transportation, the U.S. Department of Transportation, and the Controller General of the United States to inspect and audit all data and records, including financial records, of the Contractor relating to performance under this Agreement. This includes any handwriting, typewriting, printing, photostatic, photographing, and every other means of recording upon tangible thing, any form of communication or representation including letters, words, pictures, sounds, or symbols or any combination thereof. Any authorized representative of City shall have access to any writings as defined above for the purpose of making audit, evaluation, examination, excerpts, and transcripts during the period such records are to be maintained by Contractor. Further, City has the right at all reasonable times to audit, inspect, or otherwise evaluate financial internal controls and work performed or being performed under this Agreement.

**25. TRANSPORTATION DATA REPORTING:** Contractor shall report transportation data to City in accordance with Level C of the Uniform Financial Accounting and Reporting Elements (FARE) as required under Section 5335 (formerly Section 15) of the Federal Transit Act of 1992 as amended and the California Public Utilities Code, Chapter 4, Section 99243. All transit data reporting should be consistent with National Transit Database (NTD) guidelines and requirements as applicable to the size and nature of the City's transit operations.

**26. LICENSES:** A license and a Certificate of Public Convenience and Necessity to operate in accordance with this Agreement are hereby granted to Contractor. City and County of Madera hereby expressly waive any franchise or business license fees that City might ordinarily require for operation in accordance with this Agreement.

**27. FIDELITY BOND:** During the period of time this Agreement shall be in effect, Contractor shall cause its staff personnel to be covered under an appropriate bond providing protection from employee theft up to the amount of Fifty-Thousand Dollars (\$50,000) with respect to any one occurrence by Contractor employees.

**28. NONDISCRIMINATION:**

A. In connection with the execution of this Agreement, Contractor shall comply with Department of Transportation (DOT) Title VI Civil Rights Act of 1964 regulations (49 CFR Part 21) regarding non-

discrimination in federally-assisted programs of the DOT which by this reference are made a part of this Agreement. Contractor shall not discriminate against any employee or applicant for employment or patron because of age, race, religion, color, sex or national origin. Contractor shall take affirmative actions to ensure that applicants are employed and that employees are treated during their employment, without regard to their age, race, religion, color, sex or national origin. Such actions shall include, but not be limited to employment; upgrading, demotions or transfers; recruitment or recruitment advertising; layoff or termination; rate of pay or other forms of compensation; and selection for training, including apprenticeship.

B. Contractor also shall comply with the provisions of Section 1735 of the California Labor Code.

**29. DISADVANTAGED BUSINESS ENTERPRISE:** This Agreement adopts and incorporates the policy of the Department of Transportation that disadvantaged business enterprises (DBEs) as defined in 49 CFR Part 23 shall have the maximum opportunity to participate in the performance of contracts financed in whole or part with federal funds under this Agreement.

**30. PROHIBITED INTEREST:** No member, officer or employee of City during his/her tenure or one year thereafter shall have any interest direct or indirect, in this Agreement or the proceeds thereof.

**31. CONFLICT OF TRANSPORTATION INTERESTS:** Contractor shall not divert any revenues, passengers or other business from City projects to any taxi or other transportation operation of Contractor.

**32. DEBARRED BIDDERS:** Contractor, including any of its officers or holders of a controlling interest, is obligated to inform City whether or not it is or has been on any debarred bidders' list maintained by the United States Government. Should Contractor be included on such a list during the performance of this project, it promptly shall so inform City.

**33. CARGO PREFERENCE:** Contractor shall abide by 46 U.S.C. 124(B)(1) and 46 CFR Part 381 which impose cargo preference requirements on shipments of foreign made goods.

**34. DEFENSE AND INDEMNIFICATION:**

A. Contractor, its agents, officers and employees shall defend, indemnify, and hold harmless City, its agents, officers, and employees from and against all claims, damages, losses, judgments, liabilities, expenses, and other costs including litigation costs and attorney's fees arising out of or resulting from the performance of this Agreement by Contractor or Contractor agents, officers, employees, representatives or subcontractors. Contractor's obligation to defend, indemnify, and hold the City, its agents, officers and employees harmless applies to any actual or alleged personal injury, death, or damage or destruction to tangible or intangible property including the loss of use. Contractor's obligation under this subparagraph extends to any claim, damage, loss, liability, expense, or other costs to the extent caused in whole or in part by any negligent or wrongful act or omission of Contractor, its agents, employees, supplier, or any one employed by any of them or any one for whose acts or omissions any of them may be liable, except to the extent that such claim or demand arises from or is caused by the negligence or willful misconduct of City, its agents or employees; passenger upon passenger violence; or routing.

B. Contractor's obligation to defend, indemnify, and hold City, its agents, officers, and employees harmless under the provisions of this subparagraph is not limited to or restricted by any requirement in this Agreement for Contractor to procure and maintain a policy of insurance.

C. To the extent permitted by law, City shall defend, indemnify, and hold harmless Contractor, its agents, officers, and employees from and against all claims, damages, losses, judgments, liabilities, expenses, and other costs including litigation costs and attorney's fees arising out of resulting from any negligent or wrongful act or omission of City, its officers, or employees, except to the extent that such claim or demand arises from or is caused by the negligence or willful misconduct of Contractor, its agents or employees.

D. The scope of Contractor's management services, which are defined in this Agreement, will result in Contractor providing management services involving City's Americans with Disabilities Act (ADA) Program. City acknowledges that City is responsible for adopting policies for the operation of, or to be implemented under, the ADA Program. It is understood that, to the extent that any claims

arise against either party (or any third party) involving ADA compliance issues or arising from Contractor's duties in assisting with the management of the ADA Program, so long as Contractor has complied with or implemented such policies established by City for the operation of such program, all such claims shall be the responsibility of City, and City shall indemnify, defend, and hold harmless Contractor, and its agents from any and all loss or liability, including, with limitation, attorneys' fees, arising from such claims or the defense of such claims.

35. **ASSIGNMENT**: This is an agreement for the services of Contractor. City has relied upon the skills, knowledge, experience, and training of Contractor, Contractor's firm, associates, and employees of Contractor as an inducement to enter into this Agreement. Contractor shall not assign or subcontract this Agreement without the express written consent of City. Further, Contractor shall not assign any monies due or to become due under this Agreement without the prior written consent of City. Notwithstanding the above, the Contractor may assign this Agreement to a parent, subsidiary, related or affiliated company with written consent of the City.

36. **AMENDMENT**: This Agreement may be modified, amended, changes added to or subtracted from by the mutual consent of the parties hereto if such amendment or change is in written form and executed with the same formalities as this Agreement and attached to the original Agreement to maintain continuity.

37. **HEADINGS**: The headings or titles to sections of this Agreement are not part of the Agreement and shall have no effect upon the construction or interpretation of any part of this Agreement.

38. **EXHIBITS**: All Exhibits, Attachments and Requirements made part of the City's RFP for transit services are integral parts of this Agreement and are incorporated herein by reference.

39. **Independent Contractor**: In performance of the work, duties, and obligations assumed by City under this Agreement, it is mutually understood and agreed that 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 venture, partner, or associate of Contractor. Furthermore, Contractor shall have no right to control or supervise or direct the manner or method by which City shall perform its work and functions. City and Contractor 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 Contractor 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 Contractor 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 Contractor or to this Agreement.

40. **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.

41. **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 Fresno County.

42. **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.


43. **City's Authority:** Each individual executing or attesting to this Agreement on behalf of 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.

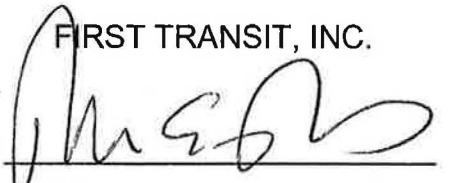
44. **Contractor's Legal Authority:** Each individual executing or attesting this Agreement on behalf of Contractor hereby covenants and represents: (i) that he or she is duly authorized to execute or attest and deliver this Agreement on behalf of such corporation in accordance with such corporation's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

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed by and through their respective officers thereunto duly authorized on the date written below their signatures and that all required Contractor certifications and documentation has been provided to City:

CITY OF MADERA

FIRST TRANSIT, INC.

By   
Robert L. Poythress, Mayor

By   
Title Senior Vice President

ATTEST:  
Sonia Alvarez,  
City Clerk

APPROVED AS TO FORM:  
Brent Richardson  
City Attorney

By 

By 



## MEMORANDUM OF EXTENSION OF AGREEMENT

WHEREAS, the City of Madera and First Transit, Inc. entered into an Agreement for Management and Operation of Madera Transit Services (the "Agreement") on August 6, 2014, for the provision of fixed route and dial-a-ride services in the City of Madera; and

WHEREAS, Section 1 of the Agreement provides for a three year term through June of 2017 with two one year extensions thereafter upon written agreement of the parties; and

WHEREAS, parties to the Agreement desire to enter into the first of the one year extensions.

NOW THEREFORE, the parties hereby agree as to extend the Agreement through June 30 of 2018 pursuant to Section 1 of the Agreement.

### CITY OF MADERA

Dated: 07/19/17



Dated: 07/19/17

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

Andrew J. Medellin, Mayor

### FIRST TRANSIT, INC.

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

NICHOLAS E. PRAMPANNIS

Its: \_\_\_\_\_

SENIOR VICE PRESIDENT

**RESOLUTION NO. 2017-\_\_\_\_\_**

**A RESOLUTION OF THE CITY COUNCIL, OF THE CITY OF MADERA,  
CALIFORNIA, APPROVING A LEASE WITH FIRST TRANSIT, INC. FOR ITS OFFICE  
AT THE INTERMODAL FACILITY**

**Whereas**, First Transit, Inc. ("First Transit") has agreed to lease property located at the Madera Intermodal Facility in the City of Madera; and

**Whereas**, consistent with the terms of the transit service provider agreement, First Transit is required to occupy space at the City's intermodal facility to provide such services; and

**Whereas**, the City and First Transit have negotiated a Lease Agreement that is amenable to both parties; and

**Whereas**, the fair market value of the lease of such property does not exceed the rental rate under the terms of the proposed Lease Agreement.

**THE CITY COUNCIL OF THE CITY OF MADERA, CALIFORNIA, HEREBY  
FURTHER FINDS, ORDERS AND RESOLVES AS FOLLOWS:**

1. The above recitals are true and correct.
2. The Lease Agreement between the City of Madera and First Transit is approved and a copy of which is on file with the City Clerk.
3. The Mayor of the City of Madera is authorized to execute the Lease Agreement on behalf of the City of Madera.
4. This resolution is effective immediately upon adoption.

\*\*\*\*\*

Recorded at the Request of:

When Recorded Return to:

City of Madera  
City Clerk's Office  
205 W. 4<sup>th</sup> Street  
Madera, CA 93637

---

(Fee waived per Section 27838 of the Government Code, no fee due, no document tax due)

## LEASE AGREEMENT

THIS LEASE, made this \_\_\_\_\_ day of \_\_\_\_\_, by and between the **City of Madera**, a municipal corporation ("Lessor"), and **First Transit, Inc.** ("Lessee").

WHEREAS, the Lessor is the owner of the Madera Intermodal Transportation Facility building located on a tract of land in Madera, California, at 123 North "E" Street.

NOW, THEREFORE, in consideration of the terms and conditions set forth herein, the Lessor and Lessee do hereby agree as follows:

### 1. DEFINITIONS

- a. Building. "Building" is defined as that certain building known as the Madera Intermodal Transportation Facility building consisting of one story and a total of approximately 2,840 square feet of floor space, located at 123 North "E" Street, in Madera, California, as shown on the attached Exhibits.
- b. Facility. "Facility" shall be defined as the area of 960 square feet within the Building reserved for the exclusive use of Lessee, and labeled Facility on the attached Exhibit 'A'.
- c. Common Area. "Common Area" shall be defined as a portion of the waiting area, restroom facilities and entryways of the Building located inside the Building and labeled Common Area on the attached Exhibit 'A'.
- d. Bus Parking Area. "Parking Area" shall be defined as the bus driveways and bus parking areas as outlined and labeled on the attached Exhibit 'B'.

### 2. FACILITY

The Lessor hereby leases to Lessee and Lessee leases from Lessor for the term, at the rental, and upon all the conditions set forth herein that certain part of the Building labeled Facility in Exhibit 'A', which is attached hereto and made a part hereof, situated in the City of Madera, County of Madera, State of California, containing approximately 960 square feet of Building Area, together with all improvements thereon and appurtenances thereto, excepting therefrom

the land upon which the Building and Facility are located; and subject to the conditions set forth herein, the continuous and uninterrupted right of Lessee and its officers, employees, business invitees, customers and patrons, of access to and from Facility over and across any part of Lessor's adjacent property which is not part of the Facility, for any purpose contemplated herein, including the Common Area, Galleria, and Bus Parking Area.

As part of the Facility, the Lessor shall provide one Motorola communication base station to Lessee. Said communication system shall be kept in the Facility at all times and maintained by the Lessor. The equipment model and serial number shall be inventoried each year and attached as Exhibit 'C' to this lease.

### 3. TERM

The term of this lease shall be 12 months, commencing January 1, 2018, concluding on December 31, 2018. This lease will automatically renew on a monthly basis unless Lessee receives written notice of intent to terminate at least 30 days prior to the termination date.

### 4. RENT

Lessee shall pay to Lessor as rent for use of the Facility equal monthly installments as indicated below payable on or before the first day of each calendar month of the term. Rent for any period less than one month shall be a pro rata portion of the monthly installment. Rent shall be payable to Lessor at the address stated herein or to such other person or at such other place as Lessor shall designate in writing as provided herein.

Rent from January 1, 2018 through December 31, 2018 shall be at \$910 per month.

### 5. USE

During the term of this Lease, and any renewal hereof, Lessee shall use the Facility as its only bus terminal for operation of the Madera Area Express and Madera Dial-A-Ride enterprises and for uses collateral thereto. The Lessee shall have the right of reasonable access to the Common Area, Galleria, and Bus Concourse Area during normal business hours for the life of this Lease. Other tenants in the "building" shall have reasonable access to the Common Area and Galleria.

Lessee shall not commit or permit any act or acts in or on the Facility or use the Facility or suffer it to be used in any manner which will cause a cancellation of any fire, liability, or other insurance policy covering the Building or any part thereof.

### 6. LESSOR'S WARRANTY OF TITLE

Lessor represents and warrants that:

- a. Lessor will be the sole owner in fee simple of the Building and has full right and power to grant the estate demised and to execute and perform this Lease;
- b. The Building will remain free and clear of all encumbrances which could adversely affect Lessee's leasehold estate;
- c. The intended use of the Building for purposes stated herein is permitted by all applicable zoning laws and regulations; and
- d. The Building will comply with all applicable ordinances, regulations, zoning and other laws.

#### 7. QUIET ENJOYMENT

Lessor covenants and agrees that so long as Lessee observes and performs all the agreements and covenants required of it hereunder, Lessee shall peaceably and quietly have, hold and enjoy the Facility for the Term without any encumbrances or hindrance by Lessor. If Lessee's use of the Facility is significantly limited, or denied, through rezoning, environmental impact edict, or other action of any public or quasi-public agency, this Lease, at the sole option of Lessee, shall terminate as of the effective date of such action and the rent applying to the unexpired portion of the Term will abate.

#### 8. REPAIRS, MAINTENANCE AND UTILITIES

- a. Exterior of Building. Lessor shall provide and pay for day-to-day maintenance and repair of the exterior area of the Building, including but not limited to the exterior landscaping, bus concourse area, driveways, exterior roof, and exterior side walls.
- b. Facility. The Lessee shall provide, perform and pay for day-to-day maintenance, repair, and janitorial services for the Facility, as defined in Subsection 1.b. above. The Lessee shall pay the total cost of its telephone and communication services and its ProRataShare, as defined in Section 8d below, of the gas and electricity used at the Facility.
- c. Interior of Building. Except as provided in Subsections a. and b. above, the Lessor shall provide, perform, and pay all costs for maintenance, repairs, janitorial services, garbage and rubbish services, sewer, water, gas, electricity, maintenance and janitorial supplies, security costs, and all other public utility services for the Building during the term of this Lease, or any renewals thereof as provided herein; and Lessee shall, upon receipt of a proper accounting from Lessor, reimburse Lessor for said costs on a monthly basis its ProRataShare of said costs as determined by reference to Subsection d. below.
- d. ProRataShare Computation. Wherever in this Lease the Lessee agrees to provide, perform or pay its ProRataShare of services or costs, the Lessee shall provide, perform or pay a percentage of the total of said services or costs, as determined by this subsection and defined herein as "ProRataShare".

For the purpose of this Lease:

The "Interior Area" shall mean the total square footage of leasable floor space in the interior of Section 'A' of the Building. Such square footage is determined to be 1120 square feet.

The "Facility Area" shall mean the square footage of the Facility equaling 960 square feet.

The "ProRataShare" hereby defined, shall be the ratio of the Facility Area to the Interior Area where the area designated as "Taxi" in Exhibit 'A' is in use by someone other than Lessee. The "ProRataShare" shall include the costs of such services for the entire Interior Area where the area indicated as "Taxi" on Exhibit 'A' is not in use by anyone.

#### 9. ALTERATIONS AND IMPROVEMENTS

Lessee shall have the right to make alterations and improvements to the Facility subject to the following terms and conditions:

- a. No alterations or improvements made by Lessee shall in any way impair the structural stability of the Building or diminish the value of the property;
- b. All alterations or improvements shall be first approved in writing by the Lessor, but said approval shall not be unreasonably withheld by Lessor;
- c. Lessee shall keep the Facility and every part of the Building free and clear of any mechanic's liens or materialmen's liens arising out of the construction of any such alterations or improvements.
- d. All alterations and improvements made to the Facility shall become the property of the Lessor and shall remain on and be surrendered with the Facility at the expiration or sooner termination of this lease or any renewal or extension of this lease.
- e. Lessee's personal property and its trade fixtures, including machinery, equipment, and furnishings, shall remain the property of Lessee and may be removed by Lessee. Any personal property, trade fixtures, or equipment not removed by Lessee within thirty (30) days after the termination of this Lease or any extension thereof, shall automatically become the property of the Lessor. Lessee shall repair any damage to the Facility or Building caused by Lessee's removal of its personal property, trade fixtures, or equipment, but Lessee shall have no obligation to remove such items from the Facility or Building at any time.

#### 10. MECHANIC'S LIENS



The Lessor and Lessee agree to keep the Building free from any and all claims of persons or firms or corporations who, at the request of Lessor or Lessee or their employees or contractor, furnish labor or materials to or for the benefit of the Building and Lessor and Lessee further agree to hold each other harmless from any and all claims.

#### 11. DAMAGE/DESTRUCTION

If the Facility or Building is damaged or destroyed in whole or in part by fire or other casualty, Lessor shall repair and restore the Facility or Building to a good tenable condition. All rent shall wholly abate in case the entire Facility or Building is untenable, or shall abate pro rata for the portion rendered untenable in case a part only is untenable, until the Facility and Building is restored to a tenable condition. Lessor shall commence and complete all work required to be done under this paragraph with reasonable promptness and diligence, but Lessor shall not be in default in any required performance if delay in performance results from fire, flood, storm, labor disputes, shortage of materials or transportation facilities, governmental regulations, war, act of God or other causes beyond lessor's reasonable control. If (i), Lessor shall not commence such repair or restoration within thirty (30) days the "Deadline Date" after such damage or destruction shall occur or (ii), it is determined that repair or restoration will require more than one hundred twenty (120) days to complete, Lessee may after, in the case of (i), the Deadline Date, or (ii), the date of the occurrence of the casualty, at its option, terminate this Lease by sending the Lessor written notice of its election to do so at any time prior to the commencement of such repair or restoration. In that event, this Lease shall terminate as of the date such notice is received by Lessor.

Notwithstanding any other provisions of this section, Lessee shall be responsible for repair and restoration of Lessee's trade fixtures and personal property located in or on the Building or Facility in the event of damage or destruction of said property.

#### 12. INSURANCE

Without limiting Lessee's indemnification of Lessor, and prior to Lessee's operation and use of the Building, Lessee shall obtain, provide, and continuously maintain at its own expense during the term of the Lease policies of insurance of the type and amounts described below and in form satisfactory to the Lessor.

##### *Minimum Scope and Limits of Insurance*

Lessee shall maintain limits no less than:

- **\$2,000,000 General Liability** (including operations, products and completed operations) per occurrence, \$4,000,000 general aggregate, for bodily injury, personal injury and property damage, including without limitation, blanket contractual liability. Coverage shall be at least as broad as Insurance Services Office (ISO) Commercial General Liability coverage

form CG 00 01. General liability policies shall be endorsed to provide that the Lessor 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 Lessee arising out of or in connection with operations conducted at the Leased Building, including coverage for any owned, hired, non-owned or rented vehicles. Automobile Liability policies shall be endorsed to provide that the Lessor 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. Lessee shall submit to the Lessor, along with the certificate of insurance, a Waiver of Subrogation endorsement in favor of the Lessor, its officers, agents, employees, and volunteers.
- Property insurance against all risks of loss to any Lessee improvements or betterments. Policy should be for full replacement cost with no coinsurance penalty provision.

#### *Maintenance of Coverage*

Lessee 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 Lessee, his agents, representatives, or employees as specified in this Agreement.

#### *Proof of Insurance*

Lessee shall provide to the Lessor 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 Lessor prior to commencement of performance. Current evidence of insurance shall be kept on file with the Lessor 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 Lessor, its elected or appointed officers, agents, officials, employees, and volunteers, or shall specifically allow

Lessee, or others providing insurance evidence in compliance with these specifications, to waive their right of recovery prior to a loss. Lessee hereby waives its own right of recovery against the Lessor.

*Enforcement of Contract Provisions (non estoppel)*

Lessee acknowledges and agrees that any actual or alleged failure on the part of the Agency to inform Lessee of non-compliance with any requirement imposes no additional obligations on the Lessor, 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 Lessee maintains higher limits than the minimums required above, the entity shall be entitled to coverage at the higher limits maintained by Lessee.

*Notice of Cancellation*

Lessee agrees to oblige its insurance agent or broker and insurers to provide to the Lessor 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 Lessor. The Lessor 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 Lessor's Risk Manager.

*Timely Notice of Claims*

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

*Additional Insurance*

Lessee 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.

**13. SIGNS**

Any and all signs or advertisements of any nature extending into, on, or located over the Building, Facility, or Bus Concourse Area, shall conform to all

City of Madera, California, zoning and building codes and shall be approved by Lessor in writing prior to construction, use, or erection thereof. Approval by Lessor shall not be unreasonably withheld as to location, graphics type, content, architectural or engineering standards.

#### 14. TAXES

The terms of this Lease may result in the creation of a possessory interest. If such a possessory interest is vested in a private party to this Lease, the private party may be subjected to payment of personal property taxes levied on such interest. Lessee shall be responsible for the payment of, and shall pay before they become delinquent, all taxes, including possessory interest taxes, if any, assessments and fees assessed or levied upon Lessee or the Facility, or any interest therein, including, but not limited to, buildings, structures, fixtures, equipment or other property installed, or constructed thereon. Lessee further agrees not to allow such taxes, assessments or fees to become delinquent and as such to become a lien against the Building or Facility or any improvement thereto. Nothing herein contained shall be deemed to prevent or prohibit Lessee from contesting the validity or amount of any such tax, assessment or fee in the manner authorized by law.

The obligation to make any payments pursuant to this Section shall survive the expiration of the term of this Lease, provided Lessee's obligation arose out of or is equitably allocable to the period covered by this Lease.

Unless otherwise provided by this Section, the Lessee shall pay the Lessor its ProRataShare, as defined in Section 8.d. above, of any other taxes, assessments, or fees, which the Lessor may become obligated to pay in connection with the ownership or maintenance of the Building.

#### 15. VENDING

Lessor shall have the right to place vending machines and lockers within the Common Area and be entitled to all income derived therefrom.

#### 16. ASSIGNMENT AND SUBLETTING

Lessee shall not encumber, assign, or otherwise transfer this Lease, any right or interest in this Lease, or any right or interest in the Facility, without the prior written consent of Lessor. Neither shall Lessee sublet the Facility or any part thereof, or allow any persons, other than Lessee's agents and servants, to occupy or use the Facility or any part thereof without the prior written consent of Lessor. A consent of Lessor to one assignment, subletting, or occupation and use by another person shall not be deemed to be a consent to any subsequent assignment, subletting, or occupation and use by another person. Any encumbrances, assignment, transfer, or subletting without the prior written consent of Lessor, whether it be voluntary or involuntary, by operation or law, or otherwise, is void and shall, at the option of Lessor, terminate this Lease.

The consent of Lessor to any assignment of Lessee's interest in this lease or the subletting by Lessee of the Facility shall not be unreasonably withheld or delayed.

Notwithstanding anything to the contrary as set forth above, Lessee may, without Lessor's consent, assign or sublease all or a portion of the Facility, a subsidiary, affiliate or parent company of Lessee or any subsequent purchaser of Lessee. Any permitted assignment or sublease shall not relieve the Lessee from any obligations set forth herein.

#### 17. PUBLIC ACCESS

The public shall have access during normal business hours of Lessee to the Facility by way of the Common Area and Galleria identified on Exhibit 'A'.

#### 18. TERMINATION OF LEASE

- a. In the event the Lessee determines in good faith that it no longer practicably, economically, or operationally can do business from the Facility, upon making a reasonable showing of same to Lessor, Lessee shall have the right to terminate this Lease on thirty (30) days prior written notice.
- b. It is understood and agreed by the parties hereto that Lessor and its successors in interest shall and hereby do reserve the right to cancel or terminate this lease prior to expiration of the term or renewed or extended term hereof as follows:
  - i. If the Lessee is in default or breach of this lease, as specified in Section 22 of this lease or as otherwise provided by law; or
  - ii. If the Lessee assigns or sublets the Facility without the prior written consent of Lessor, as specified in Section 18 of this lease.

#### 19. COMPLIANCE WITH LAWS

During the term of this Lease and any renewals hereof, Lessee shall promptly execute and comply with all Federal, State, County, and State statutes, ordinances, regulations, laws, or other requirements applicable to the occupancy of the Facility, and the operation of the Building as a Multi-purpose Transportation Facility.

#### 20. DEFAULT/REMEDIES

Lessee:

The occurrence of any one or more of the following events constitutes a material default and breach of this Lease by Lessee:

- a. The failure by Lessee to make any payment of rent or any other payment required to be made by Lessee hereunder, as and when due, where the failure continues for a period of twenty (20) days after written notice thereof from Lessor to Lessee.

- b. The failure by Lessee to observe or perform any of the covenants, conditions, or provisions of this Lease to be observed or performed by Lessee, other than those described in Subsection a. above, where the failure continues for a period of thirty (30) days after notice thereof from Lessor to Lessee; provided, however, that if the nature of Lessee's default is such that more than thirty (30) days are reasonably required for its cure, then Lessee shall not be deemed in default if Lessee commences such cure within the thirty (30) day period and thereafter diligently completes the cure.
- c. The making of Lessee of any general assignment, or general arrangement for the benefit of creditors.
- d. The filing by Lessee of a voluntary petition to have Lessee adjudged a bankrupt.
- e. The judicial declaration of Lessee as bankrupt and the lack of dismissal of such proceeding within sixty (60) days.
- f. The appointment of a trustee or receiver to take possession of substantially all Lessee's assets located at the Facility or of Lessee's interest in this Lease, if possession is not restored within sixty (60) days.
- g. The attachment, execution or other judicial seizure of substantially all Lessee's assets located at the Facility or of Lessee's interest in this Lease, if the seizure is not discharged within sixty (60) days.

In the event of any such default or breach with the exception of bankruptcy or receivership, by Lessee, Lessor may, after giving written notice as provided above, pursue those remedies available to Lessor under the laws or judicial decisions of the State of California. In the event of bankruptcy or receivership, this Lease shall immediately terminate if same is not dismissed within sixty (60) days.

If Lessee breaches this Lease or is in default and fails to cure within applicable cure periods, as provided above, the Lessor may terminate this Lease upon written notice as provided herein. On such termination, the Lessor may recover from Lessee:

- (i) The worth at the time of award of the unpaid rent which has been earned at the time of termination;
- (ii) The worth at the time of award of the amount by which the unpaid rent which would have been earned after termination until the time of award exceeds the amount of such rental loss that Lessee proves could have been unreasonably avoided.
- (iii) The worth at the time of award of the amount by which the unpaid rent for the balance of the term after the time of award exceeds the amount of such



- rental loss for such period that Lessee proves could be reasonably avoided; and
- (iv) The "worth at the time of award" of the amounts referred to in Subsections (i) and (ii) hereinabove is computed by allowing interest at the statutory rate. The worth at the time of award of the amount referred to in Paragraph (iii) of this subsection is computed by discounting such amount at the statutory rate of interest.

Even though Lessee breaches this Lease or is in default, as provided above, this Lease continues in effect for so long as the Lessor does not terminate Lessee's right of possession; and the Lessor may enforce all its rights and remedies under this Lease, including the right to recover the rent as it becomes due under this Lease, unless the breach by Lessee constitutes a breach and abandonment of the Lease, in which case the Lessor may enforce all its rights and remedies except its right to recover rent as it becomes due.

For the purposes of this Lease, acts of maintenance or preservation or efforts to relet the Facility do not constitute a termination of Lessee's right to possession.

The rights of the Lessor under this Lease shall be cumulative to all other rights or remedies now or hereafter given to Lessor by law. Nothing in this Lease affects the right of the Lessor to equitable relief where such relief is appropriate.

Nothing in this Lease affects the rights of the parties under statutory provisions relating to actions for unlawful detainer, forcible entry, and forcible detainer. If Lessor brings an action in unlawful detainer, and possession of the property is no longer an issue because possession of the property is delivered to Lessor before trial or, if there is no trial, before judgment is entered, unless Lessor amends the complaint to state a claim for damages not recoverable in the unlawful detainer proceeding, the bringing of an unlawful detainer proceeding, the bringing of an unlawful detainer, forcible entry, or forcible detainer action as described hereinabove does not affect Lessor's right to bring a separate action for relief on termination, or in equity; but no relief shall be requested and no damages shall be recovered in the subsequent action for any detriment for which claim for damages was made and determined on the merits in the previous action.

Efforts by the Lessor to mitigate the damages caused by Lessee's breach of this Lease do not waive the Lessor's right to recover damages under this Section.



Nothing in this Section affects the right of the Lessor to indemnification for liability arising prior to the termination of this lease for personal injuries or property damage as provided in Section 29 of this Lease.

## 21. DEFAULT REMEDIES

Lessor:

Lessor shall not be in default unless Lessor fails to perform obligations required of it within a reasonable time, but in no event later than thirty (30) days after written notice by Lessee to Lessor; provided that if the nature of Lessor's obligation is such that more than thirty (30) days are reasonably required for performance, then Lessor shall not be in default, if Lessor commences performance within the thirty (30) day period and thereafter diligently completes performance.

If Lessor defaults in the performance of any of the obligations or conditions required to be performed by Lessor under this Lease, Lessee may, after giving notice as provided above, either cure the default and deduct the cost thereof from rent subsequently becoming due hereunder, or elect to terminate this Lease upon giving thirty (30) days' written notice to Lessor of its intentions to do so. In that event, this Lease shall terminate upon the date specified in the notice, unless Lessor has meanwhile cured the default. Lessee may also pursue those remedies available to it under the laws or judicial decisions of the State of California.

## 22. CONDEMNATION

If all of the Building or a substantial portion thereof is taken under the power of eminent domain, sold under the threat of the exercise of said power, or disposed of to satisfy Federal requirements (all of which are herein called "condemnation"), this Lease shall automatically terminate as of the date the condemning authority takes title or possession, whichever occurs first.

If any other taking adversely substantially affects lessee's use of the Facility, then Lessee may elect to terminate this Lease as of the date the condemning authority takes possession. Lessee's election to terminate shall be made in writing thirty (30) days after Lessor has given Lessee written notice of the taking (or in the absence of such notice within thirty (30) days after the condemning authority has taken possession). If Lessee does not terminate this Lease in accordance with this paragraph, this Lease shall remain in full force and effect as to the portion of the Facility remaining, except that rent shall be reduced in the proportion that the area taken diminishes the value and use of the Facility to Lessee. In addition, Lessor, at its expense, shall promptly repair any damage to the Facility caused by condemnation and restore the remainder of the Facility to the reasonable satisfaction of Lessee.

Any award or payment made upon condemnation of all or any part of the Facility shall be the property of Lessor, whether such award or payment is made

as compensation for the taking of the fee or as severance damages; provided Lessee shall be entitled to the portion of any such award or payment for loss of or damage to Lessee's trade fixtures, removable personal property, and additions, alterations and improvements made to the Facility by Lessee, or for its loss of the leasehold interest herein created; or for its reasonable relocation and moving expenses.

Lessor shall give notice to Lessee within five (5) days after receipt of notification from any condemning authority of its intention to take all or a portion of the Facility.

Notwithstanding anything, expressed or implied, to the contrary contained in this lease, Lessee, at its own expense, may in good faith contest any such award for loss of or damage to Lessee's trade fixtures, removable personal property, and additions, alterations and improvements made to the Facility by Lessee, and for its loss of the leasehold interest herein created.

#### 23. SEVERABILITY; CHOICE OF LAW

No waiver of any breach of any covenant, condition or stipulation hereunder shall be taken to be a waiver of any succeeding breach of the same covenant, condition or stipulation. In the event of default, either party may also pursue those remedies available to it under the laws or judicial decisions of the State of California.

#### 24. BINDING EFFECT

This Lease shall be binding upon the parties hereto, their heirs, personal representatives, administrators, successors and assigns.

#### 25. ASSUMPTION BY NEW OWNER

If the City of Madera transfers any interest in the Facility to any other party or entity, this Lease shall remain in full force and effect, with the new owner assuming the role of Lessor with all the rights and duties specified in this Lease.

#### 26. SURRENDER

Lessee agrees to take good care of the Facility and to commit no waste, and suffer no injury to be done to the same, and to return the possession of the same to Lessor at the expiration of the term, or earlier termination as provided herein, in as good condition as at the commencement of this Lease, normal wear and tear, Lessor's repair obligations, unavoidable accidents and damage by casualty or condemnation excepted.

If Lessee fails to surrender the Facility upon the expiration or termination of this Lease, Lessee shall indemnify and hold the Lessor harmless from all liability and expense resulting from the delay or failure to surrender, including without limitation, claims made by any succeeding tenant founded on or resulting from Lessee's failure to surrender.

## 27. INDEMNITY

Lessee 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 Lessee's performance of its obligations under this agreement or out of the operations conducted by Lessee, including the City's active or passive negligence, except for such loss or damage arising from the sole negligence or willful misconduct of the City. In the event the City indemnitees are made a party to any action, lawsuit, or other adversarial proceeding arising from Lessee's performance of this agreement, the Lessee shall provide a defense to the City indemnitees, or at the City's option, reimburse the City indemnitees their costs of defense, including reasonable legal counsels' fees, incurred in defense of such claims.

## 28. COVENANTS AGAINST DISCRIMINATION

The Lessee agrees for itself, its heirs, executors, administrators and assigns, and all persons claiming under or through them, that any leases, covenants or agreements shall contain the following covenants:

"There shall be no discrimination against or segregation of any person or group of persons on account of race, color, creed, national origin, religion, sex, marital status or ancestry, in the leasing, subleasing, transferring, use, occupancy, tenure or enjoyment of the Facility herein leased, nor shall the Lessee itself, or any person claiming under or through it, establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use, occupancy, or tenants, lessees, sublessees, subtenants or vendees in the Facility herein leased".

## 29. NOTICES

All notices and other communications contemplated shall be in writing and shall be deemed given when personally delivered or received by mail, and shall be personally delivered or mailed by certified mail, return receipt requested, with postage and fees paid, as follows:

Lessor:

City of Madera  
c/o City Administrator  
205 W. 4<sup>th</sup> Street  
Madera, CA 93637

Lessee:

First Transit, Inc.  
600 Vine Street  
Suite 1400  
Cincinnati, Ohio 45202

### 30. ENTIRE AGREEMENT

All preliminary and contemporaneous agreements and understandings are merged and incorporated into this Lease which contains the entire agreement between the parties. This Lease may not be modified or amended in any manner except by an instrument in writing executed by the parties hereto.

### 31. TAXES, UTILITIES AND MECHANIC'S LIENS

Notwithstanding anything expressed or implied to the contrary contained in this Lease, Lessee, at its own expense, may in good faith contest charges for taxes or utilities or mechanic's lien claim and, in the event of such contest, may permit the items contested to remain unpaid during the period of the contest and any appeal therefrom; provided that such nonpayment shall not be permitted to cause a loss or forfeiture of any part of the Building. Lessor shall render to Lessee all assistance reasonably possible in contesting such charges including joining in and signing any protest or pleadings which Lessee deems advisable to file. Should any refund be made of any charges paid by Lessee, the amount of such refund shall belong to and be paid to Lessee.

### 32. MISCELLANEOUS

32.1 Attachments, Headings, Terms. All attachments referred to herein are hereby incorporated by reference into this Lease. The headings and underscorings contained herein are for convenience purposes only and shall not be used to interpret nor be deemed to extend or limit the specific sections. The word or words enclosed in quotation marks shall be construed as defined terms for purposes of this agreement. The terms "Lessor" and "Lessee" shall be construed to mean, when required by the context, the directors, officers, employees, invitees, contractors, materialmen, servants and agents of Lessor and Lessee.

32.2 Attorney's Fees. If either party named herein brings an action to enforce the terms of this Lease or to declare rights hereunder, the prevailing party in any such action, on trial or appeal, shall be entitled to his reasonable attorney's fees to be paid by losing party as fixed by the court.

32.3 Execution and Delivery. This Lease shall not be binding nor confer any rights upon either party unless and until executed and mutually delivered by and between both parties.

32.4 Relationship of Parties. This Lease does not create the relationship of principal and agent or a partnership or joint venture, or of any association other than that of Lessor and Lessee.

32.5 Time of the Essence. Time and specific performance are each of the essence of this Lease.

32.6. Books & Records. Lessee shall have the right at all reasonable times to review the Lessor's books, accounting, and other records with respect to the operation, maintenance, repair, and utility costs, to determine and verify such costs and Lessee's ProRataShare thereof, including insurance and taxes set forth in Sections 12 and 16 herein. Lessor must maintain such books and records for a period of at least two (2) years following the calendar month in which said costs were incurred.

32.7 The venue for any action brought by Lessor or Lessee in connection with this Lease is the County of Madera.

### 33. SUBORDINATION

Lessor shall have the right, at any time or times during the term of this Lease, to mortgage Lessor's interest in the Facility for any purposes, and Lessee will, if requested by the lender, subordinate its interest in the Facility to the lien of lender's mortgage or trust deed, provided the lender agrees in writing, in recordable form, not to disturb Lessee's possession of the Facility under this Lease, so long as Lessee is not in default of any of the terms, conditions, and covenants of this Lease, and to accept the performance by Lessee of its covenants and obligations hereunder if such mortgage shall be foreclosed (hereinafter referred to as "non-disturbance agreement").

IN WITNESS WHEREOF, the parties hereto have executed or caused this instrument to be executed as of the date and year first above written.

ATTEST:

CITY OF MADERA  
a Municipal Corporation

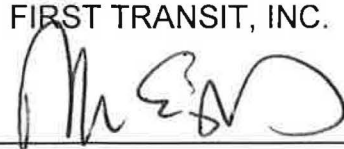
By: \_\_\_\_\_  
Sonia Alvarez  
City Clerk

By: \_\_\_\_\_  
Andrew Medellin  
Mayor

APPROVED AS TO FORM:

FIRST TRANSIT, INC.

By: \_\_\_\_\_  
Brent Richardson  
City Attorney

By:  \_\_\_\_\_  
Title: Sonam Vitz President

23-1716119

(Tax Payer I.D. Number)  
First Transit

## TRANSPORTATION FACILITY BUILDING





## TRANSPORTATION FACILITY BUILDING





## EXHIBIT "C"

### Equipment

The City of Madera provides one communication base station for dispatching purposes. This equipment is maintained by the City of Madera and housed in the Intermodal Facility at all times.

1. Motorola base station, Serial # 922TGC3180, Model #M50KQC9AAIAN



# REPORT TO THE CITY COUNCIL

COUNCIL MEETING OF December 20, 2017

AGENDA ITEM NUMBER B-11

APPROVED BY

  
\_\_\_\_\_  
GRANTS ADMINISTRATOR

  
\_\_\_\_\_  
CITY ADMINISTRATOR

**SUBJECT:** Consideration of a Resolution Appointing Linda Clark, Cynthia Ortegon, and Alex Salazar as Members of the City of Madera Transit Advisory Board

**RECOMMENDATION:** Staff recommends adoption of a resolution appointing Linda Clark, Cynthia Ortegon, and Alex Salazar as members of the City of Madera Transit Advisory Board.

## **SUMMARY:**

These appointments serve to fill one vacancy and to make two re-appointments on the City's seven-member Transit Advisory Board (TAB). In order to continue to have TAB meetings, a quorum of four (4) members is required.

The TAB serves our community by providing feedback and oversight regarding the operation of the City of Madera's public transit system. Members of the TAB typically have transit knowledge and experience which is beneficial when making recommendations to improve the City's transit services.

Alex Salazar has applied to serve on the Transit Advisory Board as Council Member Will Oliver's representative. Mr. Salazar is a resident of Madera, qualified and willing to serve on the TAB. Ms. Clark and Ms. Ortegon are being nominated for reappointment by their respective Council Members, Honorable Donald Holley and Mayor Andrew Medellin. Upon appointment to the TAB by the City Council, each member's term of service will be consistent with the term of the nominating Council Member. Mr. Salazar's term will expire December 2018, and Ms. Clark's and Ms. Ortegon's terms will expire December 2020.

**FINANCIAL IMPACT:** None.

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

The appointment of qualified Transit Advisory Board Members addresses components within Strategy 121. *Multi-modal transportation: Develop a city-wide multi-modal transportation plan to ensure safe, affordable and convenient transportation modes for residents and businesses within Madera.*

**RESOLUTION NO. 17 - \_\_\_\_\_**

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MADERA,  
CALIFORNIA, APPOINTING LINDA CLARK, CYNTHIA ORTEGON,  
AND ALEX SALAZAR AS MEMBERS OF THE CITY OF MADERA  
TRANSIT ADVISORY BOARD**

**WHEREAS**, Councilmember Will Oliver has nominated Mr. Alex Salazar for appointment to the City of Madera Transit Advisory Board; and

**WHEREAS**, Councilmember Donald Holley and Mayor Andrew Medellin have nominated Ms. Linda Clark and Ms. Cynthia Ortegon respectively for re-appointment to the City of Madera Transit Advisory Board.

**NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF MADERA  
HEREBY FINDS RESOLVES AND ORDERS AS FOLLOWS:**

1. The above recitals are true and correct.
2. Linda Clark, Cynthia Ortegon, and Alex Salazar are hereby appointed to the office of the Transit Advisory Board of the City of Madera for the term prescribed by law.
3. This resolution is effective immediately upon adoption.

\* \* \* \* \*

# REPORT TO THE CITY COUNCIL

COUNCIL MEETING OF December 20, 2017

AGENDA ITEM NUMBER B-12

APPROVED BY

  
DEPARTMENT HEAD

  
For CITY ADMINISTRATOR

**SUBJECT: CONSIDERATION OF A RESOLUTION APPROVING A CONTRACT WITH PREDPOL, INC. TO PROVIDE PREDICTIVE POLICING CRIME ANALYTICS SERVICES AND AUTHORIZING THE MAYOR TO EXECUTE THE CONTRACT ON BEHALF OF THE CITY**

## **RECOMMENDATION:**

Staff recommends that Council adopt the attached resolution approving the contract with PredPol, INC to provide predictive policing crime analytics services for three (3) years.

## **SUMMARY:**

PredPol is crime prediction software that generates predictions about which areas and windows of time are at highest risk for future crimes. This includes property crimes, traffic accidents, drug incidents, gang activity, and violent crimes. PredPol integrates with the City's RMS crime data systems and updates automatically as an agency updates its records. PredPol has proven to be an effective resource for suppression and reduction of crime in cities across the US and abroad. Regionally, PredPol is being used with success by the Fresno Police Department, Merced Police Department, and Modesto Police Department.

PredPol will allow us to intelligently deploy our officers in those areas where they are most likely to deter or interrupt crimes. PredPol will allow Command Staff to set crime-specific missions by beat, shift and day of week.

## **DISCUSSION:**

In contrast to hotspot analysis that simply maps past crime data, PredPol claims their technology applies advanced mathematics and computer learning that predicts twice as many crimes as those made by current best practices like heat-mapping. Predictions are recalibrated daily for each patrol shift, translated onto a map as distinctive red boxes and are immediately available to personnel working in the field. Reports are delivered to any internet-connected device, viewed on an MDT (Mobile Data Terminal), or printed on paper. This

system is designed to complement the judgment of officers and crime analysts to problem solve.

Predictions are based on data received from the Department's Records Management System and include type of crime, location of crime, and date / time of crime. There is no use of personally identifiable information.

PredPol provides the ability to review the accuracy of historical predictions. PredPol also continually receives real-time location information from the GPS units installed on our patrol vehicles. This give us the ability to evaluate which areas are being under-patrolled, patrolled sufficiently, or over-patrolled to prevent crime.

#### **FINANCIAL IMPACT:**

This project will be cost neutral to the City of Madera for at least three (3) years. On November 7, 2017, the Community Corrections Partnership Committee approved the use of \$29,700 to reimburse the City of Madera for three (3) years of PredPol predictive policing crime analytics services.

In year four (4) there is a potential annual liability of \$9,900 if the Community Corrections Partnership Committee decides to no longer fund the program. If this were to occur we would explore other funding options if the program is successful.

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

Strategy 115- Economic resources provision: ensure sufficient economic resources to provide adequate City services and prepare for future growth.

**RESOLUTION \_\_\_\_\_**

**RESOLUTION OF THE CITY COUNCIL OF THE CITY  
OF MADERA, CALIFORNIA, APPROVING A CONTRACT WITH PREDPOL, INC. TO  
PROVIDE PREDICTIVE POLICING CRIME ANALYTICS SERVICES AND  
AUTHORIZING THE MAYOR TO EXECUTE THE CONTRACT ON BEHALF OF  
THE CITY**

WHEREAS, the Madera Police Department is seeking to utilize predictive policing crime analytics to intelligently deploy our officers in those areas where they are most likely to deter or interrupt crimes.

WHEREAS, the Madera Police Department has identified a company, PredPol Inc, to provide predictive policing crime analytics services at a cost of twenty nine thousand seven hundred, \$29,700 for three (3) years of service.

WHEREAS, the Madera Police Department has secured funding from the Community Corrections Partnership Committee of Madera County for the full amount of twenty nine thousand seven hundred, \$29,700.

WHEREAS, the City of Madera wishes to contract with PredPol, Inc. to provide predictive policing crime analytics services.

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 contract between the City of Madera and PredPol, Inc., a copy of which will be on file in the office of the City Clerk and referred to for particulars, is approved.
3. The Mayor is authorized to execute the contract on behalf of the City of Madera.
4. The resolution is effective immediately.

\*\*\*\*\*



## **PredPol Predictive Policing SaaS Subscription Agreement**

This Subscription Agreement ("**Agreement**") between PredPol, Inc., a California corporation, PO Box 2870, Santa Cruz, CA 95063-2870 ("**PredPol**") and the City of Madera, with offices at 330 S C St, Madera, CA 93638 ("**Client**") entered into as of the date it is signed by both Parties (the "**Effective Date**"). This Agreement governs Client's access to and use of the Services as they are defined herein.

1. **Definitions.** All capitalized terms used in this Agreement and any attachments hereto shall have the meanings assigned to them below.
  - A) "**Admin Account(s)**" means the administrative account(s) provided to Client by PredPol for the purpose of administering the Services. The use of the Admin Account(s) requires a password, which PredPol will provide to Client.
  - B) "**Administrators**" means the Client-designated technical personnel who administer the Services to End Users on Client's behalf.
  - C) "**Affiliate**" means any entity that directly or indirectly controls, is controlled by, or is under common control with a party.
  - D) "**Brand Features**" means the trade names, trademarks, service marks, logos, domain names, and other distinctive brand features of each party, respectively, as secured by such party from time to time.
  - E) "**Confidential Information**" means information disclosed by a party to the other party under this Agreement that is marked as confidential or would normally be considered confidential under the circumstances. Client Data is Client's Confidential Information. Confidential Information does not include information that: (a) the recipient of the Confidential Information already knew; (b) becomes public through no fault of the recipient; (c) was independently developed by the recipient; or (d) was rightfully given to the recipient by another party.
  - F) "**Client Data**" means data, including crime data, provided, generated, transmitted or displayed via the Services by Client or End Users.
  - G) "**Data Pipe**" means the server software used by PredPol to extract crime data from Client's RMS, encrypt it, and send to the PredPol servers to use to deliver the Service.
  - H) "**Emergency Security Issue**" means either: (a) Client's use of the Services in violation of the Acceptable Use Policy, which could disrupt: (i) the Services; (ii) other Client's use of the Services; or (iii) the PredPol network or servers used to provide the Services; or (b) unauthorized third party access to the Services.
  - I) "**End Users**" means the individuals Client permits to use the Services.





- J) **"End User Account"** means a PredPol-hosted account established by Client through the Services for an End User.
- K) **"Fees"** means the amounts invoiced to Client by PredPol for the Services as described in the Statement of Work.
- L) **"Initial Services Term"** means the term for the applicable Services beginning on the 46<sup>th</sup> day from the Effective Date and continuing for three (3) years.
- M) **"Intellectual Property Rights"** means current and future worldwide rights under patent law, copyright law, trade secret law, trademark law, and moral rights law, and other similar rights.
- N) **"RMS"** means Records Management System database, an agency-wide system that provides for the storage, retrieval, retention, manipulation, archiving, and viewing of information, records, documents, or files pertaining to law enforcement operations.
- O) **"SaaS"** means software as a service, which describes the manner in which PredPol delivers the Services via access to a hosted software platform rather than through a software license.
- P) **"Service Commencement Date"** is the date upon which PredPol makes the Services described in Section 2.B of the Statement of Work available to Client. Notwithstanding anything to the contrary herein, said Services shall not be made available to Client absent: i.) PredPol's receipt of the payment due for the Initial Services Term; or ii.) Client taking the necessary steps as defined in this Agreement and the Statement of Work to enable PredPol to setup the said Services.
- Q) **"Services"** means the applicable PredPol product or service, as described in this Agreement or the Statement of Work.
- R) **"Services Term"** means the applicable Initial Services Term, the Contract Term (see Section 3.A) and all renewal terms for the applicable Services as set out in the Statement of Work.
- S) **"Statement of Work"** means the statement of work attached hereto as Exhibit A that contains additional details regarding the Services to be provided to Client per the terms of this Agreement.
- T) **"Subscription Terms"** means the order document reflecting the financial terms of the subscription, including: (i) the Services being ordered; (ii) Fees; (iii) Initial Services Term; and (iv) Contract Term.
- U) **"Suspend"** means the immediate disabling of access to the Services, or components of the Services, as applicable, to prevent further use of the Services.



- V) "**Term**" means the term of the Agreement, which will begin on the Effective Date and continue until the earlier of (i) the end of the Services Term or (ii) termination date of the Agreement (or Statement of Work) as set forth herein.

2. **Product and Payment.**

- A) **Product.** In consideration of the pricing and other obligations described herein, Client shall receive PredPol Services as they are described in Exhibit A.
- B) **Fees and Payment Terms.** Fees due for the services described herein are outlined in Exhibit A. Fees for orders where PredPol issues an invoice are due upon Client's receipt of the invoice and are considered delinquent thirty days after the date of the applicable invoice. Payments shall be made in U.S. Dollars by either wire transfer or check.
- C) **Revising Rates.** Rates may not be changed during the Initial Services Term of this Agreement without consent of both Parties. Following the end of the Initial Services Term, PredPol may revise its rates by providing Client written notice (which may be by email) at least thirty days prior to the effective date of the revision.
- D) **Delinquent Payments.** Delinquent payments shall bear interest at the rate of one-and-one-half percent per month (or the highest rate permitted by law if less) from the payment due date until paid in full. Client will be responsible for all reasonable expenses (including attorneys' fees) incurred by PredPol in collecting such delinquent amounts except where such delinquent amounts are due to PredPol's billing inaccuracies.

3. **Term and Termination.**

- A) **Term.** This Agreement shall begin on the Effective Date and continue for three (3) years from the beginning of the Initial Services Term ("Contract Term"). This Agreement shall then be renewed for additional terms of one (1) year each unless either Party provides the other Party with written notice of its intent not to renew no less than sixty (60) days prior to the end of the then current term.
- B) **Termination Resulting from Breach of Agreement.** This Agreement may be terminated immediately by either Party upon the failure of the other Party to correct a material breach of this Agreement within thirty (30) days after notice of such material breach by the non-breaching Party to the other Party.
- C) **Termination Resulting From Insolvency Events.** Either Party may terminate this Agreement immediately upon written notice to the other Party in the event a receiver, trustee or similar officer is appointed for the other Party or a substantial portion of the other Party's assets or businesses is assigned or transferred to a third party for the benefit of its creditors, or a petition or application is filed by or against the other Party under any bankruptcy law, or if an assignment is made of the other Party's business or assets for the benefit of its creditors.
- D) **Obligations Upon Termination.** Upon any termination of this Agreement, the Parties shall return to each other any and all confidential information and any and all equipment, documents and materials, including all copies thereof, which it received from the other Party in connection with this Agreement.

**E) Remedies for Breach of Agreement.** If termination is the result of a material breach by a Party, the non-breaching Party shall be entitled to pursue any and all rights and remedies it has under law.

**F) Survival Provisions.** Termination of the Agreement shall not relieve either Party from its continuing obligation to protect Confidential Information and proprietary rights of the other Party. In addition, the rights and obligations of the Parties under Sections 1, 2, 3, 4, 6.G, 6.H, 8, 9, 10, 11, 12, 13 and 14 shall survive the expiration or termination of this Agreement

#### **4. License Grants, Ownership, and Security.**

**A) License.** Subject to the terms and conditions of this Agreement and solely for the duration that it remains in effect, PredPol hereby grants to Client a limited, non-transferable, non-exclusive, non-sublicensable license to use the Services as provided as a SaaS. The Services are protected by copyright, trade secret, and other intellectual property laws. You are only granted the right to use the Services, and only for the purposes described herein. PredPol reserves all other rights in the Services.

**B) Ownership.** The Parties acknowledge and agree that, as between the Parties, all worldwide ownership rights, title and interest in and to the Services, its underlying software, and all other resulting material conceived, made or discovered by PredPol as a result of or in connection with the Services, together with any and all modifications and derivative works thereof, and any and all manuals, work in process, notes, drawings, designs, flowcharts, and other results of the Services, including, without limitation, each and every discovery, invention or improvement which may be conceived or developed as a result of or in connection with the Services (collectively as the "Work Products"), shall be the sole property of PredPol.

Notwithstanding anything to the contrary herein, each Party agrees that it shall not acquire any rights, title or interest in or to the other Party's Marks (as defined below) pursuant to this Agreement. Each Party will not contest the other Party's right, title or interest in and to the other Party's Marks.

"Marks" means the respective trademarks, service marks, trade names, domain names, or any other source identifiers of each Party.

**C) Facilities and Data Transfer.** Facilities used to store and process Client Data will adhere to security standards no less protective than the standards used for PredPol's own information and shall be compliant with applicable laws.

**D) Modifications to the Services.** PredPol may make commercially reasonable changes to the Services. If PredPol materially changes the Services, PredPol will inform Client.

**E) Retention.** PredPol will have no obligation to retain archived Client Data.

5. **License to Client Data.** Client understands and agrees that Client is solely responsible for ensuring it has all rights in or to any Client Data as necessary to upload such data to the System without violation of any laws, regulations or guidelines, or any privacy or property rights of any third parties. In connection with such data, Client hereby represents and warrants that:

- A) Client owns, or otherwise has the necessary licenses, rights, consents, and permissions under all intellectual property and/or proprietary rights in Client Data to enable inclusion and use of the Client Data by PredPol and its agents in the manner permitted by this Agreement;
- B) PredPol's receipt and/or storage of such Client Data on the System pursuant to this Agreement, does not and will not: (a) infringe, violate, or misappropriate any third-party right, including any copyright, trademark, patent, trade secret, moral right, privacy right, right of publicity, or any other intellectual property or proprietary right; (b) slander, defame, libel, or invade the right of privacy, publicity or other property rights of any other person; or (c) violate any applicable law, regulation or guideline; and
- C) Client retains ownership at all times of the Client Data. Client hereby grants to PredPol and its agents the right to use, store, publish, reproduce, and otherwise possess and utilize the Client Data in connection with and as reasonably necessary for PredPol to provide the Services to Client hereunder, and to disclose Client Data to its officers, employees, agents, consultants, contractors and representatives for the purposes of performing Services for the Client.

Client hereby agrees to indemnify and hold harmless PredPol from any third-party claim arising from or otherwise related to Client's breach of any of the representations and warranties in this Section 5.

6. **Additional Client Obligations.**

- A) The Client also agrees to: a) support testing of new features/tools; b) contribute to requested case studies; c) respond to inquiries from other agencies regarding Client's use of PredPol; and d) provide user feedback.
- B) Client shall (i) obtain access to the Internet at Client's own expense from a provider selected by Client so that Client can communicate with the System, and (ii) select, obtain and maintain all equipment necessary to permit Client to communicate with the Web based interfaces of the Software. PredPol will have no obligations with respect to any hardware, software, or services chosen and/or used by Client to access the Services. Notwithstanding anything to the contrary within this Agreement, PredPol's obligation to provide Services is met upon PredPol making the relevant data accessible to Client via the internet. PredPol will not have any liability if Client is unable to access or utilize the Services due to a fault or failure in any such hardware, software and/or services.
- C) Client shall provide access for the Data Pipe to the Client's server which houses applicable crime data. Client shall ensure their server is running at all times and



communicate any pertinent changes to their server or database to PredPol in a timely manner.

- D) Compliance.** Client will use the Services in accordance with this Agreement, the Statement of Work and all applicable laws.
- E) Login IDs and Passwords.** Client is solely responsible for monitoring and protecting the confidentiality of all Login IDs and Passwords issued to it and its End Users.
- F) Client Administration of the Services.** Client may specify one or more Administrators with the rights to administer the End User Accounts. Client is responsible for: (a) maintaining the confidentiality of the password and Admin Account(s); (b) designating individuals authorized to access the Admin Account(s); and (c) ensuring activities that occur in connection with the Admin Account(s) comply with this Agreement. Client agrees that PredPol's responsibilities do not extend to Client's internal management or administration of the Services.
- G) Unauthorized Use.** Client will use commercially reasonable efforts to prevent unauthorized use of the Services and to terminate any unauthorized use. Client will promptly notify PredPol of any unauthorized use of or access to the Services of which it becomes aware.
- H) Restrictions on Use.** Unless PredPol specifically agrees in writing, Client will not, and will use commercially reasonable efforts to make sure a third party does not: (i) intentionally store or send software viruses, worms, Trojan horses or other harmful computer code, files, scripts or programs; (ii) modify any software programs on the System; (iii) use any programs on the System other than the Application as installed and maintained by PredPol; (iv) access the System in any manner other than via the Software's Web based administrative, user and mobile interfaces; (v) remove, circumvent, disable, damage or otherwise interfere with any security-related features of the System, or features that enforce limitations on the use of the System; (vi) attempt to gain unauthorized access to the System, or any part of it, other accounts, computer systems or networks connected to the System through hacking, password mining or any other means; (vii) assign, sell, resell, rent, lease, distribute, delegate or otherwise transfer any rights or obligations under or in connection with this Agreement or the System; (viii) use the System, or sell access to the System, on a time-sharing, service bureau, application service provider, or similar basis; (ix) reverse engineer, decompile, reverse compile, disassemble, or reverse assemble, any aspect or element of the System, or attempt to do so, except if and to the extent permitted by relevant law applicable to Client; (xi) take any action the intent or likely result of which would be to reveal or reconstruct all or any portion of the design of the System; (xii) use the System in a manner that violates any applicable law; (xv) use the facilities or capabilities of the System to conduct any business or activity or solicit the performance of any activity which is prohibited by law; or (xvi) upload into the System, or cause or permit the System to store, copy, process, communicate, distribute or publish, any data, information

or materials (including without limitation, the Crime Data) to the extent that so doing actually, or allegedly, (a) creates any liability for, or imposes any obligations upon, PredPol (b) violates any legal requirement, violates any rights of any person or entity or violates any duty to any person or entity, (c) damages any person or entity, (d) would be abusive, profane or sexually offensive to an average person as judged by PredPol, (e) infringes, misappropriates or violates any intellectual property right or any personal right of any person or entity anywhere at any time, including, but not limited to, rights arising out of, or related to, copyright, patent, trade secret, trademark, service mark, privacy and publicity or (f) gives rise to any claims by any person or entity anywhere at any time for slander, liable, false light, invasion of privacy, unfair competition or misappropriation.

- I) Third-Party Requests.** Client is responsible for responding to Third Party Requests. PredPol will, to the extent allowed by law and by the terms of the Third-Party Request: (a) promptly notify Client of its receipt of a Third-Party Request; (b) comply with Client's reasonable requests regarding Client's efforts to respond to a Third-Party Request; and (c) provide Client with the information or tools required for Client to respond to the Third-Party Request. Client will first seek to obtain the information required to respond to the Third-Party Request on its own and will contact PredPol only if it cannot reasonably obtain such information.
- J) End User Requests.** Client will, at its own expense, respond to questions and complaints from End Users or third parties. Client will use commercially reasonable efforts to resolve support issues before escalating them to PredPol. Should Client need to escalate the issue to PredPol, contact will be made in accordance with Notices, Section 14.B.

**7. Suspension Of End User Accounts by PredPol.**

- A)** If PredPol becomes aware of an End User's violation of the Agreement, PredPol may request that Client suspend the applicable End User Account. If Client fails to comply with PredPol's request, PredPol may suspend the End User Account. The suspension will continue until the applicable End User has cured the breach.
- B)** If there is an emergency security issue (determined solely in PredPol's reasonable business judgment), PredPol may suspend the offending use without Client's consent. Suspension will be to the extent and duration required to prevent or terminate the emergency security issue. If PredPol suspends an End User Account without prior notice to Client, at Client's request, PredPol will provide Client the reason for the suspension.

**8. Confidential Information.**

- A) Asset of PredPol.** Client acknowledges and agrees that the System and results generated therefrom constitute valuable, proprietary and confidential assets of PredPol and its licensors, successors and assigns. The foregoing shall be considered the Confidential Information of PredPol.





For purposes of this Agreement, "Confidential Information" means any tangible or intangible information relating to or disclosed in the course of performing the Agreement that is marked or designated as confidential by the disclosing Party, including, without limitation, designs, specifications, routines, protocols, formulas, source codes, technical processes, unpublished financial information, product and business plans, projections, customer information and employee information. Confidential Information does not include information that (i) becomes publicly known through no fault of the receiving Party, (ii) is lawfully received from a third party not bound by confidentiality obligations, or (iii) is independently developed by a Party without using any Confidential Information of the other Party.

- B) Obligations.** Each party will: (a) protect the other party's Confidential Information with the same standard of care it uses to protect its own; and (b) not disclose Confidential Information except to affiliates, employees and agents who need to know it and who have agreed in writing to keep it confidential. Confidential Information may only be used to exercise rights and fulfill obligations under this Agreement, while using reasonable care to protect it. Each party is responsible for the actions of its affiliates' employees.
- C) Required Disclosure.** Each party may disclose the other party's Confidential Information when required by law but only after it, if legally permissible: (a) uses commercially reasonable efforts to notify the other party; and (b) gives the other party the chance to challenge the disclosure.

**9. Intellectual Property Rights; Brand Features.**

- A) Intellectual Property Rights.** Except as expressly set forth herein, this Agreement does not grant either party any rights, implied or otherwise, to the other's content, brand features or intellectual property.

**10. Disclaimers.**

- A) Disclaimers.** TO THE EXTENT PERMITTED BY LAW, EXCEPT AS EXPRESSLY PROVIDED FOR HEREIN; (i). PREDPOL MAKES NO WARRANTIES OR REPRESENTATIONS ABOUT CONTENT OR INFORMATION MADE ACCESSIBLE BY OR THROUGH THE SERVICES AND DOES NOT GUARANTEE THAT THE SERVICES WILL PREDICT ALL CRIMES IN YOUR JURISDICTION; AND (ii) THE SERVICES ARE PROVIDED "AS IS" AND WITHOUT WARRANTIES OR CONDITIONS OF ANY KIND, INCLUDING THE IMPLIED WARRANTIES OF MERCHANTABILITY, NON-INFRINGEMENT, QUIET ENJOYMENT, ACCURACY OF DATA, SYSTEM INTEGRATION, COURSE OF PERFORMANCE AND FITNESS FOR A PARTICULAR PURPOSE. PREDPOL AND ITS SUPPLIERS DO NOT GUARANTEE OR WARRANT THAT THE USE OF THE SERVICES WILL BE UNINTERRUPTED OR ERROR FREE. CLIENT ACKNOWLEDGES THAT THE SERVICES ARE NOT A TELEPHONY SERVICE AND THAT THE SERVICES ARE NOT CAPABLE OF PLACING OR RECEIVING ANY CALLS INCLUDING EMERGENCY SERVICES CALLS OVER PUBLICLY SWITCHED TELEPHONE NETWORKS.



- B) **Warranty.** PredPol warrants all work performed or services rendered under the Agreement to be of good quality and free from any defective or faulty material and workmanship.

#### **11. Indemnification.**

- A) **By Client.** Client will indemnify, defend, and hold harmless PredPol from and against all liabilities, damages, and costs (including settlement costs and reasonable attorneys' fees) arising out of a third-party claim: (i) regarding Client Data; or (ii) regarding Client's use of the Services in violation of this Agreement or applicable law.
- B) **By PredPol.** PredPol will indemnify, defend, and hold harmless Client, its officers, employees, and agents ("City Indemnities") from and against causes of action, claims, liabilities, obligations, judgments, or damages, including reasonable legal counsels' fees and costs of litigation, asserted against Client by a third-party arising directly from PredPol's material failure to perform one or more of its obligations under this agreement ("Claims"). **To the extent that Client has materially contributed to the cause of such Claim, PredPol's liability shall be reduced accordingly.** In the event the City Indemnities are made a party to any action, lawsuit, or other adversarial proceeding arising from such claim, PredPol shall provide a defense to the City Indemnities, or at the City's option, reimburse the City indemnities their reasonable, pre-approved costs of defense, including reasonable legal counsels' fees, incurred in defense of such claims.
- C) **General.** The party seeking indemnification will promptly notify the other party of the claim and cooperate in defending the claim. The indemnifying party will have full control and authority over the defense, except that: (a) any settlement requiring the party seeking indemnification to admit liability or to pay money will require that party's prior written consent, such consent not to be unreasonably withheld or delayed; (b) the other party reasonably cooperates with requests for assistance; and (c) the other party may join in the defense with its own counsel at its own expense. THE INDEMNITIES ABOVE ARE A PARTY'S SOLE REMEDY FOR VIOLATION BY THE OTHER PARTY OF A THIRD PARTY'S INTELLECTUAL PROPERTY RIGHTS.

#### **12. Possible Infringement.**

- A) **Repair, Replace, or Modify.** If PredPol reasonably believes the Services infringe a third party's Intellectual Property Rights, then PredPol will: (a) obtain the right for Client, at PredPol's expense, to continue using the Services; (b) provide a non-infringing functionally equivalent replacement; or (c) modify the Services so that they no longer infringe.
- B) **Suspension or Termination.** If PredPol does not believe the foregoing options are commercially reasonable, then PredPol may suspend or terminate Client's use of the impacted Services. If PredPol terminates the impacted Services, then PredPol will provide a pro-rata refund of the unearned fees.

**13. Limitation of Liability.**

- A) **Limitation on Indirect Liability.** NEITHER PARTY WILL BE LIABLE UNDER THIS AGREEMENT FOR LOST REVENUES OR INDIRECT, SPECIAL, INCIDENTAL, CONSEQUENTIAL, EXEMPLARY, OR PUNITIVE DAMAGES, EVEN IF THE PARTY KNEW OR SHOULD HAVE KNOWN THAT SUCH DAMAGES WERE POSSIBLE AND EVEN IF DIRECT DAMAGES DO NOT SATISFY A REMEDY.
- B) **Limitation on Amount of Liability.** EXCEPT AS PROVIDED HEREIN, PREDPOL SHALL NOT BE HELD LIABLE UNDER THIS AGREEMENT FOR MORE THAN THE AMOUNT PAID BY CLIENT TO PREDPOL HEREUNDER DURING THE TWELVE MONTHS PRIOR TO THE EVENT GIVING RISE TO LIABILITY.
- C) **Exceptions to Limitations.** These limitations of liability apply to the fullest extent permitted by applicable law but do not apply to breaches of confidentiality obligations, violations of a party's Intellectual Property Rights by the other party, or indemnification obligations.

**14. Miscellaneous.**

- A) **Privacy Rights:** Without limiting any of the foregoing, Client hereby agrees to strictly comply with all laws, regulations and guidelines relating to the privacy rights of any individuals applicable to its use of the System, including, without limitation, personally identifiable information.
- B) **Notices.** (a) All notices must be in writing and addressed to the attention of the other party's legal department and primary point of contact and (b) notice will be deemed given: (i) when verified by written receipt if sent by personal courier, overnight courier, or when received if sent by mail without verification of receipt; or (ii) when verified by automated receipt or electronic logs if sent by facsimile or email.

Point of Contact, PredPol: accounting@predpol.com

Point of Contact, Client: \_\_\_\_\_

- C) **Change of Control.** Upon a change of control (a) the party experiencing the change of control will provide written notice to the other party within thirty days after the change of control; and (b) upon such change of control by Client, PredPol may terminate this Agreement any time between the change of control and thirty days after it receives the notice.
- D) **Force Majeure.** Neither party will be liable for inadequate performance to the extent caused by a condition (for example, natural disaster, act of war, riot, labor condition, governmental action, and Internet disturbance) beyond the party's reasonable control;

provided, that obligations that are purely financial in nature shall not be subject to this provision

- E) No Waiver.** Failure to enforce any provision of this Agreement will not constitute a waiver.
- F) Severability.** If any provision of this Agreement is found unenforceable, the balance of the Agreement will remain in full force and effect.
- G) No Agency.** The Parties are independent contractors, and this Agreement does not create an agency, partnership or joint venture.
- H) Equitable Relief.** Nothing in this Agreement will limit either party's ability to seek equitable relief.
- I) Governing Law.** This Agreement is governed by California law, excluding that state's choice of law rules. FOR ANY DISPUTE ARISING OUT OF OR RELATING TO THIS AGREEMENT, THE PARTIES CONSENT TO PERSONAL JURISDICTION IN, AND THE EXCLUSIVE VENUE OF, THE COURTS IN SANTA CRUZ COUNTY, CALIFORNIA. The Parties explicitly agree that no other laws, treaties or regulations shall control this Agreement.
- J) Amendments.** Any amendment must be in writing and expressly state that it is amending this Agreement.
- K) Entire Agreement.** This Agreement, and all documents referenced herein, is the Parties' entire agreement relating to its subject and supersedes any prior or contemporaneous agreements on that subject.
- L) Interpretation of Conflicting Terms.** If there is a conflict between the documents that make up this Agreement, the documents will control in the following order: the Agreement, the terms located at any URL, then the Subscription Terms set forth in any separate quote prepared by PredPol. If Client signs a physical agreement with PredPol to receive the Services, the physical agreement will override any online agreement.
- M) Counterparts.** The Parties may enter into this Agreement in counterparts, including facsimile, PDF or other electronic copies, which taken together will constitute one instrument.

*[Signature page follows.]*



EXECUTED as a sealed instrument as of the day and year first set forth below by the last counter-signatory.

Each party represents that it has full power and authority to enter into the Agreement. If you are accepting on behalf of your employer or another entity, you represent and warrant that: (i) you have full legal authority to bind your employer, or the applicable entity, to these terms and conditions; (ii) you have read and understand this Agreement; and (iii) you agree, on behalf of the party that you represent, to this Agreement. Each party warrants that it will comply with all laws and regulations applicable to its provision, or use of the Services.

**PredPol, Inc.:**

**Client:**

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

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

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

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

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

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

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

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

**EXHIBIT A**  
**STATEMENT OF WORK**  
**PREDPOL SAAS SERVICES DESCRIPTION**

PredPol shall provide client with the following services per the terms of this Agreement.

**1. SERVICE OVERVIEW**

PredPol provides predictions for where and when crime is most likely to occur (“Predictive Services”). This includes property crime, gun violence, gang activity, and traffic incidents. Predictions may be generated for different time windows and delivered on paper or to any internet-connected device. The predictions are shown on maps as 500 foot by 500 foot boxes (approximately the size of a large intersection; referred to herein as “Prediction Boxes”) that officers may patrol during their shift when not responding to calls for service or performing other duties.

Three types of crime data – type of crime, place of crime, and time of crime – are delivered through a secure Data Pipe from Client’s RMS to the PredPol Service. Predictions are then generated and made available anytime the Client logs in to the system.

**2. SERVICES DESCRIPTION**

**A. Installation and Training Services**

- i. Setup and integration of a secure Data Pipe from Client’s RMS to PredPol Service. Said setup shall be completed forty-five (45) days from the Effective Date, subject to Client’s adherence to the terms herein, Client’s provision of the crime data file from Client, and Client making all commercially reasonable efforts to appropriately feed the crime data file into PredPol’s services.
- ii. A “train the trainers” session in operations and best practices. Training takes one hour via remote web session. PredPol’s obligation to provide said training shall expire upon the earlier of Client receiving said training, and forty-five (45) days from the Effective Date.

**B. Services and Technical Support**

- i. Services. Beginning on the completion of the services described in Section 2.A above, PredPol will make the following Services accessible to Client via the internet per the terms of the Service Level Agreement set out below, for the duration that this Agreement and this Statement of Work remain in effect.
  - a. Predictive Services: Data to be transferred is restricted to fields related to type of crime, place of crime, and time of crime. There shall be no limit on the number of Client users or prediction views:
    - (i) Latitude and longitude information of the center of Prediction Boxes. Prediction Boxes shall be for crime types as defined and mutually agreed to by Client and PredPol;
    - (ii) Historical location of Prediction Boxes as defined and mutually agreed to by Client and PredPol; and

- (iii) Radar tool that details hit scoring information.
- ii. Technical Support. PredPol will provide Client with online and e-mail technical and operational use support.

### 3. SERVICE LEVEL AGREEMENT

- A. Service Availability. The PredPol SaaS service shall have an uptime of 98%, calculated as the percentage time said service is accessible from the Internet in any whole calendar month after SaaS service initiation ("Service Month"). Downtime resulting from scheduled maintenance and force majeure events shall not be included in the uptime calculation. Additionally, in the situation where the Client's technical architecture or the RMS data formats within the record management system are changed by the Client without 60- day advance notice, any resulting downtime will not be included in the uptime calculation.
- B. Service Response Time. PredPol shall take reasonable measures to ensure that the SaaS service response times do not materially fall behind industry standards.
- C. Service Credits. Client's sole remedy for any failure for PredPol to meet the foregoing shall be a credit of 1/12 a percent for each percent below 98% the calculated uptime is in a Service Month, on Client's next annual invoice. Said credits shall have no cash value.

### 4. FEES

- A. Installation and Training Services Fees. As consideration for the services provided per Section 2.A of this Exhibit A, Client shall pay to PredPol a one-time setup fee of \$[**setup fees waived**], to be invoiced upon the full execution of this Agreement.
- B. SaaS and Technical Support Fees. As consideration for the services provided per Section 2.B of this Exhibit A, Client shall pay to PredPol a subscription fee of \$29,700 for Predictive Services for the Initial Services Term. For every year that this contract remains in effect thereafter, the annual subscription fee will be \$9,900 for Predictive Services. The subscription fee due for the Initial Services Term shall be invoiced upon the full execution of this Agreement. The subscription fee due for subsequent one (1) year periods that this contract remains in effect shall be invoiced thirty (30) days prior to the conclusion of the Initial Services Term, and the annual anniversaries thereof.
- C. Software updates to the SaaS provided herein shall be provided at no additional charge during the Initial Services Term. The fee for the continued provision of said software updates shall be mutually agreed to by the parties at the conclusion of the Initial Services Term.
- D. All fees described herein shall be paid by Client within thirty (30) days of the invoice date.

### 5. CLIENT OBLIGATIONS

- A. Client shall make commercially reasonable efforts to performing the following during the term of this Agreement:
  - i. provide access to and service of Client IT staff and services during the initial setup of the Data Pipe as is reasonably necessary;

- ii. deploy and utilize the PredPol services according to PredPol's recommended best practices;
- iii. generally support the deployment of any new features and/or tools, including providing user feedback, as requested by PredPol;
- iv. provide access to relevant databases and shared databases to which Client has access, pursuant to all applicable laws and access agreements; and
- v. occasionally respond to inquiries from other agencies.

## **6. DEPLOYMENT STEPS**

The anticipated deployment steps are as follows and may change without notice. The estimated timeline for setup as outlined below is dependent upon availability of the Client's technical resource for installation of the Data Pipe. Once an agency provides initial data transfer and ensures the correct data mapping is in place, the PredPol system can be ready to generate predictions within two weeks.

### **A. Technical Implementation.**

- i. PredPol to conduct a kickoff meeting or conference call with appropriate Client staff (as identified by the Client) – with 7 days of receiving the signed Agreement;
- ii. Client to complete an informational form – within 7 days after the kickoff meeting;
- iii. Upon receipt of the Client's completed information form, PredPol will send installation instructions to Client;
- iv. Client must complete the installation instructions for the Data Pipe and complete the online setup form with 30 days of the agreement Effective Date. PredPol staff will be available for support as needed; and
- v. Upon successful installation of Data Pipe and completion of setup form, PredPol will complete initial data processing. The PredPol Service will generally be available to Client within two weeks from the completion of this step. Successful completion of this step is contingent on the Client confirming that the data mapping is correct.

**B. Service Initiation.** Upon completion of Technical Implementation, Client will receive the URL and login information of their PredPol site via email for their review. Upon Client signoff, PredPol will work with Client to schedule training.

**C. Training.** PredPol recommends a "train the trainers" approach for command staff, supervisors, and analysts once the system goes live. This provides a better understanding of the system and allows new officers to be trained as needed. Training takes one hour, including questions and answers.



<b>PROPOSED PROJECT SCHEDULE*</b>	
<b>Deliverable/Task</b>	<b>Target Date</b>
Effective Date	Date of contract signature
Kickoff call	Within 7 days of Effective Date
Client completion of information form	Within 7 days of kickoff call
Installation of Data Pipe and completion of setup form	Within 30 days of Effective Date **
Payment due	30 days after Effective Date
Service Commencement Date	2 weeks after installation of Data Pipe and completion of setup form **
Training	Within 14 days of Service Commencement Date
Annual billing date	30 days prior to the conclusion of the annual anniversary of the Initial Services Term
Annual payment due date	30 days after annual billing date

\* The dates herein reflect the anticipated project timeline and are subject to change.

\*\* These dates are dependent on Client's completion of Data Pipe installation and setup form.

# REPORT TO THE CITY COUNCIL

COUNCIL MEETING OF December 20, 2017

AGENDA ITEM NUMBER B-13

APPROVED BY



DEPARTMENT HEAD

  
CITY ADMINISTRATOR

**SUBJECT: CONSIDERATION OF A RESOLUTION APPROVING A CONTRACT WITH VIGILANT SOLUTIONS, LLC TO PROVIDE AUTOMATIC LICENSE PLATE READER EQUIPMENT, DATA COLLECTION AND SOFTWARE ACCESS AND AUTHORIZING THE MAYOR TO EXECUTE THE CONTRACT ON BEHALF OF THE CITY**

## **RECOMMENDATION:**

Staff recommends that Council adopt the attached resolution approving the contract with Vigilant Solutions, LLC for automatic license plate reader services.

## **SUMMARY:**

Automatic License Plate Reader (ALPR) cameras will be purchased and mounted on two patrol vehicles and ten (10) fixed cameras will be placed in a few strategic locations around the city of Madera. The ALPR cameras and equipment will be the property of the City of Madera, and we will contract with Vigilant Solutions, LLC for: installation, training, service, licensing, support, and data retention. The term of the contract will be for four (4) years.

ALPRs allow us to gather and immediately analyze license plate data to enable the rapid identification and location of vehicles of interest to law enforcement.

## **DISCUSSION:**

An Automated License Plate Reader (ALPR) camera is an image-processing technology, referred to as optical character recognition technology, where the camera takes a digital image and transforms the image into text. The text is automatically searched in the system and the officer is alerted if a vehicle of interest is around the patrol vehicle or in the area of a fixed location camera. Law enforcement agencies from around the country have been touting the success of their ALPR programs which have provided the following benefits:

- Significantly increase the number of stolen vehicles located.
- Provide better monitoring and tracking of criminals on supervised release.

- Reduce the amount of time it takes to locate missing or endangered people.
- Provide investigative leads when a victim or witness observes only part of the license plate number.
- Because the mobile license plate readers also logs the location of where the scan occurred, many time this information will lead law enforcement to the suspect's residence.
- Locate more witnesses and victims of crime.

ALPR cameras can be mounted to stationary structures such as bridges, poles or traffic signals. The cameras can take photos of license plates at a rate of up to 100 per minute. Below is a picture of how the ALPR cameras will look mounted on our vehicles or light poles.



Attached to this report is a draft copy of the Madera Police Department's ALPR policy. This policy was authored by our legal policy advisors at Lexipol, LLC and it mirrors the statutory requirements for the use of ALPRs under California Civil Code sections 1798.90.5, 1798.90.51, 1798.90.53.

### **FINANCIAL IMPACT:**

This project will be cost neutral to the City of Madera for at least four years. On November 7, 2017, the Community Corrections Partnership Committee of Madera County approved the use of \$217,315 to reimburse the City of Madera for the purchase of all equipment and four years of services described above. In year five there is a potential annual liability of \$17,200 if the Community Corrections Partnership Committee decides to no longer fund the program. If this were to occur we would explore other funding options.

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

Strategy 115- Economic resources provision: ensure sufficient economic resources to provide adequate City services and prepare for future growth.

**RESOLUTION \_\_\_\_\_**

**RESOLUTION OF THE CITY COUNCIL OF THE CITY  
OF MADERA, CALIFORNIA, APPROVING A CONTRACT WITH VIGILANT  
SOLUTIONS, LLC TO PROVIDE AUTOMATIC LICENSE PLATE READER  
SERVICES AND AUTHORIZING THE MAYOR TO EXECUTE THE CONTRACT ON  
BEHALF OF THE CITY**

WHEREAS, the City of Madera Police Department is seeking to utilize Automatic License Plate Reader (ALPR) cameras to quickly locate vehicles of interest to law enforcement.

WHEREAS, the Madera Police Department has identified a company, Vigilant Solutions, LLC, to provide license plate reader equipment, data collection and services at a cost of two hundred and seventeen thousand three hundred and fifteen dollars (\$217,315) for four (4) years of service.

WHEREAS, the Madera Police Department has secured funding from the Community Corrections Partnership Committee of Madera County for the full amount of two hundred and seventeen thousand three hundred and fifteen dollars (\$217,315).

WHEREAS, the City of Madera Police Department wishes to contract with Vigilant Solutions, LLC, to provide license plate reader equipment, data collection and services for a term of four years.

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 contract between the City of Madera and Vigilant Solutions, LLC, a copy of which will

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

3. The Mayor is authorized to execute the contract on behalf of the City of Madera.
4. The resolution is effective immediately.

\*\*\*\*\*



## Enterprise Service Agreement (ESA)

This Vigilant Solutions Enterprise Service Agreement (the "Agreement") is made and entered into as of this \_\_\_\_\_ Day of \_\_\_\_\_, 201\_\_ by and between **Vigilant Solutions, LLC**, a Delaware company, having its principal place of business at 2021 Las Positas Court Suite # 101, Livermore, CA 94551 ("Vigilant") and \_\_\_\_\_, a law enforcement agency (LEA) or other governmental agency, having its principal place of business at \_\_\_\_\_ ("Affiliate").

**WHEREAS**, Vigilant designs, develops, licenses and services advanced video analysis software technologies for the law enforcement and security markets;

**WHEREAS**, Vigilant provides access to license plate data as a value added component of the Vigilant law enforcement package of license plate recognition equipment and software;

**WHEREAS**, Affiliate will separately purchase License Plate Recognition (LPR) hardware components from Vigilant and/or its authorized reseller for use with the Software Products (as defined below);

**WHEREAS**, Affiliate desires to license from and receive service for the Software Products provided by Vigilant;

**THEREFORE**, In consideration of the mutual covenants contained herein this Agreement, Affiliate and Vigilant hereby agree as follows:

### I. Definitions:

**"CJIS Security Policy"** means the FBI CJIS Security Policy document as published by the FBI CJIS Information Security Officer.

**"CLK"** or **"Camera License Key"** means an electronic key that will permit each license of Vigilant's CarDetector brand LPR software or LineUp brand facial recognition software (one CLK per camera) to be used with other Vigilant approved and licensed LPR hardware components (i.e., cameras and other hardware components provided by Vigilant or provided by a Vigilant certified reselling partner that has authority from Vigilant to deliver such Vigilant-authorized components) and Software Products. CLKs shall be not issuable and if issued in error shall be removed and immediately rendered null and void for cameras and other hardware components that are not Vigilant-authorized cameras and other hardware components or are delivered to Affiliate by another vendor that is not a Vigilant certified reselling partner.

**"Commercial LPR Data"** refers to LPR data collected by private sources and available on LEARN with a paid subscription.

**"Criminal Justice Information Services Division" or "CJIS"** means the FBI division responsible for the collection, warehousing, and timely dissemination of relevant CJ to the FBI and to qualified law enforcement, criminal justice, civilian, academic, employment, and licensing agencies.

**"Effective Date"** means sixty (60) days subsequent to the date set forth in the first paragraph of this Agreement.





**“Enterprise License”** means a non-exclusive, non-transferable license to install and operate the Software Products, on applicable media provided by Vigilant or Vigilant’s certified reselling partners. This Enterprise Service Agreement allows Affiliate to install the Software Products on such devices, in accordance with the selected Service Package(s), and allow benefits of all rights granted hereunder this Agreement.

**“LEA LPR Data”** refers to LPR data collected by LEAs and available on LEARN for use by other LEAs. LEA LPR Data is freely available to LEAs at no cost and is governed by the contributing LEA’s retention policy.

**“Service Fee”** means the amount due from Affiliate prior to the renewal of this Agreement as consideration for the continued use of the Software Products and Service Package benefits according to Section VIII of this Agreement.

**“Service Package”** means the Affiliate designated service option(s) which defines the extent of use of the Software Products, in conjunction with any service and/or benefits therein granted as rights hereunder this Agreement.

**“Service Period”** has the meaning set forth in Section III (A) of this Agreement.

**“Software Products”** means Vigilant’s Law Enforcement & Security suite of Software Products including CarDetector, Law Enforcement Archival & Reporting Network (LEARN), Mobile Companion for Smartphones, Target Alert Service (TAS) server/client alerting package, FaceSearch, LineUp and other software applications considered by Vigilant to be applicable for the benefit of law enforcement and security practices. Software Products shall only be permitted to function on approved Vigilant cameras and other hardware components provided by Vigilant or through Vigilant certified reselling partners. Software Products shall not be permitted to operate on third-party provided or not Vigilant-authorized hardware components, and if found to be operating on third-party provided hardware components Software Products shall be promptly removed by Affiliate.

**“Technical Support Agents”** means Affiliate’s staff person specified in the Contact Information Worksheet of this Agreement responsible for administering the Software Products and acting as Affiliate’s Software Products support contact.

**“User License”** means a non-exclusive, non-transferable license to install and operate the Software Products, on applicable media, limited to a single licensee.

**“Users”** refers to individuals who are agents and/or sworn officers of the Affiliate and who are authorized by the Affiliate to access LEARN on behalf of Affiliate through login credentials provided by Affiliate.

## **II. Enterprise License Grant; Duplication and Distribution Rights:**

Subject to the terms and conditions of this Agreement, Vigilant hereby grants Affiliate an Enterprise License to the Software Products for the Term provided in Section III below. Except as expressly permitted by this Agreement, Affiliate or any third party acting on behalf of Affiliate shall not copy, modify, distribute, loan, lease, resell, sublicense or otherwise transfer any right in the Software Products. Except as expressly permitted by this Agreement, no other rights are granted by implication, estoppels or otherwise. Affiliate shall not eliminate, bypass, or in any way alter the copyright screen (also known as the “splash” screen) that may appear when Software Products are first started on any computer. Any use or redistribution of Software Products in a manner not explicitly stated in this Agreement, or not agreed to in writing by Vigilant, is strictly prohibited.





### III. Term; Termination.

A. Term. The initial term of this Agreement is for one (1) year beginning on the Effective Date (the "Initial Term"), unless earlier terminated as provided herein. Sixty (60) days prior to the expiration of the Initial Term and each subsequent Service Period, Vigilant will provide Affiliate with an invoice for the Service Fee due for the subsequent twelve (12) month period (each such period, a "Service Period"). This Agreement and the Enterprise License granted under this Agreement will be extended for a Service Period upon Affiliate's payment of that Service Period's Service Fee, which is due 30 days prior to the expiration of the Initial Term or the existing Service Period, as the case may be. Pursuant to Section VIII below, Affiliate may also pay in advance for more than one Service Period.

B. Affiliate Termination. Affiliate may terminate this Agreement at any time by notifying Vigilant of the termination in writing thirty (30) days prior to the termination date, and deleting all copies of the Software Products. If Affiliate terminates this Agreement prior to the end of the Initial Term, Vigilant will not refund or prorate any license fees, nor will it reduce or waive any license fees still owed to Vigilant by Affiliate. Upon termination of the Enterprise License, Affiliate shall immediately cease any further use of Software Products. Affiliate may also terminate this agreement by not paying an invoice for a subsequent year's Service Fee within sixty (60) days of invoice issue date.

C. Vigilant Termination. Vigilant has the right to terminate this Agreement by providing thirty (30) days written notice to Affiliate. If Vigilant's termination notice is based on an alleged breach by Affiliate, then Affiliate shall have thirty (30) days from the date of its receipt of Vigilant's notice of termination, which shall set forth in detail Affiliate's purported breach of this Agreement, to cure the alleged breach. If within thirty (30) days of written notice of violation from Vigilant Affiliate has not reasonably cured the described breach of this Agreement, Affiliate shall immediately discontinue all use of Software Products and certify to Vigilant that it has returned or destroyed all copies of Software Products in its possession or control. If Vigilant terminates this Agreement prior to the end of a Service Period for breach, no refund for any unused Service Fees will be provided. If Vigilant terminates this Agreement prior to the end of a Service Period for no reason, and not based on Affiliate's failure to cure the breach of a material term or condition of this Agreement, Vigilant shall refund to Affiliate an amount calculated by multiplying the total amount of Service Fees paid by Affiliate for the then-current Service Period by the percentage resulting from dividing the number of days remaining in the then-current Service Period, by 365.

### IV. Warranty and Disclaimer; Infringement Protection; Use of Software Products Interface.

A. Warranty and Disclaimer. Vigilant warrants that the Software Products will be free from all Significant Defects (as defined below) during the lesser of the term of this Agreement (the "Warranty Period") or one year. "Significant Defect" means a defect in a Software Product that impedes the primary function of the Software Product. This warranty does not include products not manufactured by Vigilant. Vigilant will repair or replace any Software Product with a Significant Defect during the Warranty Period; *provided, however*, if Vigilant cannot substantially correct a Significant Defect in a commercially reasonable manner, Affiliate may terminate this Agreement and Vigilant shall refund to Affiliate an amount calculated by multiplying the total amount of Service Fees paid by Affiliate for the then-current Service Period by the percentage resulting from dividing the number of days remaining in the then-current Service Period, by 365. The foregoing remedies are Affiliate's exclusive remedy for defects in the Software Product. Vigilant shall not be responsible for labor charges for removal or reinstallation of defective software, charges for transportation, shipping or handling loss, unless such charges are due to Vigilant's gross negligence or intentional misconduct. Vigilant disclaims all warranties, expressed or implied, including but not limited to implied warranties of



merchantability and fitness for a particular purpose. In no event shall Vigilant be liable for any damages whatsoever arising out of the use of, or inability to use, the Software Products.

B. Infringement Protection. If an infringement claim is made against Affiliate by a third-party in a court of competent jurisdiction regarding Affiliate's use of any of the Software Products, Vigilant shall indemnify Affiliate, and assume all legal responsibility and costs to contest any such claim. If Affiliate's use of any portion of the Software Products or documentation provided to Affiliate by Vigilant in connection with the Software Products is enjoined by a court of competent jurisdiction, Vigilant shall do one of the following at its option and expense within sixty (60) days of such enjoinder: (1) Procure for Affiliate the right to use such infringing portion; (2) replace such infringing portion with a non-infringing portion providing equivalent functionality; or (3) modify the infringing portion so as to eliminate the infringement while providing equivalent functionality.

C. Use of Software Products Interface. Under certain circumstances, it may be dangerous to operate a moving vehicle while attempting to operate a touch screen or laptop screen and any of their applications. It is agreed by Affiliate that Affiliate's users will be instructed to only utilize the interface to the Software Products at times when it is safe to do so. Vigilant is not liable for any accident caused by a result of distraction such as from viewing the screen while operating a moving vehicle.

#### **V. Software Support, Warranty and Maintenance.**

Affiliate will receive technical support by submitting a support ticket to Vigilant's company support website or by sending an email to Vigilant's support team. Updates, patches and bug fixes of the Software Products will be made available to Affiliate at no additional charge, although charges may be assessed if the Software Product is requested to be delivered on physical media. Vigilant will provide Software Products support to Affiliate's Technical Support Agents through e-mail, fax and telephone.

#### **VI. Camera License Keys (CLKs).**

Affiliate is entitled to use of the Software Products during the term of this Agreement to set up and install the Software Products on an unlimited number of media centers within Affiliate's agency in accordance with selected Service Options. As Affiliate installs additional units of the Software Products and connects them to LPR cameras, Affiliate is required to obtain a Camera License Key (CLK) for each camera installed and considered in active service. A CLK can be obtained by Affiliate by going to Vigilant's company support website and completing the online request form to Vigilant technical support staff. Within two (2) business days of Affiliate's application for a CLK, Affiliate's Technical Support Agent will receive the requested CLK that is set to expire on the last day of the Initial Term or the then-current Service Period, as the case may be.

#### **VII. Ownership of Software.**

A. Ownership of Software Products. The Software Products are copyrighted by Vigilant Solutions and remain the property of Vigilant Solutions. The license granted under this Agreement is not a sale of the Software Products or any copy. Affiliate owns the physical media on which the Software Products are installed, but Vigilant Solutions retains title and ownership of the Software Products and all other materials included as part of the Software Products.



B. Rights in Software Products. Vigilant Solutions represents and warrants that: (1) it has title to the Software and the authority to grant license to use the Software Products; (2) it has the corporate power and authority and the legal right to grant the licenses contemplated by this Agreement; and (3) it has not and will not enter into agreements and will not take or fail to take action that causes its legal right or ability to grant such licenses to be restricted.

#### **VIII. Data Sharing, Access and Security.**

If Affiliate is a generator as well as a consumer of LPR Data, Affiliate at its option may share its LEA LPR Data with similarly situated LEAs who contract with Vigilant to access LEARN (for example, LEAs who share LEA LPR Data with other LEAs). Vigilant will not share any LEA LPR Data generated by the Affiliate without the permission of the Affiliate.

Vigilant has implemented procedures to allow for adherence to the FBI CJIS Security Policy. The hosting facility utilizes state-of-the-art access control technologies that meet or exceed CJIS requirements. In addition, Vigilant has installed and configured a solid network intrusion prevention appliances, as well as ensured that the configuration of the Microsoft environment adhere to the Windows Server Security Guide.

#### **IX. Ownership and use of Commercial LPR Data and LEA LPR Data.**

Vigilant retains all title and rights to Commercial LPR Data. Users shall not utilize Commercial LPR Data on the behalf of other local, state or Federal LEAs. Affiliate retains all rights to LEA LPR Data generated by the Affiliate. Should Affiliate terminate agreement with Vigilant, a copy of all LEA LPR Data generated by the Affiliate will be created and provided to the Affiliate. After the copy is created, all LEA LPR Data generated by the Affiliate will be deleted from LEARN at the written request of an authorized representative of the Affiliate or per the Affiliate's designated retention policy, whichever occurs first. Commercial LPR Data and LEA LPR Data should be used by the Affiliate for law enforcement purposes only.

#### **X. Loss of Data, Irregularities and Recovery.**

Vigilant places imperative priority on supporting and maintaining data center integrity. Using redundant disk arrays, there is a virtual guarantee that any hard disk failure will not result in the corruption or loss of the valuable LPR data that is essential to the LEARN system and clients.

#### **XI. Data Retention and Redundancy.**

LEA LPR Data is governed by the contributing LEA's retention policy. LEA LPR Data that reaches its expiration date will be deleted from LEARN. Vigilant's use of redundant power sources, fiber connectivity and disk arrays ensure no less than 99% uptime of the LEARN LPR database server system.

#### **XII. Account Access.**

A. Eligibility. Affiliate shall only authorize individuals who satisfy the eligibility requirements of "Users" to access LEARN. Vigilant in its sole discretion may deny access to LEARN to any individual based on such person's failure to satisfy such eligibility requirements. User logins are restricted to agents and sworn officers of the Affiliate. No User logins may be provided to agents or officers of other local, state, or Federal LEAs without the express written consent of Vigilant.



B. Security. Affiliate shall be responsible for assigning an Agency Manager who in turn will be responsible for assigning to each of Affiliate's Users a username and password (one per user account). A limited number of User accounts is provided. Affiliate will cause the Users to maintain username and password credentials confidential and will prevent use of such username and password credentials by any unauthorized person(s). Affiliate shall notify Vigilant immediately if Affiliate believes the password of any of its Users has, or may have, been obtained or used by any unauthorized person(s). In addition, Affiliate must notify Vigilant immediately if Affiliate becomes aware of any other breach or attempted breach of the security of any of its Users' accounts.

C. CJIS Requirements. Affiliate certifies that its LEARN users shall comply with the following CJIS requirements:

1. Affiliate agrees to use training, policy and procedures to ensure support staff use proper handling, processing, storing, and communication protocols for data.
2. Affiliate agrees to protect systems and data by monitoring and auditing staff user activity to ensure that it is only within the purview of system application development, system maintenance or the support roles assigned.
3. Affiliate will only provide access to Vigilant systems and Affiliate-owned LEA information through Affiliate managed role-based access and applied sharing rules configured by the Affiliate.
4. Affiliate agrees to create and retain activity transaction logs to enable auditing by the LEA data owners, Vigilant staff, and FBI CJIS if requested.
5. Affiliate agrees to perform independent employment background screening for its' staff and participate in additional fingerprint background screening as required by client LEA agencies at Affiliate's own expense.
6. Affiliate agrees to reinforce staff policies for creating user accounts with only one Affiliate domain email addresses for each user. Exceptions may only be granted in writing by Vigilant.

### **XIII. Service Package, Fees and Payment Provisions.**

A. Service Package. This Enterprise License Agreement is based on one (1) of the three (3) following Service Package Options. Please select one (1) Service Package below:

☐

Service Package - Basic LPR Service Package:

- Vigilant Managed/Hosted LPR server LEARN Account
- Access to all Vigilant Software including all upgrades and updates
- Unlimited user licensing for the following applications:
  - LEARN, CarDetector and TAS

☐

Service Package - Option # 1 – Standard LPR Service Package:

- All Basic Service Package benefits
- Unlimited use of CarDetector – Mobile Hit Hunter (CDMS-MHH)
- Unlimited use of Vigilant's LPR Mobile Companion smartphone application



**Service Package - Option # 2 – ‘Intelligence-Led Policing (ILP)’ Service Package:**

- All Service Package Option # 1 benefits
- Mobile LPR hardware up to level of Tier (see Exhibit A)
- Use of Vigilant Facial Recognition technologies up to level of Tier
  - FaceSearch Account
  - FaceSearch Mobile Companion
  - Templates up to limit for FaceSearch Account (details in Exhibit A)
- Tiered based on size of department (Tier 1 up to 100 sworn officers, Tier 2 up to 200 sworn officers, Tier 3 up to 500 sworn officers, Tier 4 up to 1,000 sworn officers, Tier 5 up to 1,500 sworn officers, Tier 6 up to 2,000 sworn officers)
- States, Federal Agencies, and Departments with greater than 2,000 sworn fall under a, “Custom” Tier which will be defined in the Annual Service Fee Schedule if applicable.

B. **Service Fee.** Payment of each Service Fee entitles Affiliate to all rights granted under this Agreement, including without limitation, use of the Software Products for the relevant Service Period, replacement of CLKs, and access to the updates and releases of the Software Products and associated equipment driver software to allow the Software Products to remain current and enable the best possible performance. The annual Service Fee due for a particular Service Period is based on the number of current Vigilant issued CLK’s at the time of Service Fee invoicing, and which will be used by Affiliate in the upcoming Service Period. A schedule of annual Service Fees is shown below:

Annual Service Fee Schedule (multiplied by number of CLK’s Issued)					
Total # of CLK’s under this ESA	0-14 CLK’s	15-30 CLK’s	31-60 CLK’s	Over 60	
Basic Service	\$525.00	\$450.00	\$400.00	\$275.00	
Standard (Option # 1)	\$750.00	\$640.00	\$565.00	\$390.00	
ILP Subscriber CLK Renewal Fees	\$525.00	\$450.00	\$400.00	\$275.00	

Intelligence-Led Policing Service Package Annual Fee Schedule	
Tier	Annual Fee
ILP Tier 1 (Option # 2)	\$14,995.00
ILP Tier 2 (Option # 2)	\$34,495.00
ILP Tier 3 (Option # 2)	\$59,995.00
ILP Tier 4 (Option #2)	\$89,995.00
ILP Tier 5 (Options #2)	\$119,995.00
ILP Tier 6 (Option #2)	\$154,995.00

Annual Service Fee Schedule for Image Enrollment (applicable to FaceSearch/LineUp)	
5,000 Images	\$750.00



Payment of the Service Fee is due thirty (30) days prior to the renewal of the then-current Service Period. All Service Fees are exclusive of any sales, use, value-added or other federal, state or local taxes (excluding taxes based on Vigilant's net income) and Affiliate agrees to pay any such tax. Service Fees may increase by no higher than 4% per year for years after the first year of this agreement. For ILP (Option # 2) Tier packages, the Tier amount is due for subsequent periods and Basic Service CLK fees are due for all cameras from previous periods (this is in addition to the Annual Subscription Fee).

Affiliate and Vigilant agree that the number of CLKs issued as of the Effective Date of this Agreement is \_\_\_\_\_ [Insert Quantity]. All future additions of CLKs shall only be those as provided for in the definitions provided above.

C. Advanced Service Fee Payments. Vigilant Solutions will accept advanced Service Fee payments on a case by case basis for Affiliates who wish to lock in the Service Fee rates for subsequent periods at the rates currently in effect, as listed in the table above. If Affiliate makes advanced Service Fee payments to Vigilant Solutions, advanced payments to Vigilant Solutions will be applied in full to each subsequent Service Period's Service Fees until the balance of the credits is reduced to a zero balance. System based advanced credits shall be applied to subsequent Service Fees in the amount that entitles Affiliate continued operation of the designated camera unit systems for the following Service Period until the credits are reduced to a zero balance.

D. Price Adjustment. Vigilant has the right to increase or decrease the annual Service Fee from one Service Period to another; *provided, however*, that in no event will a Service Fee be increased by more than the greater of (i) 4% of the prior Service Period's Service Fees, or (ii) prices identified in the original proposal. If Vigilant intends to adjust the Service Fee for a subsequent Service Period, it must give Affiliate notice of the proposed increase on or before the date that Vigilant invoices Affiliate for the upcoming Service Period.

#### XIV. Miscellaneous.

A. Limitation of Liability. IN NO EVENT SHALL VIGILANT SOLUTIONS BE LIABLE FOR ANY INDIRECT, INCIDENTAL, SPECIAL, CONSEQUENTIAL DAMAGES INCLUDING DAMAGES FOR LOSS OF USE, DATA OR PROFIT, ARISING OUT OF OR CONNECTED WITH THE USE OF THE SOFTWARE PRODUCTS, WHETHER BASED ON CONTRACT, TORT, NEGLIGENCE, STRICT LIABILITY OR OTHERWISE, EVEN IF VIGILANT SOLUTIONS HAS BEEN ADVISED OF THE POSSIBILITY OF DAMAGES. IN NO EVENT WILL VIGILANT SOLUTIONS'S LIABILITY ARISING OUT OF OR RELATED TO THIS AGREEMENT EXCEED THE FEES PAID BY AFFILIATE TO VIGILANT SOLUTIONS FOR THE SOFTWARE PRODUCTS LICENSED UNDER THIS AGREEMENT.

B. Confidentiality. Affiliate acknowledges that Software Products contain valuable and proprietary information of Vigilant Solutions and Affiliate will not disassemble, decompile or reverse engineer any Software Products to gain access to confidential information of Vigilant Solutions.

C. Assignment. Neither Vigilant Solutions nor Affiliate is permitted to assign this Agreement without the prior written consent of the other party. Any attempted assignment without written consent is void.

D. Amendment; Choice of Law. No amendment or modification of this Agreement shall be effective unless in writing and signed by authorized representatives of the parties. This Agreement shall be governed by the laws of the state of California without regard to its conflicts of law.





E. Complete Agreement. This Agreement constitutes the final and complete agreement between the parties with respect to the subject matter hereof, and supersedes any prior or contemporaneous agreements, written or oral, with respect to such subject matter.

F. Relationship. The relationship created hereby is that of contractor and customer and of licensor and Affiliate. Nothing herein shall be construed to create a partnership, joint venture, or agency relationship between the parties hereto. Neither party shall have any authority to enter into agreements of any kind on behalf of the other and shall have no power or authority to bind or obligate the other in any manner to any third party. The employees or agents of one party shall not be deemed or construed to be the employees or agents of the other party for any purpose whatsoever. Each party hereto represents that it is acting on its own behalf and is not acting as an agent for or on behalf of any third party.

G. No Rights in Third Parties. This agreement is entered into for the sole benefit of Vigilant Solutions and Affiliate and their permitted successors, executors, representatives, administrators and assigns. Nothing in this Agreement shall be construed as giving any benefits, rights, remedies or claims to any other person, firm, corporation or other entity, including, without limitation, the general public or any member thereof, or to authorize anyone not a party to this Agreement to maintain a suit for personal injuries, property damage, or any other relief in law or equity in connection with this Agreement.

H. Construction. The headings used in this Agreement are for convenience and ease of reference only, and do not define, limit, augment, or describe the scope, content or intent of this Agreement. Any term referencing time, days or period for performance shall be deemed calendar days and not business days, unless otherwise expressly provided herein.

I. Severability. If any provision of this Agreement shall for any reason be held to be invalid, illegal, unenforceable, or in conflict with any law of a federal, state, or local government having jurisdiction over this Agreement, such provision shall be construed so as to make it enforceable to the greatest extent permitted, such provision shall remain in effect to the greatest extent permitted and the remaining provisions of this Agreement shall remain in full force and effect.

J. Federal Government. Any use, copy or disclosure of Software Products by the U.S. Government is subject to restrictions as set forth in this Agreement and as provided by DFARS 227.7202-1(a) and 227.7202-3(a) (1995), DFARS 252.227-7013(c)(1)(ii) (Oct 1988), FAR 12.212(a)(1995), FAR 52.227-19, or FAR 52.227 (ALT III), as applicable.

K. Right to Audit. Affiliate, upon thirty (30) days advanced written request to Vigilant Solutions, shall have the right to investigate, examine, and audit any and all necessary non-financial books, papers, documents, records and personnel that pertain to this Agreement and any other Sub Agreements.

L. Notices; Authorized Representatives; Technical Support Agents. All notices, requests, demands, or other communications required or permitted to be given hereunder must be in writing and must be addressed to the parties at their respective addresses set forth below and shall be deemed to have been duly given when (a) delivered in person; (b) sent by facsimile transmission indicating receipt at the facsimile number where sent; (c) one (1) business day after being deposited with a reputable overnight air courier service; or (d) three (3) business days after being deposited with the United States Postal Service, for delivery by certified or registered mail, postage pre-paid and return receipt requested. All notices and communications regarding default or termination of this Agreement shall be delivered by hand or sent by certified mail, postage pre-paid and return receipt requested. Either party may from time





to time change the notice address set forth below by delivering 30 days advance notice to the other party in accordance with this section setting forth the new address and the date on which it will become effective.

<b>Vigilant Solutions, LLC</b> Attn: Sales Administration 2021 Las Positas Court - Suite # 101 Livermore, CA 94551	<b>Affiliate:</b> _____ <b>Attn:</b> _____ <b>Address:</b> _____ _____
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M. **Authorized Representatives; Technical Support Agents.** Affiliate's Authorized Representatives and its Technical Support Agents are set forth below (Last Page). Affiliate's Authorized Representative is responsible for administering this Agreement and Affiliate's Technical Support Agents are responsible for administering the Software Products and acting as Affiliate's Software Products support contact. Either party may from time to time change its Authorized Representative, and Affiliate may from time to time change its Technical Support Agents, in each case, by delivering 30 days advance notice to the other party in accordance with the notice provisions of this Agreement.

N. **Indemnification by Vigilant.** Vigilant agrees to indemnify, hold harmless and defend Affiliate, and its officers, employees and agents of Affiliate (each, an "**Affiliate Indemnified Party**"), against any and all claims, suits, actions, losses or other proceedings (including, without limitation, attorneys fees and costs) brought against the Affiliate Indemnified Party based on or arising from any claim that the LEARN Software Service or the LEA LPR Data provided by Vigilant infringes upon any copyright, trade secret, trademark, patent or other proprietary or intellectual property right of any third party. Vigilant shall, at its sole expense, defend and settle all suits or proceedings arising out of the foregoing, provided that Affiliate gives Vigilant prompt notice of such claim of which it learns. In all events, Affiliate shall have the right, but not the obligation, to participate at its own expense in the defense of any such suit or proceeding through counsel of its own choosing.

O. **Indemnification by Affiliate.** Affiliate agrees to indemnify, defend and hold harmless Vigilant and its employees, representatives, agents, officers, directors, and corporate employees (each, a "**Vigilant Indemnified Party**"), against any and all claims, suits, actions, losses or other proceedings (including, without limitation, attorneys fees and costs) brought against the Vigilant Indemnified Party based on or arising from any claim (i) resulting from Affiliate's or a User's breach of this Agreement, (ii) that involves any vehicle owned or operated by Affiliate, (iii) or any employee or independent contractor hired by Affiliate or (iv) any and all claims based on Affiliate's or a User's actions or omissions. Affiliate shall, at its sole expense, defend and settle all suits or proceedings arising out of the foregoing, provided that Vigilant gives Affiliate prompt notice of such claim of which it learns. In all events, Vigilant shall have the right, but not the obligation, to participate at its own expense in the defense of any such suit or proceeding through counsel of its own choosing.



IN WITNESS WHEREOF, the parties have executed the Agreement as of the Effective Date.

**Manufacturer:** Vigilant Solutions, LLC

**Authorized Agent:** Bill Quinlan

**Title:** Vice President Sales Operations

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

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

**Affiliate Organization:** \_\_\_\_\_

**Authorized Agent:** \_\_\_\_\_

**Title:** \_\_\_\_\_

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

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



## Enterprise Service Agreement

### Contact Information Worksheet

Please complete the following contact information for your Vigilant Solutions Enterprise License program.

Enterprise License Agreement Holder			
Company / Agency Name:			
Company / Agency Type:			
Address:			
Primary Contact			
Name:			
Title:		Phone:	
Email:			
Supervisor Information			
Name:			
Title:		Phone:	
Email:			
Financial Contact (Accounts Payable)			
Name:			
Title:		Phone:	
Email:			
Technical Support Contact # 1			
Name:			
Title:		Phone:	
Email:			
Technical Support Contact # 2			
Name:			
Title:		Phone:	
Email:			

For questions or concerns, please contact Vigilant Solutions' sales team:

[sales@vigilantsolutions.com](mailto:sales@vigilantsolutions.com)

1-925-398-2079



Exhibit A: Option # 2 ILP Tier Package Components

Part #	Item Description
<b>VS-ILP-1M3RE</b>	<b>ILP Mobile Bundle for Agencies of Up to 100 Sworn</b> Includes: <ul style="list-style-type: none"><li>- Agency license for LEARN SaaS</li><li>- Unlimited access to Commercial LPR data</li><li>- One (1) 3-camera mobile LPR system</li><li>- First year of Basic and Standard Service Packages</li><li>- LEARN-Mobile Companion</li><li>- Mobile Hit Hunter</li><li>- Agency license for FaceSearch</li><li>- Image gallery up to 5,000 images</li></ul>
<b>VS-ILP-2M3RE</b>	<b>ILP Mobile Bundle for Agencies of 101 to 200 Sworn</b> Includes: <ul style="list-style-type: none"><li>- Agency license for LEARN SaaS</li><li>- Unlimited access to Commercial LPR data</li><li>- Two (2) 3-camera mobile LPR system</li><li>- First year of Basic and Standard Service Packages</li><li>- LEARN-Mobile Companion</li><li>- Mobile Hit Hunter</li><li>- Agency license for FaceSearch</li><li>- Image gallery up to 20,000 images</li></ul>
<b>VS-ILP-3M3RE</b>	<b>ILP Mobile Bundle for Agencies of 201 to 500 Sworn</b> Includes: <ul style="list-style-type: none"><li>- Agency license for LEARN SaaS</li><li>- Unlimited access to Commercial LPR data</li><li>- Three (3) 3-camera mobile LPR system</li><li>- First year of Basic and Standard Service Packages</li><li>- LEARN-Mobile Companion</li><li>- Mobile Hit Hunter</li><li>- Agency license for FaceSearch</li><li>- Image gallery up to 50,000 images</li></ul>
<b>VS-ILP-4M3RE</b>	<b>ILP Mobile Bundle for Agencies of 501 to 1,000 Sworn</b> Includes: <ul style="list-style-type: none"><li>- Agency license for LEARN SaaS</li><li>- Unlimited access to Commercial LPR data</li><li>- Four (4) 3-camera mobile LPR system</li><li>- First year of Basic and Standard Service Packages</li><li>- LEARN-Mobile Companion</li><li>- Mobile Hit Hunter</li><li>- Agency license for FaceSearch</li><li>- Image gallery up to 75,000 images</li></ul>



<b>VS-ILP-5M3RE</b>	<b>ILP Mobile Bundle for Agencies of 1,001 to 1,500 Sworn</b> Includes: <ul style="list-style-type: none"><li>- Agency license for LEARN SaaS</li><li>- Unlimited access to Commercial LPR data</li><li>- Five (5) 3-camera mobile LPR system</li><li>- First year of Basic and Standard Service Packages</li><li>- LEARN-Mobile Companion</li><li>- Mobile Hit Hunter</li><li>- Agency license for FaceSearch</li><li>- Image gallery up to 100,000 images</li></ul>
<b>VS-ILP-6M3RE</b>	<b>ILP Mobile Bundle for Agencies of 1,501 to 2,000 Sworn</b> Includes: <ul style="list-style-type: none"><li>- Agency license for LEARN SaaS</li><li>- Unlimited access to Commercial LPR data</li><li>- Five (5) 3-camera mobile LPR system</li><li>- First year of Basic and Standard Service Packages</li><li>- LEARN-Mobile Companion</li><li>- Mobile Hit Hunter</li><li>- Agency license for FaceSearch</li><li>- Image gallery up to 200,000 images</li></ul>

## Automated License Plate Readers (ALPRs)

### 473.1 PURPOSE AND SCOPE

#### Best Practice

The purpose of this policy is to provide guidance for the capture, storage and use of digital data obtained through the use of Automated License Plate Reader (ALPR) technology.

### 473.2 POLICY

#### Best Practice

The policy of the Madera Police Department is to utilize ALPR technology to capture and store digital license plate data and images while recognizing the established privacy rights of the public.

All data and images gathered by the ALPR are for the official use of this department. Because such data may contain confidential information, it is not open to public review.

### 473.3 ADMINISTRATION

#### Best Practice

The ALPR technology, also known as License Plate Recognition (LPR), allows for the automated detection of license plates. It is used by the Madera Police Department to convert data associated with vehicle license plates for official law enforcement purposes, including identifying stolen or wanted vehicles, stolen license plates and missing persons. It may also be used to gather information related to active warrants, homeland security, electronic surveillance, suspect interdiction and stolen property recovery.

All installation and maintenance of ALPR equipment, as well as ALPR data retention and access, shall be managed by the Administrative Services Lieutenant. The Administrative Services Lieutenant will assign members under his/her command to administer the day-to-day operation of the ALPR equipment and data.

#### 473.3.1 ALPR ADMINISTRATOR

##### State

The Administrative Services Lieutenant shall be responsible for developing guidelines and procedures to comply with the requirements of Civil Code § 1798.90.5 et seq. This includes, but is not limited to (Civil Code § 1798.90.51; Civil Code § 1798.90.53):

- (a) A description of the job title or other designation of the members and independent contractors who are authorized to use or access the ALPR system or to collect ALPR information.
- (b) Training requirements for authorized users.
- (c) A description of how the ALPR system will be monitored to ensure the security of the information and compliance with applicable privacy laws.
- (d) Procedures for system operators to maintain records of access in compliance with Civil Code § 1798.90.52.

# Madera Police Department

## Madera PD Policy Manual

### *Automated License Plate Readers (ALPRs)*

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- (e) The title and name of the current designee in overseeing the ALPR operation.
- (f) Working with the Custodian of Records on the retention and destruction of ALPR data.
- (g) Ensuring this policy and related procedures are conspicuously posted on the department's website.

#### **473.4 OPERATIONS**

##### **State**

Use of an ALPR is restricted to the purposes outlined below. Department members shall not use, or allow others to use the equipment or database records for any unauthorized purpose (Civil Code § 1798.90.51; Civil Code § 1798.90.53).

- (a) An ALPR shall only be used for official law enforcement business.
- (b) An ALPR may be used in conjunction with any routine patrol operation or criminal investigation. Reasonable suspicion or probable cause is not required before using an ALPR.
- (c) While an ALPR may be used to canvass license plates around any crime scene, particular consideration should be given to using ALPR-equipped cars to canvass areas around homicides, shootings and other major incidents. Partial license plates reported during major crimes should be entered into the ALPR system in an attempt to identify suspect vehicles.
- (d) No member of this department shall operate ALPR equipment or access ALPR data without first completing department-approved training.
- (e) No ALPR operator may access department, state or federal data unless otherwise authorized to do so.
- (f) If practicable, the officer should verify an ALPR response through the California Law Enforcement Telecommunications System (CLETS) before taking enforcement action that is based solely on an ALPR alert.

#### **473.5 DATA COLLECTION AND RETENTION**

##### **Best Practice**

The Administrative Services Lieutenant is responsible for ensuring systems and processes are in place for the proper collection and retention of ALPR data. Data will be transferred from vehicles to the designated storage in accordance with department procedures.

All ALPR data downloaded to the server should be stored for a minimum of one year (Government Code § 34090.6) and in accordance with the established records retention schedule. Thereafter, ALPR data should be purged unless it has become, or it is reasonable to believe it will become, evidence in a criminal or civil action or is subject to a discovery request or other lawful action to produce records. In those circumstances the applicable data should be downloaded from the server onto portable media and booked into evidence.



# Madera Police Department

Madera PD Policy Manual

## Automated License Plate Readers (ALPRs)

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### 473.6 ACCOUNTABILITY

**State**

All data will be closely safeguarded and protected by both procedural and technological means. The Madera Police Department will observe the following safeguards regarding access to and use of stored data (Civil Code § 1798.90.51; Civil Code § 1798.90.53):

- (a) All ALPR data downloaded to the mobile workstation and in storage shall be accessible only through a login/password-protected system capable of documenting all access of information by name, date and time (Civil Code § 1798.90.52).
- (b) Members approved to access ALPR data under these guidelines are permitted to access the data for legitimate law enforcement purposes only, such as when the data relate to a specific criminal investigation or department-related civil or administrative action.
- (c) ALPR system audits should be conducted on a regular basis.

For security or data breaches, see the Records Release and Maintenance Policy.

### 473.7 RELEASING ALPR DATA

**Best Practice**

The ALPR data may be shared only with other law enforcement or prosecutorial agencies for official law enforcement purposes or as otherwise permitted by law, using the following procedures:

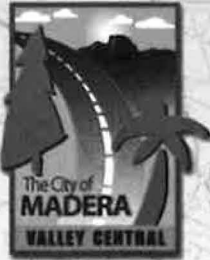
- (a) The agency makes a written request for the ALPR data that includes:
  - 1. The name of the agency.
  - 2. The name of the person requesting.
  - 3. The intended purpose of obtaining the information.
- (b) The request is reviewed by the Administrative Services Lieutenant or the authorized designee and approved before the request is fulfilled.
- (c) The approved request is retained on file.

Requests for ALPR data by non-law enforcement or non-prosecutorial agencies will be processed as provided in the Records Maintenance and Release Policy (Civil Code § 1798.90.55).

### 473.8 TRAINING

**State**

The Training Sergeant should ensure that members receive department-approved training for those authorized to use or access the ALPR system (Civil Code § 1798.90.51; Civil Code § 1798.90.53).



[Return to Agenda](#)

## REPORT TO CITY COUNCIL

Approved By:

  
Department Director

Council Meeting of December 20, 2017  
Agenda Item Number B-14

  
City Administrator

### **SUBJECT:**

CONSIDERATION OF A RESOLUTION APPROVING THE AWARD OF CONTRACT FOR E. YOSEMITE AVENUE (SR 145) & ELM AVENUE TRAFFIC SIGNAL INSTALLATION CITY PROJECT NO. TS 17-02, CDBG PROJECT NO. B17MC060053 (REBID) IN THE AMOUNT OF \$516,310 TO BUSH ENGINEERING, INC., AUTHORIZING CONSTRUCTION CONTINGENCIES OF UP TO 10% AND CONSTRUCTION INSPECTION AND MANAGEMENT CONTINGENCIES OF UP TO 10% AS APPROVED BY THE CITY ENGINEER, AND AUTHORIZING THE MAYOR TO EXECUTE THE CONTRACT ON BEHALF OF THE CITY

### **RECOMMENDATION:**

1. That the City Council approves Resolution No. 17-\_\_\_\_
  - a. Approving the award of the contract for E. Yosemite Avenue (SR 145) & Elm Avenue Traffic Signal Installation City Project No. TS 17-02, CDBG No. B17MC060053 (REBID) in the amount of \$516,310 to Bush Engineering, Inc.
  - b. Authorizing Construction Contingencies of up to 10% as approved by the City Engineer.
  - c. Authorizing Construction Inspection and Management Contingencies of up to 10% as approved by the City Engineer.
  - d. Authorizing the Mayor to execute the contract on behalf of the City.

### **SUMMARY:**

The City received bids for the E. Yosemite Avenue (SR 145) & Elm Avenue Traffic Signal Installation City Project No. TS 17-02, CDBG No. B17MC060053 (REBID). Bush Engineering, Inc. submitted the lowest responsive and responsible bid that meets the contract requirements. It is recommended that the City Council award the project to Bush Engineering, Inc.

### **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)

## **SITUATION:**

The proposed project will provide traffic signal at the E. Yosemite Avenue (SR 145) intersection with Elm Avenue. Installation of the traffic signal addresses the mitigating measure identified in the Sugar Pine Village Master plan to place a traffic signal at the intersection.

The new traffic signal is on State Route 145 which requires that the signal be installed according to Caltrans Standards. An encroachment permit has been obtained from Caltrans for the project.

The installation of the traffic signal will include new poles with mast arms, signal and pedestrian heads, street lighting, an intersection camera and appurtenances consisting of conduit, pull boxes, wiring, electrical meters and street signs. Pedestrian ramps with truncated domes will be placed at each corner along-side pedestrian push-button controls. The intersection will be paved with new striping to accommodate the new median width and pedestrian crossings.

The "Notice Inviting Bids" for the project was duly noticed in the Madera Tribune Newspaper. The construction and bidding documents (plans and specifications) were distributed to Builders Exchanges in Fresno, Modesto and Visalia. The bid documents were also made available to the Kern-Minority Contractors Association in Bakersfield to address CDBG Federal Funding, DBE requirements. The plans and specifications were also posted on EBidBoard.com, an online listing service for contractors which is accessible from the City's website. The Blue Book Network also listed the City project making the project known to contractors and subcontractors using their system.

On December 12, 2017, the City received three (3) bids. The bids were reviewed for responsiveness and compliance with the bidding requirements as described in the specifications as well as for validity of contractor licenses and bid security.

The qualified bidders and bids received are listed below:

Bush Engineering, Inc.	\$516,310
Kertel Communications, Inc.	\$567,762
American Paving Co.	\$574,800
Engineers Opinion of Cost	\$546,700

The lowest bid in the amount of \$516,310 is approximately 5.5 % below the engineering opinion of cost. Bush Engineering, Inc. submitted the lowest responsive and responsible bid that meets the bidding requirements. It is recommended that the City Council award the project to Bush Engineering Inc.

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

Strategy 121.8 – Upgrade of the City's street system.

Strategy 126.0 – Create safe streets.

Strategy 126.6 – Reconstruct existing streets to install sidewalks and ADA ramps

## **FINANCIAL IMPACT:**

Funding for the project is programmed in FY2017/18 including CDBG Funding in Account 102180200 and Traffic Signal DIF Funding in Account No. 40970000.

Construction of the project will not have a financial impact on the City's General Fund.

**RESOLUTION NO. 17-\_\_**

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MADERA, CALIFORNIA, APPROVING THE AWARD OF CONTRACT FOR E. YOSEMITE AVENUE (SR 145) & ELM AVENUE TRAFFIC SIGNAL INSTALLATION CITY PROJECT NO. TS 17-02, CDBG PROJECT NO. B17MC060053 (REBID) IN THE AMOUNT OF \$516,310 TO BUSH ENGINEERING, INC., AUTHORIZING CONSTRUCTION CONTINGENCIES OF UP TO 10% AND CONSTRUCTION INSPECTION AND MANAGEMENT CONTINGENCIES OF UP TO 10% AS APPROVED BY THE CITY ENGINEER, AND AUTHORIZING THE MAYOR TO EXECUTE THE CONTRACT ON BEHALF OF THE CITY**

**WHEREAS**, the City of Madera Successor Agency has provided street and utility improvements and traffic signals required for development of the Sugar Pine Village according to prior development agreements entered into by the Redevelopment Agency; and

**WHEREAS**, The Engineering Department advertised a solicitation for bids for the E. Yosemite Avenue (SR 145) & Elm Avenue Traffic Signal Installation City Project No. TS 17-02, CDBG No. B17MC060053 (REBID), hereinafter referred to as "the Project"; and

**WHEREAS**, Sealed bids were received on October 3, 2017, and opened by the City Engineer; and

**WHEREAS**, Funding for the E. Yosemite Avenue (SR 145) & Elm Avenue Traffic Signal Installation City Project No. TS 17-02, CDBG No. B17MC060053 is programmed in the Capital Improvement Projects Budget for FY 2017/18, and

**WHEREAS**, a Mitigated Negative Declaration was certified by the City of Madera on August 18, 2004, for the development of the Sugar Pine Village in accordance with CEQA and recorded by the Madera County Clerk on August 23, 2004.

**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 of the information presented including the report to the City Council from the Engineering Department.
3. The City finds that Bush Engineering, Inc., is the lowest responsible and responsive bidder.
4. The contract for E. Yosemite Avenue (SR 145) & Elm Avenue Traffic Signal Installation City Project No. TS 17-02, CDBG No. B17MC060053 (REBID), in the amount of \$516,310 with Bush Engineering, Inc., a copy of which is on file in the Office of the City Clerk and referred to for particulars, is approved.

5. Construction Contingencies of up to 10% and Construction Inspection and Management Contingencies of up to 10%, as approved by the City Engineer are hereby authorized.
6. The Mayor is hereby authorized to execute the contract on behalf of the City.
7. This Resolution is effective immediately upon adoption.

\*\*\*\*\*

## AGREEMENT

**THIS AGREEMENT**, made this 20<sup>th</sup> day of December, 2017, between the City of Madera, hereinafter called "**OWNER**", and Bush Engineering, 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 "**E. Yosemite (SR 145) & Elm Avenue Traffic Signal Installation City Project No. TS 17-02, CDBG Project No. B17MC060053**" (**REBID**)
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 \$516,310.00, 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) State Standard Plans and Specifications ISSUE MAY 2015
  - (L) **PLANS and SPECIFICATIONS** prepared or issued by CITY OF MADERA, entitled "**E. Yosemite (SR 145) & Elm Avenue Traffic Signal Installation City Project No. TS 17-02, CDBG Project No. B17MC060053**" (**REBID**) November 2017.

Project Plans prepared or issued by the City of Madera Engineering Department, Explanation of Bid Items, Technical Specifications, City of Madera Standard Specifications and Drawings

Addenda Nos.            1            , dated December 7, 2017

Addenda Nos.            \_\_\_\_\_, dated \_\_\_\_\_

Addenda Nos.            \_\_\_\_\_, dated \_\_\_\_\_
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 **Four Hundred Dollars (\$400.00)** 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 I, 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 Sub-consultant, 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 called "INSURANCE REQUIREMENTS FOR **CONTRACTOR**", pages 38-39 of the Contract Documents.

19. Amendments- Any changes to this Agreement requested by either City or Bush Engineering, 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, Bush Engineering, 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 Bush Engineering, Inc.;
2. A failure by Bush Engineering, Inc., to comply with any material term of this Agreement;
3. A substantially incorrect or incomplete report submitted by Bush Engineering, Inc., to City.

In no event shall any payment by City or acceptance by Bush Engineering, 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 Bush Engineering, Inc., the repayment to City of any funds disbursed to Bush Engineering, 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  
205 W. 4<sup>th</sup> Street  
Madera, Ca 93637

To the Contractor Bush Engineering, Inc.

Notices. All notices and communications from the Bush Engineering, 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 Bush Engineering, 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 Bush Engineering, 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 Bush Engineering, Inc., in connection to the Project and correctly sets forth the obligations of the City and Bush Engineering, 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.

29. Assignment-Neither the Bush Engineering, Inc., nor City will assign its interest in this Agreement without the written consent of the other.

30. During the performance of this Agreement, the Contractor assures that no otherwise qualified person shall be excluded from participation or employment, denied program benefits, or be subjected to discrimination based on race, color, national origin, sex, age, or handicap, under any program or activity funded by this contract, as required by Title VI of the Civil Rights Act of 1964, Title I of the Housing and Community Development Act of 1974, as amended, and the Age Discrimination Act of 1975, and all implementing regulations.

31. 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 \_\_\_\_\_, 2017 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

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:

- **\$2,000,000 General Liability** (including operations, products and completed operations) per occurrence, \$4,000,000 general aggregate, for bodily injury, personal injury and property damage, including without limitation, blanket contractual liability. Coverage shall be at least as broad as Insurance Services Office (ISO) Commercial General Liability coverage form CG 00 01. General liability policies shall be endorsed using ISO 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.
- **\$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.

### 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, 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 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.



[Return to Agenda](#)

## REPORT TO CITY COUNCIL

Approved By:

  
Department Director

Council Meeting of December 20, 2017

Agenda Item No. B-15

  
For City Administrator

**SUBJECT:** CONSIDERATION OF A RESOLUTION APPROVING THE AWARD OF CONTRACT FOR WATER MAIN INSTALLATIONS AT VARIOUS LOCATIONS CITY PROJECT NO. W 16-03 TO EMMETT'S EXCAVATION INC., AUTHORIZING CONSTRUCTION CONTINGENCIES OF UP TO 10% AS APPROVED BY THE CITY ENGINEER, CONSTRUCTION MANAGEMENT AND INSPECTION COSTS UP TO 5% AND AUTHORIZING THE MAYOR TO EXECUTE THE CONTRACT ON BEHALF OF THE CITY;

CONSIDERATION OF A RESOLUTION APPROVING FUNDING AMENDMENTS TO THE CITY OF MADERA FISCAL YEAR 2017/18 CAPITAL FUND BUDGET FOR WATER MAIN INSTALLATIONS AT VARIOUS LOCATIONS CITY PROJECT NO. W 16-03

### **RECOMMENDATION:**

1. That the City Council approves Resolution No. 17-\_\_\_\_
  - a. Approving the award of the contract for Water Main Installations at Various Locations City Project No. W 16-03 in the amount of \$671,037.00 to Emmett's Excavation Inc.
  - b. Authorizing Construction Contingencies of up to 10% as approved by the City Engineer.
  - c. Authorizing Funding of up to 5% of the Contract Amount for Construction Inspection and Management as approved by the City Engineer.
  - d. Authorizing the Mayor to execute the contract on behalf of the City.
2. That the City Council approves Resolution No. 17-\_\_\_\_ authorizing a funding amendment to Fiscal Year 2017/18 Capital Projects Budget appropriating additional funds for the Installation of Water Mains at Various Locations Project, City Project No. W 16-03.

### **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)

## **SUMMARY:**

The City received bids for the Water Main Installations at Various Locations City Project No. W 16-03, the Project. Emmett's Excavation Inc. submitted the lowest responsive and responsible bid that meets the contract requirements. It is recommended that the City Council award the Project to Emmett's Excavation Inc.

Additional funding in the amount of \$70,000.00 is needed to comfortably proceed with the project as currently designed to construction.

## **DISCUSSION:**

The City of Madera entered into an agreement with Provost and Pritchard Consulting Group in March 2017 to perform engineering services resulting in construction bid documents for several identified water main Capital Improvement Program (CIP) projects. This Project is a conglomeration of seven City CIP projects that are being combined into a single project for enhanced economies of scale and to form a project size more conducive to lower construction bids.

The general scope of work for the project consists of the installation of approximately 1,750 feet of 8-inch water main and 2,520 feet of 12-inch water main. The CIP water main projects included with this project and the reason for their inclusion in this project are as follows:

1. W-FF-4: Olive Avenue, extending from Grove Street to Cypress Street. Install approximately 770 feet of new 12-inch water main. The 2014 Water System Master Plan recommended this installation for improvement of fire flow.
2. W-FF-1: Maple Street, extending from Pine Street to Noble Street. Install approximately 890 feet of 8-inch water main in parallel with an existing water line. The 2014 Water System Master Plan recommended this installation for improvement of fire flow.
3. W-FF-2: Rotan Avenue, extending from Howard Road to Oak Street. Install approximately 450 feet of 8-inch water main in parallel with an existing 6-inch water line. The 2014 Water System Master Plan recommended this installation for improvement of fire flow.
4. W-PSW-50: Pecan Avenue, extending from Monterey Street to approximately 680 feet west from Monterey Street. Install approximately 680 feet of new 12-inch water main. The 2014 Water System Master Plan recommended this installation to close a gap between existing lines in order to improve efficiency of the City's water system.
5. W-PSE-3: Pecan Avenue, extending from Madera Avenue to approximately 750 feet east from Madera Avenue. Install approximately 750 feet of new 12-inch water main. The 2014 Water System Master Plan recommended this installation to close a gap between existing lines in order to improve efficiency of the City's water system.
6. W-28: Sycamore Street, extending from the existing fire hydrant on Sycamore Street to Lake Street. Install approximately 410 feet of new 8-inch water main. Public Works reported regular maintenance and repair issues with this existing 2" galvanized water line. This line will be replaced to reduce regular maintenance on the line and increase water system redundancy and efficiency.
7. W-PNW-30: Intersection of Aviation Drive and Falcon Drive. Install approximately 320 feet of new 12-inch water main between Aviation Drive and Falcon Drive. The 2014 Water System Master Plan recommended this installation to close a gap between existing lines in order to improve efficiency of the City's water system.

The project received a CEQA (California Environmental Quality Act) categorical exemption.

**SITUATION:**

The "Notice Inviting Bids" for Water Main Installations at Various Locations was duly noticed in the Madera Tribune newspaper on 11/11/17 and 11/18/17. The construction and bidding documents (plans and specifications) were distributed to Builders Exchanges in Fresno, Merced, Modesto and Visalia, and thereby made available to contractors and sub-contractors. The plans and specifications were also posted on EBidBoard.com, a projects online listing service for contractors accessible from the City's website.

On December 7, 2017, the City received six (6) bids. All bids were checked for accuracy with the bidding requirements of the specifications and for validity of licenses and bid security.

The qualified bidders and bids received are listed below:

Emmett's Excavation Inc.	\$ 671,037.00
Rolfe Construction Company, LLC	\$ 700,643.00
Steve Dovali Construction	\$ 754,162.00
Jt2, Inc. dba Todd Companies	\$ 786,583.50
West Valley Construction	\$ 816,619.00
Dawson-Mauldin Construction	\$ 897,141.88
Engineers Opinion of Cost	\$ 670,000.00

Emmett's Excavation submitted the lowest responsive and responsible bid that meets the contract requirements. It is recommended that the City Council award the project to Emmett's Excavation Inc.

After the bid opening on December 7, 2017, five (5) project segments were identified to require additional funding. There is a combined total of seven (7) segments for the project. The additional funding for the five (5) segments is to allow for a 10% contingencies for unknown conditions that may be encountered during construction and 5% construction management and inspection costs. Attached is an exhibit AA that represents the additional funding needed for each segment. The additional funding will have an impact on the Water Utility Fund. Two (2) project segments directly related to Water Pipe Impact Fee does not require additional funding.

**FINANCIAL IMPACT:**

Funding for the Project is programmed in FY2017/2018 budget in several line item accounts with \$652,700 coming from Water Utility Fund and \$83,700 from Water Pipe Impact Fee for the proportionate share of the Pecan Water Mains. Staff has presented an exhibit AA reflecting the recommended budget increases and is proposing to transfer an additional \$70,000 from the unprogrammed balance of the Water Utility Fund. Any funds remaining will be returned to the Water Utility Fund.

Construction of the project will not have a financial impact on the City's General Fund.

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

The recommended capital improvement project supports Vision Strategy 101.6, Ensure infrastructure can sustain population growth.



**RESOLUTION NO. 17-\_\_**

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MADERA, CALIFORNIA, APPROVING THE AWARD OF CONTRACT FOR WATER MAIN INSTALLATIONS AT VARIOUS LOCATIONS CITY PROJECT NO. W 16-03, IN THE AMOUNT OF \$671,037.00 TO EMMETT'S EXCAVATION INC., AND AUTHORIZING CONSTRUCTION CONTINGENCIES OF UP TO 10% AS APPROVED BY THE CITY ENGINEER AND CONSTRUCTION MANAGEMENT AND INSPECTION COSTS UP TO 5% AS APPROVED BY THE CITY ENGINEER, AND AUTHORIZING THE MAYOR TO EXECUTE THE CONTRACT ON BEHALF OF THE CITY**

**WHEREAS**, The Engineering Department advertised a solicitation for bids for the Water Main Installations at Various Locations City Project No. W 16-03, hereinafter referred to as "the Project"; and

**WHEREAS**, Sealed bids were received on December 7, 2017 and opened by the City Engineer; and

**WHEREAS**, the Project received a CEQA (California Environmental Quality Act) categorical exemption and a categorical exclusion from NEPA (National Environmental Policy Act).

**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 of the information presented including the report to the City Council from the Engineering Department.
3. The City finds that Emmett's Excavation Inc., is the lowest responsible and responsive bidder.
4. The contract for Water Main Installations at Various Locations City Project No. W 16-03, in the amount of \$671,037.00 with Emmett's Excavation Inc., a copy of which is on file in the Office of the City clerk and referred to for particulars, is approved.
5. Construction Contingencies of up to 10% as approved by the City Engineer and Construction Inspection and Management of up to 5% as approved by the City Engineer are hereby authorized.
6. The Mayor is hereby authorized to execute the contract on behalf of the City.
7. This Resolution is effective immediately upon adoption.

\*\*\*\*\*

**RESOLUTION NO. 17-\_\_**

**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**

**WHEREAS**, the seven (7) projects comprising the Installation of Water Mains at Various Locations Project, City Project No. W 16-03, hereinafter called "the Project", are included in the FY 2017/18 Budget for Capital Projects; and

**WHEREAS**, additional funds are necessary for the construction phase of the Project; and

**WHEREAS**, funds are available in the unprogrammed fund balance of the Water Utility Fund.

**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 2017/18 Capital Projects Budget is hereby amended in accordance with Exhibit AA, which is incorporated by reference herein.
3. The City Clerk is authorized and directed to forward a certified copy of the resolution to the Director of Finance who is authorized to take such action as necessary to implement the terms of this resolution.
4. This resolution is effective immediately upon adoption.

\* \* \* \* \*



EXHIBIT AA

CITY OF MADERA

Resolution 17 -

**Appropriating Additional Funds for the Water Main Installation at Various Locations  
City Project No. W 16-03**

ORG CODE	OBJECT CODE	PROJECT CODE	DESCRIPTION	ALREADY APPROPRIATED AS PART OF DESIGN APPROVAL	
				(+)	(-)
<b><u>Water Utility Fund (20303830)</u></b>					
20303830	7050	W-PSE-03	Pecan Ave Water Main, Madera-750'E	-	
20303830	7050	W-PNW-30	Aviation Dr/Falcon Dr Water Main	5,000.00	
20303830	7050	W-FF-001	Maple St Water Main, Pine to Noble	33,000.00	
20303830	7050	W-FF-002	Rotan Ave Water Main, Howard to Oak	7,500.00	
20303830	7050	W-FF-004	Olive Ave Water Main, Grove to Cypress	12,000.00	
20303830	7050	W-000028	Sycamore St Water Main, Lake to Clinton	12,500.00	
20303830	7050	W-PSW-50	Pecan Water Main, Monterey to 680'W	-	
2030	3210		Unappropriated Fund Balance		70,000.00
				<b><u>70,000.00</u></b>	<b><u>70,000.00</u></b>
<b><u>Water Pipes Impact Fee (DIF:40845)</u></b>					
40810000	7050	W-PSW-50	Pecan Water Main, Monterey to 680'W	-	
40810000	7050	W-PSE-03	Pecan Ave Water Main, Madera-750'E	-	
4081	3210		Unappropriated Fund Balance		-
				<b><u>-</u></b>	<b><u>-</u></b>

## AGREEMENT

**THIS AGREEMENT**, made this 20<sup>th</sup> day of December, 2017, between the City of Madera, hereinafter called "**OWNER**", and Emmett's Excavation, 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 "**Water Main Installations at Various Locations, City Project No. W 16-03**"
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 \$671,037.00, 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) State Standard Plans and Specifications ISSUE MAY 2015
  - (L) PLANS and SPECIFICATIONS prepared or issued by CITY OF MADERA, entitled "**Water Main Installations at Various Locations, City Project No. W 16-03**" dated **October 2017**. Project Plans prepared or issued by the City of Madera Engineering Department, Explanation of Bid Items, Technical Specifications, City of Madera Standard Specifications and Drawings

Addenda Nos. 1, dated 11/30/17  
Addenda Nos.       , dated         
Addenda Nos.       , dated

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 **Four Hundred Dollars (\$400.00)** 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 I, 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 Indemnatee. 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 **CONTRACTOR**", pages 37-38 of the Contract Documents.

19. Amendments- Any changes to this Agreement requested by either City or Emmett's Excavation, 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, Emmett's Excavation, 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 Emmett's Excavation, Inc.;
2. A failure by Emmett's Excavation, Inc. to comply with any material term of this Agreement;
3. A substantially incorrect or incomplete report submitted by Emmett's Excavation, Inc. to City.

In no event shall any payment by City or acceptance by Emmett's Excavation, 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 Emmett's Excavation, Inc. the repayment to City of any funds disbursed to Emmett's Excavation, 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  
205 W. 4<sup>th</sup> Street  
Madera, Ca 93637

To the Contractor Emmett's Excavation, Inc.

Notices. All notices and communications from the Emmett's Excavation, 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 Emmett's Excavation, 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 Emmett's Excavation, 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 Emmett's Excavation, Inc. in connection to the Project and correctly sets forth the obligations of the City and Emmett's Excavation, 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.

29. Assignment-Neither the Emmett's Excavation, Inc. nor City will assign its interest in this Agreement without the written consent of the other.

30. During the performance of this Agreement, the Contractor assures that no otherwise qualified person shall be excluded from participation or employment, denied program benefits, or be subjected to discrimination based on race, color, national origin, sex, age, or handicap, under any program or activity funded by this contract, as required by Title VI of the Civil Rights Act of 1964, Title I of the Housing and Community Development Act of 1974, as amended, and the Age Discrimination Act of 1975, and all implementing regulations.

31. 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 \_\_\_\_\_, 2017 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

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:

- **\$2,000,000 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 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.
- **\$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.

### 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, 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 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.





## REPORT TO CITY COUNCIL

Approved by:

Council Meeting of: December 20, 2017

Agenda Number: C-1

  
\_\_\_\_\_  
Department Director

  
\_\_\_\_\_  
For City Administrator

**SUBJECT:** CONSIDERATION OF A RESOLUTION OF THE MADERA CITY COUNCIL APPROVING A LEASE, A SUBLEASE AND AN ASSIGNMENT AGREEMENT; AND AUTHORIZING EXECUTION OF DOCUMENTS AND THE TAKING OF ALL NECESSARY ACTIONS RELATING TO THE LEASE FINANCING

**RECOMMENDATION:** Council to adopt resolution approving a lease, a sublease and an assignment agreement; and authorizing execution of documents and the taking of all necessary actions relating to the lease financing.

**SUMMARY:** The City's Municipal Advisor, Del Rio Advisors, LLC, examined all the outstanding debt of the City for possible refunding opportunities. The Municipal Advisor has identified several candidates, two of which are before the Council tonight for consideration:

**Madera Public Financing Authority  
1993 Variable Rate Demand Bonds  
(Madera Municipal Golf Course Refinancing Project)  
Remarketed on October 25, 2012  
(the "Bonds")**

The Bonds were originally issued in 1989 to finance the construction of the Madera Municipal Golf Course. The Bonds were refunded on a variable rate basis in 1993 with a Letter of Credit provided by CalSTRS. The Letter of Credit was replaced in 2012 with a Letter of Credit provided by MUFG Bank formerly Union Bank (the "Bank"). The Bonds are outstanding in the amount of \$1.9 million with principal payable each November 1 to November 1, 2023. Since the 2012 remarketing, the Letter of Credit has been extended several times with the most recent extension expiring on November 12, 2017. The Bank has indicated they no longer wish to provide the Letter of Credit but did extend the expiration date to January 12, 2018.

The current interest rate is averaging 0.92%. The City also pays a Letter of Credit fee of 2.00% to the Bank and pays RBC Capital Markets approximately 0.25% to remarket the Bonds each week. This brings the current "all-in" interest rate to approximately 3.17%. The Bonds are callable at par (100%) only on an interest payment date with the next date being May 1, 2018. However,



upon expiration of the Letter of Credit, the Bonds are subject to mandatory tender (investors must surrender them) five (5) business days prior or in this case on January 5, 2018. The original leased asset was the golf course but was replaced with City Hall on January 7, 2014.

**City of Madera  
Police Station  
Lease Purchase Agreement  
Dated: December 15, 2005  
(the "Lease")**

The Lease was originally issued to complete construction of the Police Administration Building and it currently serves as the leased asset. The Lease is outstanding in the amount of \$847,856, is payable semiannually on each June 1 and December 1 and has a final maturity of December 1, 2025. The Lease pays a fixed rate of interest at 5.12%. The original lender was LaSalle Bank which was acquired by Banc of America. The Lease was ultimately sold to Capital One Public Funding, LLC and is callable at par (100%) on any interest payment date with the next date being June 1, 2018.

The Municipal Advisor reached out to the current owner Capital One Public Funding, LLC ("Cap One") and they were willing to allow the City to pay off the Lease early on January 5, 2018 by paying Cap One all the outstanding principal and the accrued interest otherwise due to them through June 1, 2018.

**DISCUSSION:** After the remarketing on October 25, 2012. The letter of credit with MUFG Bank originally expired on November 12, 2013. However, the Letter of Credit has been extended several times with the most recent extension to November 12, 2017. The Bank has indicated they no longer wish to provide the Letter of Credit but, to give time for the City to look at alternatives, did extend the expiration date to January 12, 2018. The current interest rate is averaging 0.92%. The City also pays a Letter of Credit fee of 2.00% to the Bank and pays RBC Capital Markets approximately 0.25% to remarket the Bonds each week. This brings the current "all-in" interest rate to approximately 3.17%.

The market for letter of credit arrangements is very limited and almost non-existent for municipalities with transactions under \$10 million. The Golf Course transaction balance currently sits at \$1.9 million. Beside the extension to January 12, 2018, The Bank has indicated they are not willing to extend beyond that date due to the amount of work involved and the due diligence required in reviewing the credit worthiness of municipalities for small transactions of this size. They simply do not make enough money to merit the extra work. While a refunding of this obligation will cost the City money each year, the refunding will eliminate any variable interest rate risk. In addition, since the golf course is now under private management, the City is required to refund the Bonds on a taxable basis. The current leased asset is City Hall.

The Lease agreement for the Police Station will be refunded for purely economic reasons. The leased asset is the current Police Administration Building.

In October, the Municipal Advisor sent out a request for fee proposals for firms to act as Placement Agent on the proposed refunding. The Municipal Advisor received three (3) fee quotes with Hilltop Securities providing the least expensive alternative at \$5,000.

The City's Municipal Advisor, Del Rio Advisors, LLC working in conjunction with the Placement Agent, Hilltop Securities, considered the Refunding as both a public offering to both institutional and retail investors and as a direct placement to commercial banks and other lending institutions that operate in the municipal finance market. A public offering requires an official statement and a bond rating from one or more of the rating agencies (S&P, Moody's Investors Service or Fitch Ratings). While interest rates can be lower in a public offering, the increased costs and time associated with conducting a public offering often makes it less economically attractive than a direct placement, particularly for smaller short-term obligations like the ones proposed here.

In November, the Placement Agent sent out a term sheet to the universe of direct placement lenders that operate in the municipal finance market. The Placement Agent received ten (10) qualifying responses. The low interest rate alternative was provided by Zions Bank / California Bank & Trust (the "Lender") at 3.19%. The interest rate is locked for sixty (60) days and the lease can be prepaid anytime at par. The cover bid was from BB&T at 3.22% but the Refunding would be non-callable. A summary of the bids has been attached as an exhibit to this staff report.

The Municipal Advisor and Placement Agent then approached the Lender to get a tax-exempt interest rate for the refunding of the Lease. The Lender quoted an interest rate of 2.76%. The interest rate for this is also locked for sixty (60) days and the obligation can also be prepaid anytime at par.

The proposed plan is to refund the Bonds on a taxable basis and refund the Lease on a tax-exempt basis. The City will make one lease payment to the lender a portion of which will be applied to the taxable refunding of the Bonds and a portion applied to the tax-exempt refunding of the Lease. The leased asset will be the Corporation Yard and associated buildings and will release both City Hall and the Police Station for future use.

The results of the refunding are as follows:

Refunding	Prior Issue Par Amount	Prior Issue Total Debt Service	Proposed Par Amount	Proposed Debt Service	Total (Savings) / Cost	Avg. Annual (Savings) / Cost	NPV (Savings) / Cost	NPV as % of Prior
Bonds	\$1,900,000	\$1,911,743(*)	\$1,762,400	\$1,952,579	\$40,836	\$7,014	\$26,716	1.41%
Lease	\$847,856	\$1,043,976	\$895,700	\$999,486	(\$44,490)	(\$5,688)	(\$37,721)	(4.45%)
<b>Total</b>	<b>\$2,747,856</b>	<b>\$2,955,719</b>	<b>\$2,658,100</b>	<b>\$2,952,065</b>	<b>(\$3,654)</b>	<b>(\$467)</b>	<b>(\$11,005)</b>	<b>(0.40%)</b>

**Note**

(\*) Includes current market variable rate of interest at 0.92% plus letter of credit and remarketing fees less reserve fund earnings at 1.00% and reserve fund corpus used to pay final year of debt service on the Bonds

The Refunding will not extend either existing obligation beyond its current final maturity (2023 for the Bonds and 2025 for the Lease).

**FINANCIAL IMPACT:** Adoption of this resolution is estimated to save the City's General Fund \$3,654 over the life of the obligation or an estimated \$467 per year.

The costs of issuance are fully contingent and will be paid at closing from the proceeds of the Refunding. The costs of issuance are fully accounted for in the calculation of the estimated (savings) / costs listed above. Here is a table showing the current estimated costs of issuance:

<b>Madera Public Financing Authority Refunding Lease Agreement (Lease Refinancing Project) Costs of Issuance</b>	
Bond Counsel	35,000.00
Municipal Advisor	17,500.00
Paying Agent / Trustee / Legal	10,000.00
Verification Report	2,500.00
Bank Counsel	-
Placement Agent	10,000.00
CDIAC	664.53
Title Insurance	5,048.00
Miscellaneous	2,500.00
Rounding Adjustment	30.83
<b>Total</b>	<b>83,243.35</b>

**CONSISTENCY WITH THE VISION MADERA 2025 PLAN:** Refunding these existing obligations is not addressed in the vision or action plans. The requested action does not conflict with any of the actions or goals contained in those plans.

**Attachments:**

Summary of Bank Bids  
Bond Numbers

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

RESOLUTION OF THE COUNCIL OF THE CITY OF MADERA, CALIFORNIA  
APPROVING A LEASE, A SUBLEASE AND AN ASSIGNMENT AGREEMENT;  
AND AUTHORIZING EXECUTION OF DOCUMENTS AND THE TAKING OF ALL  
NECESSARY ACTIONS RELATING TO THE LEASE FINANCING

WHEREAS, the City of Madera (the "City") and the Redevelopment Agency of the City of Madera (the "Agency") have executed a Joint Exercise of Powers Agreement, dated July 17, 1989, as amended (the "Joint Powers Agreement"), between the City and the Agency that creates and establishes the Madera Public Financing Authority (the "Authority"); and

WHEREAS, pursuant to Article 4 of Chapter 5 of Division 7 of Title 1 of the Government Code of the State of California (the "Marks-Roos Local Bond Pooling Act of 1985") and the Joint Powers Agreement, the Authority is authorized to finance and refinance public capital improvements and equipment, working capital, liability and other insurance needs or projects whenever there are significant public benefits; and

WHEREAS, the City has financed its public golf course pursuant to a lease agreement, dated as of May 1, 1993, by and between the Authority and the City, as amended and supplemented (the "1993 Lease Agreement"); and

WHEREAS, the City has financed a police station pursuant to a lease purchase agreement, dated as of December 15, 2005, by and between LaSalle Bank National Association and the City (the "2005 Lease Agreement" and together with the 1993 Lease, the "Prior Leases"); and

WHEREAS, the City desires to prepay and refinance the Prior Leases by entering into the Lease and Sublease (as hereinafter defined); and

WHEREAS, in order to refinance the Projects, the City desires to lease to the Authority certain real property described in Exhibit A hereto (the "Facilities") pursuant to the terms of that certain Lease (the "Lease"), by and between the City and the Authority, and the City desires to lease back from the Authority the Facilities, pursuant to the terms of that certain Sublease (the "Sublease"), by and between the Authority and the City; and

WHEREAS, the Authority desires to assign, sell, transfer and convey all of its right, title and interest in the Lease and Sublease to ZB, N.A. (the "Purchaser"), pursuant to the terms of that certain Assignment Agreement (the "Assignment Agreement"), by and between the Authority and the Purchaser; and

WHEREAS, the execution and delivery of the Facilities Lease and Facilities Sublease will result in significant public benefits through savings in the effective interest rates, and that it furthers the public purpose to assist in such financing;

NOW THEREFORE, the Council of the City of Madera hereby finds, determines, declares and resolves as follows:

**Section 1.** The City Council hereby specifically finds and declares that the actions authorized hereby constitute and are with respect to municipal affairs of the City and the statements, findings and determinations of the City set forth in the recitals above and in the preambles of the documents approved herein are true and correct.

**Section 2.** The proposed form of Lease, by and between the City and the Authority, on file with the City Clerk, and delivered to Council, is hereby approved. The Mayor, Director of Finance or City Administrator, jointly and severally, or any person acting in such capacity, or any such officer's designee (collectively, the "Authorized Officers"), are each hereby authorized and directed, on behalf of the City, to execute and deliver the Facilities Lease in substantially said form, with such changes therein as such officer may require or approve, subject to review by the City Attorney's Office, such approval to be conclusively evidenced by the execution and delivery thereof; provided, however, that the term of the Lease shall end no later than November 1, 2025, plus an extension period of not to exceed ten (10) years.

**Section 3.** The proposed form of Sublease, by and between the Authority and City, on file with the City Clerk, and delivered to Council, is hereby approved. The Authorized Officers are each hereby authorized and directed, on behalf of the City, to execute and deliver the Sublease in substantially said form, with such changes therein as such officer may require or approve, subject to review by the City Attorney's Office, such approval to be conclusively evidenced by the execution and delivery thereof; provided, however, that principal components of the Sublease shall not exceed \$2,900,000, the term of the Sublease shall end no later than November 1, 2025 plus an extension period of not to exceed ten (10) years and the interest rate shall not exceed a true interest cost of 3.25% per annum.

**Section 4.** The proposed form of Assignment Agreement, by and between the Authority and the Purchaser, on file with the City Clerk, and delivered to Council, is hereby approved. The City Council hereby authorizes the Authority to assign its right, title and interest in the Lease and Sublease to the Purchaser.

**Section 5.** The officers and City Council members of the City are hereby authorized and directed, jointly and severally, to do any and all things and to execute and deliver any and all documents and certificates which they deem necessary or advisable to consummate the execution and delivery of the documents mentioned herein and otherwise to carry out, give effect to and comply with the terms and intent of this Resolution, the Lease, the Sublease, the Assignment Agreement and the transactions contemplated by each such document including, but not limited to, entering into a fiscal agreement with a financial institution selected by the Controller to hold funds if requested by the Purchaser. Such actions heretofore taken by such officers are hereby ratified, confirmed and approved.

**Section 6.** This Resolution shall take effect upon its adoption.

## CERTIFICATE OF CLERK OF THE CITY OF MADERA

I, Sonia Alvarez, Clerk of the City of Madera (the "City"), hereby certify that the foregoing Resolution No. \_\_\_\_\_ is a full, true and correct copy of a resolution duly adopted at a regular meeting of the City duly held in Madera, California on December 20, 2017, of which meeting all of the council members of said City had due notice.

I further certify that I have carefully compared the foregoing copy with the original minutes of said meeting on file and of record in my office; that said copy is a full, true and correct copy of the original resolution adopted at said meeting and entered in said minutes; and that said resolution has not been amended, modified, rescinded or revoked in any manner since the date of its adoption, and the same is now in full force and effect.

An agenda of said meeting was posted at least 72 hours before the meeting at City Hall, 205 West Fourth Street, Madera, CA 93637, a location freely accessible to members of the public, and a brief general description of said resolution appeared on said agenda.

Notice of said meeting was delivered to each council member at least 24 hours before said meeting.

Dated: \_\_\_\_\_

\_\_\_\_\_  
Clerk of the City of Madera

## **EXHIBIT A**

### **FACILITIES**

All of that certain real property and improvements thereon situated in the City of Madera, State of California, known as the Corporation Yard described as follows:

APN 011-143-002 – 2.2 acres – C2 (Heavy Commercial) Zoning

APN 011-143-003 – 3.8 acres – PF (Public Facility) Zoning

APN 011-143-011 – 1.1 acres – I (Industrial) Zoning

[attach legal description from Title Company]



**City of Madera**  
**Taxable Lease Revenue Bond**  
**Summary of Bank Bids**  
**As of 11/8/17**

The City of  
**MADERA**

Order Received	Bank	Rate	Rate Lock	Rate Notes	Call Feature	Bank Counsel	Legal Fees	Bank Loan Fees (other than legal)	DSRF	Reporting Requirements	Other
1)	Capital One	3.750%	Yes? Rate subject to change if not closed by 01/05/18	will lock thru 1/5/18 closing	No call until 11/01/20, then in whole at par on any interest payment date		Legal fees paid by bank.	City shall be responsible for normal borrower COI (including CDIA fees).		City shall send copy of audited financials within 270 days of the FYE.	
2)	Opus	3.680%	expects to be able to hold the rate but it is not locked		Option 1: Years 1-2 at 105% Year 3 at 104% Year 4 at 103% Year 5 at 102% Year 6 at 101% (See other)		\$ 15,000	The City will be responsible for all costs of issuance (including legal and CDIA). Additional fee of \$1,000 if they disburse COI wires at closing.			- Up to 10% of outstanding principal can be prepaid every year, as long as such prepayment is not through refinancing. - The par amount cannot exceed 90% of insured value of the essential asset
3)	Co-Biz	3.780%	No. Can lock within 30 days prior to close	3 Year LIBOR + 1.85%	Non-callable		\$ 5,000	Bank charges a \$500 admin fee			
4)	BBVA	3.730%	No. Subject to change daily until rates are locked in writing on the Pricing Date. Rate lock: upon formal credit approval and at the Borrower's option, subject to break-funding, fixed rate may be locked up to 30 days prior to close.	Interest Rate is Indexed to a spread of 1.72% over the prevailing 4 Year LIBOR swap rate. Based on the current rate of 2.01% for the sap index as of 11/07/17, the interest rate on funded balances today would be 3.73%.		Scott Shaver, Stradling Yocca Carlson & Rauth	NTE \$10,000	Responsible for all reasonable costs of issuance (including legal and CDIA)		Audits due within 210 days of fiscal year end. Budget due within 30 days of fiscal year end.	
5)	Western Alliance	Option 1: 5.03% as of 11/8/17 (Lock 2 Weeks prior to close) Option 2: 5.08% as of 11/08/17 (Rate Lock Upon Award and Selection as Lender).	Option 1 - May be locked 2 weeks prior to funding. Option 2 - May be locked upon award of purchasing the Bonds and the rate lock will be good through 12/31/17.	Option 1 - the sum of the 3-Year LIBOR Interest Rate Swap Rate plus 3.10% Option 2 - the sum of the 3-Year LIBOR Interest Rate Swap Rate plus 3.15%.	Not subject to optional prepayment prior to the final maturity.	Stradling Yocca Carlson & Rauth	NTE \$8,500,000	City shall be responsible for delivery costs, legal and CDIA fees.	None	Within 9 months of the end of each fiscal year, Purchaser shall receive: audited financials for preceding fiscal year and certification that the City is not aware of any default of Event of Default hereunder or in connection with the Lease.	
6)	Zions Bank/California Bank & Trust	3.190%	Yes. Fixed for 60 calendar days from the bid date.	will lock thru 1/5/18 closing	Prepaid, in whole or in part, anytime at par plus accrued interest		Internal counsel will be used, so fee is \$0.	City will pay CDIA and other usual COI		Issuer shall provide to the Purchaser annual audited financial statements within 270 days of fiscal year end.	
7)	Banner Bank	4.299%	Can be locked upon approval	3 Year Des Moines FHLB + 2.20%	No call provision		\$ 7,500				
8)	Umpqua	4.200%	10-15 bps reduction for depository relationship	lock 3 weeks prior to closing	103 in yr 1 - 102 yr 2 101 yr 3 nd and par thereafter		\$ 12,500	default rate +3%			
9)	BBT	3.220%	good thru 1/5/18		non callable		\$ 8,500			within 270 days audited financials	will pay up to 4 disbursements - no paying agent needed
10)	JMPC	3.280%	accepted by 11/10 and Closing by 12/19	rate can be locked with passage of City of Resolution	no optional call provision		\$ 8,500			within 270 days audited financials and copy of budget within 30 days of adaption	

Prepared by HilltopSecurities - Cardiff by the Sea, CA

**Madera Public Financing Authority**  
**Refunding Lease Agreement**  
**(Lease Refinancing Project)**

**Sources and Uses of Funds (Direct Placement)**

Allocation Percentage		68.60%	31.40%	100.00%
Sources of Funds		Golf Course	Police Station	Total
Par Amount of Bonds		1,762,400.00	895,700.00	2,658,100.00
Plus: Accrued Interest		-	-	-
Less: (OID) Plus: OIP		-	-	-
<b>Net Proceeds at Closing</b>		<b>1,762,400.00</b>	<b>895,700.00</b>	<b>2,658,100.00</b>
Outstanding Reserve Fund		194,704.02	-	194,704.02
Other Source of Funds		-	-	-
<b>Total Other Sources of Funds</b>		<b>194,704.02</b>	<b>-</b>	<b>194,704.02</b>
<b>Total Sources of Funds</b>		<b>1,957,104.02</b>	<b>895,700.00</b>	<b>2,852,804.02</b>
<b>Uses of Funds</b>				
Cost to Payoff Prior Issue (Cash)		1,900,000.00	869,560.67	2,769,560.67
Beginning Escrow Cash Balance		-	-	-
Reserve Fund (1)		-	-	-
Surety Premium (2)		-	-	-
Underwriter's Discount (3)		-	-	-
Costs of Issuance (4)		57,107.38	26,135.97	83,243.35
Bond Insurance Premium (5)		-	-	-
Other Use of Funds		-	-	-
<b>Total Uses of Funds</b>		<b>1,957,107.38</b>	<b>895,696.64</b>	<b>2,852,804.02</b>
<b>Rounding Adjustment</b>		<b>(3.36)</b>	<b>3.36</b>	<b>-</b>

**Assumptions**

- (1) Not Applicable
- (2) Not Applicable
- (3) Not Applicable
- (4) See Attached Schedule
- (5) Not Applicable

**Run Date** December 6, 2017  
**Run Time** 5:00 AM

<p><b>Madera Public Financing Authority</b> <b>Refunding Lease Agreement</b> <b>(Lease Refinancing Project)</b> <b>Costs of Issuance</b></p>
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Bond Counsel	35,000.00
Municipal Advisor	17,500.00
Paying Agent / Trustee / Legal	10,000.00
Verification Report	2,500.00
Bank Counsel	-
Placement Agent	10,000.00
CDIAC	664.53
Title Insurance	5,048.00
Miscellaneous	2,500.00
Rounding Adjustment	30.83
<b>Total</b>	<b>83,243.35</b>

<p><b>Madera Public Financing Authority</b> <b>Refunding Lease Agreement</b> <b>(Lease Refinancing Project)</b> <b>Summary Statistics</b></p>
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Arbitrage Yield (Tax-Exempt)	2.76055 %
Arbitrage Yield (Combined Series)	3.02642 %
TIC (Combined Series)	3.02642 %
"All-In" TIC (Combined Series)	3.97279 %
NIC (Combined Series)	3.02368 %
Average Coupon (Combined Series)	3.02368 %
Average Life (Combined Series)	3.658 Years

**Madera Public Financing Authority**  
**Refunding Lease Agreement**  
**(Lease Refinancing Project)**

**Gross Debt Service Schedule and (Savings) / Cost Calculation (Combined Series)**

<b>Date</b>	<b>Principal</b>	<b>Rate</b>	<b>Interest</b>	<b>Periodic Debt Service</b>	<b>Fiscal Year Debt Service</b>	<b>Prior Issue Fiscal Year Debt Service</b>	<b>Fiscal Year (Savings) / Cost</b>
1/5/2018							
5/1/2018	65,100	N/A	26,081.27	91,181.27	91,181.27	94,318.15	(3,136.88)
11/1/2018	197,800	N/A	39,549.77	237,349.77			
5/1/2019	200,900	N/A	36,504.30	237,404.30	474,754.07	469,273.51	5,480.56
11/1/2019	204,000	N/A	33,410.88	237,410.88			
5/1/2020	207,100	N/A	30,269.53	237,369.53	474,780.41	470,114.15	4,666.25
11/1/2020	210,300	N/A	27,080.23	237,380.23			
5/1/2021	213,600	N/A	23,841.40	237,441.40	474,821.63	475,492.20	(670.57)
11/1/2021	216,800	N/A	20,551.66	237,351.66			
5/1/2022	220,200	N/A	17,212.38	237,412.38	474,764.03	480,428.02	(5,663.99)
11/1/2022	223,600	N/A	13,820.59	237,420.59			
5/1/2023	226,900	N/A	10,376.29	237,276.29	474,696.87	479,967.40	(5,270.53)
11/1/2023	230,400	N/A	6,880.86	237,280.86			
5/1/2024	59,100	N/A	3,331.32	62,431.32	299,712.18	290,380.21	9,331.96
11/1/2024	59,900	N/A	2,515.74	62,415.74			
5/1/2025	60,800	N/A	1,689.12	62,489.12	124,904.86	130,497.02	(5,592.16)
11/1/2025	61,600	N/A	850.08	62,450.08			
5/1/2026					62,450.08	65,248.51	(2,798.43)
<b>Totals</b>	<b>2,658,100</b>		<b>293,965.39</b>	<b>2,952,065.39</b>	<b>2,952,065.39</b>	<b>2,955,719.17</b>	<b>(3,653.78)</b>

**Madera Public Financing Authority**  
**Refunding Lease Agreement**  
**(Lease Refinancing Project)**

**Gross Debt Service Schedule (Golf Course, Taxable)**

<b>Date</b>	<b>Principal</b>	<b>Rate</b>	<b>Interest</b>	<b>Periodic Debt Service</b>	<b>Fiscal Year Debt Service</b>
1/5/2018					
2/1/2018					
5/1/2018	10,600.00	3.190	18,115.51	28,715.51	28,715.51
8/1/2018					
11/1/2018	146,900.00	3.190	27,941.21	174,841.21	
2/1/2019					
5/1/2019	149,300.00	3.190	25,598.16	174,898.16	349,739.37
8/1/2019					
11/1/2019	151,700.00	3.190	23,216.82	174,916.82	
2/1/2020					
5/1/2020	154,100.00	3.190	20,797.21	174,897.21	349,814.03
8/1/2020					
11/1/2020	156,600.00	3.190	18,339.31	174,939.31	
2/1/2021					
5/1/2021	159,100.00	3.190	15,841.54	174,941.54	349,880.85
8/1/2021					
11/1/2021	161,600.00	3.190	13,303.90	174,903.90	
2/1/2022					
5/1/2022	164,200.00	3.190	10,726.38	174,926.38	349,830.27
8/1/2022					
11/1/2022	166,800.00	3.190	8,107.39	174,907.39	
2/1/2023					
5/1/2023	169,400.00	3.190	5,446.93	174,846.93	349,754.31
8/1/2023					
11/1/2023	172,100.00	3.190	2,745.00	174,845.00	
2/1/2024					
5/1/2024					174,845.00
<b>Totals</b>	<b>1,762,400.00</b>		<b>190,179.33</b>	<b>1,952,579.33</b>	<b>1,952,579.33</b>

**Madera Public Financing Authority**  
**Refunding Lease Agreement**  
**(Lease Refinancing Project)**

**Net Debt Service Schedule and Savings Calculation (Cash Flow NPV Basis, Golf Course, Taxable)**

		Prior Issue Reserve Fund		194,704.02					
		Investment Yield		1.00					
Date	Periodic Debt Service	Fiscal Year Debt Service	Prior Issue Periodic Debt Service (*)	Less: RF Earnings	Prior Issue Net Periodic Debt Service	Prior Issue Net Fiscal Year Debt Service	Net Fiscal Year (Savings) / Cost	2.76055 Present Value	
1/5/2018									
2/1/2018			15,093.42		15,093.42			(15,063.56)	
5/1/2018	28,715.51	28,715.51	14,949.75	(973.52)	13,976.23	29,069.64	(354.13)	14,609.65	
8/1/2018			15,093.42		15,093.42			(14,858.47)	
11/1/2018	174,841.21		300,093.42	(973.52)	299,119.90			(121,508.46)	
2/1/2019			12,829.41		12,829.41			(12,457.75)	
5/1/2019	174,898.16	349,739.37	12,707.28	(973.52)	11,733.76	338,776.49	10,962.88	157,355.44	
8/1/2019			12,829.41		12,829.41			(12,288.14)	
11/1/2019	174,916.82		307,829.41	(973.52)	306,855.89			(125,509.41)	
2/1/2020			10,485.95		10,485.95			(9,906.82)	
5/1/2020	174,897.21	349,814.03	10,419.41	(973.52)	9,445.89	339,617.13	10,196.89	155,245.72	
8/1/2020			10,485.95		10,485.95			(9,771.94)	
11/1/2020	174,939.31		320,485.95	(973.52)	319,512.43			(133,808.44)	
2/1/2021			8,023.34		8,023.34			(7,375.21)	
5/1/2021	174,941.54	349,880.85	7,946.97	(973.52)	6,973.45	344,995.18	4,885.67	153,344.87	
8/1/2021			8,023.34		8,023.34			(7,274.80)	
11/1/2021	174,903.90		333,023.34	(973.52)	332,049.82			(141,511.63)	
2/1/2022			5,441.57		5,441.57			(4,866.73)	
5/1/2022	174,926.38	349,830.27	5,389.78	(973.52)	4,416.26	349,931.00	(100.73)	151,455.72	
8/1/2022			5,441.57		5,441.57			(4,800.47)	
11/1/2022	174,907.39		340,441.57	(973.52)	339,468.05			(144,181.02)	
2/1/2023			2,780.37		2,780.37			(2,419.40)	
5/1/2023	174,846.93	349,754.31	2,753.90	(973.52)	1,780.38	349,470.38	283.93	149,569.03	
8/1/2023			2,780.37		2,780.37			(2,386.46)	
11/1/2023	174,845.00		352,780.37	(195,677.54)	157,102.83			15,124.53	
2/1/2024									
5/1/2024	-	174,845.00				159,883.19	14,961.80		
<b>Totals</b>	<b>1,952,579.33</b>	<b>1,952,579.33</b>	<b>2,118,129.27</b>	<b>(206,386.26)</b>	<b>1,911,743.01</b>	<b>1,911,743.01</b>	<b>40,836.32</b>	<b>26,716.27</b>	

**Notes**

(\*) Includes Letter of Credit and Remarketing Fees

**Savings % New -1.01%**  
**Savings % Prior -1.41%**



Madera Public Financing Authority  
Refunding Lease Agreement  
(Lease Refinancing Project)  
Prior Issue Debt Service Schedule and Redemption Provisions (Golf Course)

Date	Beginning Principal	Principal	Ending Principal	Rate	Interest	Periodic Debt Service	Fiscal Year Debt Service	200bp Plus: Letter of Credit Fees	25bp Plus: Remarketing Fees	Adjusted Periodic Debt Service	Adjusted Fiscal Year Debt Service	1/5/2018 Called Bonds	0.00% Call Premium	Periodic Debt Service (*)	Defeasance Debt Service
1/5/2018	1,900,000		1,900,000												1,900,000.00
2/1/2018	1,900,000		1,900,000	0.920	4,405.92	4,405.92		9,500.00	1,187.50	15,093.42					
5/1/2018	1,900,000		1,900,000	0.920	4,262.25	4,262.25	8,668.16	9,500.00	1,187.50	14,949.75	30,043.16				
8/1/2018	1,900,000		1,900,000	0.920	4,405.92	4,405.92		9,500.00	1,187.50	15,093.42					
11/1/2018	1,900,000	285,000	1,615,000	0.920	4,405.92	289,405.92		9,500.00	1,187.50	300,093.42		285,000	-		
2/1/2019	1,615,000		1,615,000	0.920	3,745.03	3,745.03		8,075.00	1,009.38	12,829.41					
5/1/2019	1,615,000		1,615,000	0.920	3,622.91	3,622.91	301,179.78	8,075.00	1,009.38	12,707.28	340,723.53				
8/1/2019	1,615,000		1,615,000	0.920	3,745.03	3,745.03		8,075.00	1,009.38	12,829.41					
11/1/2019	1,615,000	295,000	1,320,000	0.920	3,745.03	298,745.03		8,075.00	1,009.38	307,829.41		295,000	-		
2/1/2020	1,320,000		1,320,000	0.920	3,060.95	3,060.95		6,500.00	825.00	10,485.95					
5/1/2020	1,320,000		1,320,000	0.920	2,994.41	2,994.41	308,545.42	6,500.00	825.00	10,419.41	341,564.17				
8/1/2020	1,320,000		1,320,000	0.920	3,060.95	3,060.95		6,500.00	825.00	10,485.95					
11/1/2020	1,320,000	310,000	1,010,000	0.920	3,060.95	313,060.95		6,500.00	825.00	320,485.95		310,000	-		
2/1/2021	1,010,000		1,010,000	0.920	2,342.09	2,342.09		5,050.00	631.25	8,023.34					
5/1/2021	1,010,000		1,010,000	0.920	2,265.72	2,265.72	320,729.72	5,050.00	631.25	7,946.97	346,942.22				
8/1/2021	1,010,000		1,010,000	0.920	2,342.09	2,342.09		5,050.00	631.25	8,023.34					
11/1/2021	1,010,000	325,000	685,000	0.920	2,342.09	327,342.09		5,050.00	631.25	333,023.34		325,000	-		
2/1/2022	685,000		685,000	0.920	1,588.45	1,588.45		3,425.00	428.13	5,441.57					
5/1/2022	685,000		685,000	0.920	1,536.65	1,536.65	332,809.29	3,425.00	428.13	5,389.78	351,878.04				
8/1/2022	685,000		685,000	0.920	1,588.45	1,588.45		3,425.00	428.13	5,441.57					
11/1/2022	685,000	335,000	350,000	0.920	1,588.45	336,588.45		3,425.00	428.13	340,441.57		335,000	-		
2/1/2023	350,000		350,000	0.920	811.62	811.62		1,750.00	218.75	2,780.37					
5/1/2023	350,000		350,000	0.920	785.15	785.15	339,773.67	1,750.00	218.75	2,753.90	351,417.42				
8/1/2023	350,000		350,000	0.920	811.62	811.62		1,750.00	218.75	2,780.37					
11/1/2023	350,000	350,000	-	0.920	811.62	350,811.62		1,750.00	218.75	352,780.37		350,000	-		
2/1/2024							351,623.23				355,560.73				
5/1/2024															
<b>Totals</b>		<b>1,900,000</b>			<b>63,329.27</b>	<b>1,963,329.27</b>	<b>1,963,329.27</b>	<b>137,600.00</b>	<b>17,200.00</b>	<b>2,118,129.27</b>	<b>2,118,129.27</b>	<b>1,900,000</b>	<b>-</b>	<b>-</b>	<b>1,900,000.00</b>

Notes

(\*) Includes Interest on Outstanding Balance at 12.00% During Escrow Period

**Madera Public Financing Authority**  
**Refunding Lease Agreement**  
**(Lease Refinancing Project)**

Gross Debt Service Schedule and Savings Calculation (Cash Flow NPV Basis, Police Station, Tax-Exempt)

Date	Principal	Rate	Interest	Periodic Debt Service	Fiscal Year Debt Service	Prior Issue Periodic Debt Service	Prior Issue Fiscal Year Debt Service	Fiscal Year (Savings) / Cost	2.76055 Present Value
1/5/2018									
5/1/2018	54,500.00	2.760	7,965.76	62,465.76					61,916.35
6/1/2018					62,465.76	65,248.51	65,248.51	(2,782.75)	(64,527.03)
11/1/2018	50,900.00	2.760	11,608.56	62,508.56					61,115.21
12/1/2018						65,248.51			(63,648.50)
5/1/2019	51,600.00	2.760	10,906.14	62,506.14					60,280.81
6/1/2019					125,014.70	65,248.51	130,497.02	(5,482.32)	(62,781.94)
11/1/2019	52,300.00	2.760	10,194.06	62,494.06					59,448.60
12/1/2019						65,248.51			(61,927.17)
5/1/2020	53,000.00	2.760	9,472.32	62,472.32					58,618.82
6/1/2020					124,966.38	65,248.51	130,497.02	(5,530.64)	(61,084.04)
11/1/2020	53,700.00	2.760	8,740.92	62,440.92					57,791.67
12/1/2020						65,248.51			(60,252.39)
5/1/2021	54,500.00	2.760	7,999.86	62,499.86					57,058.65
6/1/2021					124,940.78	65,248.51	130,497.02	(5,556.24)	(59,432.06)
11/1/2021	55,200.00	2.760	7,247.76	62,447.76					56,234.89
12/1/2021						65,248.51			(58,622.91)
5/1/2022	56,000.00	2.760	6,486.00	62,486.00					55,503.23
6/1/2022					124,933.76	65,248.51	130,497.02	(5,563.26)	(57,824.76)
11/1/2022	56,800.00	2.760	5,713.20	62,513.20					54,771.39
12/1/2022						65,248.51			(57,037.49)
5/1/2023	57,500.00	2.760	4,929.36	62,429.36					53,953.23
6/1/2023					124,942.56	65,248.51	130,497.02	(5,554.46)	(56,260.93)
11/1/2023	58,300.00	2.760	4,135.86	62,435.86					53,224.21
12/1/2023						65,248.51			(55,494.95)
5/1/2024	59,100.00	2.760	3,331.32	62,431.32					52,495.75
6/1/2024					124,867.18	65,248.51	130,497.02	(5,629.84)	(54,739.39)
11/1/2024	59,900.00	2.760	2,515.74	62,415.74					51,768.10
12/1/2024						65,248.51			(53,994.12)
5/1/2025	60,800.00	2.760	1,689.12	62,489.12					51,123.32
6/1/2025					124,904.86	65,248.51	130,497.02	(5,592.16)	(53,259.00)
11/1/2025	61,600.00	2.760	850.08	62,450.08					50,395.78
12/1/2025						65,248.51			(52,533.89)
5/1/2026									-
6/1/2026					62,450.08		65,248.51	(2,798.43)	-
<b>Totals</b>	<b>895,700.00</b>		<b>103,786.06</b>	<b>999,486.06</b>	<b>999,486.06</b>	<b>1,043,976.16</b>	<b>1,043,976.16</b>	<b>(44,490.10)</b>	<b>(37,720.57)</b>
									-
									-
								<b>(44,490.10)</b>	<b>(37,720.57)</b>
								<b>Savings % New</b>	<b>4.21%</b>
								<b>Savings % Prior</b>	<b>4.45%</b>

**Madera Public Financing Authority  
Refunding Lease Agreement  
(Lease Refinancing Project)**

**Prior Issue Debt Service Schedule and Redemption Provisions (Police Station)**

Date	Beginning Principal	Principal	Ending Principal	Rate	Interest	Periodic Debt Service	Fiscal Year Debt Service	6/1/2018 Called Bonds	0.00% Call Premium	Periodic Debt Service (*)	Defeasance Debt Service
1/5/2018											
6/1/2018	847,855.57	43,543.41	804,312.16	5.120	21,705.10	65,248.51	65,248.51			65,248.51	869,560.67
12/1/2018	804,312.16	44,658.12	759,654.04	5.120	20,590.39	65,248.51		44,658.12	-		
6/1/2019	759,654.04	45,801.37	713,852.67	5.120	19,447.14	65,248.51		45,801.37	-		
12/1/2019	713,852.67	46,973.88	666,878.79	5.120	18,274.63	65,248.51		46,973.88	-		
6/1/2020	666,878.79	48,176.41	618,702.38	5.120	17,072.10	65,248.51	260,994.04	48,176.41	-		
12/1/2020	618,702.38	49,409.73	569,292.65	5.120	15,838.78	65,248.51		49,409.73	-		
6/1/2021	569,292.65	50,674.62	518,618.03	5.120	14,573.89	65,248.51		50,674.62	-		
12/1/2021	518,618.03	51,971.89	466,646.14	5.120	13,276.62	65,248.51		51,971.89	-		
6/1/2022	466,646.14	53,302.37	413,343.77	5.120	11,946.14	65,248.51	260,994.04	53,302.37	-		
12/1/2022	413,343.77	54,666.91	358,676.86	5.120	10,581.60	65,248.51		54,666.91	-		
6/1/2023	358,676.86	56,066.38	302,610.48	5.120	9,182.13	65,248.51		56,066.38	-		
12/1/2023	302,610.48	57,501.68	245,108.80	5.120	7,746.83	65,248.51		57,501.68	-		
6/1/2024	245,108.80	58,973.72	186,135.08	5.120	6,274.79	65,248.51	260,994.04	58,973.72	-		
12/1/2024	186,135.08	60,483.45	125,651.63	5.120	4,765.06	65,248.51		60,483.45	-		
6/1/2025	125,651.63	62,031.83	63,619.80	5.120	3,216.68	65,248.51		62,031.83	-		
12/1/2025	63,619.80	63,619.80	-	5.120	1,628.71	65,248.51		63,619.80	-		
6/1/2026							195,745.53				
<b>Totals</b>		<b>847,855.57</b>			<b>196,120.59</b>	<b>1,043,976.16</b>	<b>1,043,976.16</b>	<b>804,312.16</b>	<b>-</b>	<b>65,248.51</b>	<b>869,560.67</b>

WHEN RECORDED RETURN TO:

Orrick, Herrington & Sutcliffe LLP  
405 Howard Street  
San Francisco, California 94105  
Attn: \_\_\_\_\_

---

This document is recorded for the benefit of the City of Madera and the recording is fee-exempt under Section 27383 of the California Government Code.

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**LEASE**  
**(CITY OF MADERA)**

by and between the

MADERA PUBLIC FINANCING AUTHORITY

and the

CITY OF MADERA

Executed and entered into as of January 1, 2018

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## LEASE

This Lease, dated as of January 1, 2018, between the CITY OF MADERA, a municipal corporation duly organized and existing under the laws of the State of California (the "City"), as lessor, and the MADERA PUBLIC FINANCING AUTHORITY, a public entity and agency, duly organized and existing pursuant to an Agreement entitled "Joint Exercise of Powers Agreement by and between the City of Madera and the Redevelopment Agency of the City of Madera" (the "Authority"), as lessee;

### WITNESSETH:

**WHEREAS**, the City presently owns the parcels of real property described in Exhibit A attached hereto and by this reference incorporated herein, and the City wishes to lease said parcels of real property and all buildings, structures, fixtures and improvements thereon (the "Facilities") to the Authority; and

**WHEREAS**, all acts, conditions and things required by law to exist, to have happened and to have been performed precedent to and in connection with the execution and entering into of the Lease do exist, have happened and have been performed in regular and due time, form and manner as required by law, and the parties hereto are now duly authorized to execute and enter into this Lease;

**NOW, THEREFORE**, in consideration of the premises and of the mutual agreements and covenants contained herein and for other valuable consideration, the parties hereto do hereby agree as follows:

#### SECTION 1. Definitions.

Unless the context otherwise requires, the terms defined in this Section shall, for all purposes of this Lease, have the meanings herein specified, the following definitions to be equally applicable to both the singular and plural forms of any of the terms herein defined. Capitalized terms used herein and not otherwise defined shall have the meanings set forth in the Sublease.

**"Assignment Agreement"** means that certain Assignment Agreement executed and entered into as of the date hereof by and between the Authority and the Purchaser, as originally executed and entered into and as it may from time to time be amended in accordance therewith.

**"Authority"** means Madera Public Financing Authority, acting as lessee hereunder.

**"City"** means the City of Madera, a municipal corporation duly organized and existing under and by virtue of the laws of the State of California.

**"Expiry Date"** means \_\_\_\_\_ 1, \_\_\_\_, with respect to the Facilities.

**“Facilities”** means the real property and improvements thereon described in Exhibit A hereto as such property description may be amended or modified (including the release, addition or substitution of property as part of the Facilities), in accordance with Sections 2.03 of the Sublease, subject , however, to Permitted Encumbrances.

**“Lease”** means this lease, as originally executed and entered into and as it may from time to time be amended in accordance herewith.

**“Purchaser”** means ZB, N.A.

**“Sublease”** means that certain sublease entitled “Sublease (City of Madera),” dated as of the date hereof, entered into between the Authority, as sublessor, and the City, as sublessee, as originally executed and entered into and as it may from time to time be amended in accordance therewith.

## **SECTION 2. Purpose and Term.**

The City hereby leases to the Authority and the Authority hereby hires from the City, on the terms and conditions hereinafter set forth, the Facilities. The parties hereto hereby agree that said lease of the Facilities by the City to the Authority serves the public purposes of the City and the Authority.

The term of this Lease shall commence on February 1, 2018 or the date the Lease is recorded, whichever is earlier, and shall end on the Expiry Date, unless such term is extended or sooner terminated as hereinafter provided. If on an Expiry Date, the principal components of the Base Rental Payments and all Additional Rental attributable to the related Facilities shall not have been paid, or provision therefor made in accordance with Section 8.02 of the Sublease, for any reason, including, without limitation, because the Base Rental Payments shall have been abated at any time and for any reason, then the term hereof with respect to such Facilities shall be extended until 10 days after all the principal components of the Base Rental Payments and all Additional Rental attributable to the related Facilities have been paid, or provision therefor made in accordance with Section 8.02 of the Sublease, except that the term hereof shall in no event be extended beyond 10 years after the Expiry Date. If prior to the Expiry Date, the principal components of the Base Rental Payments and all Additional Rental attributable to the related Facilities have been paid, or provision therefor made, the term hereof with respect to such Facilities shall end 10 days thereafter or 10 days after written notice by the Authority to the City, whichever is earlier.

## **SECTION 3. Rental.**

The Authority agrees to pay to the City as advance rental for the use and right to possession of the Facilities for the term of this Lease the sum of \_\_\_\_\_ Dollars (\$\_\_\_\_\_). Said advance rental shall be paid from proceeds of the assignment of this Lease and Sublease to the Purchaser. The Authority hereby waives any right that it may have under the laws of the State of California to a rebate of such rental in full or in part in the event there is substantial interference with the use and right to possession by the Authority of the Facilities or portion thereof as a result of material damage, destruction or condemnation.



#### **SECTION 4. Default.**

The Authority shall be deemed to be in default hereunder:

(a) if the Authority shall fail to keep, observe or perform any term, covenant or condition contained herein to be kept or performed by the Authority, or

(b) if (1) the Authority's interest in this Lease or any part thereof be assigned or transferred without the written consent of the City, either voluntarily or by operation of law or otherwise, or if (2) any proceeding under the United States Bankruptcy Code or any federal or state bankruptcy, insolvency or similar law or any law providing for the appointment of a receiver, liquidator, trustee or similar official of the Authority or of all or substantially all of its assets is instituted by or with the consent of the Authority, or is instituted without its consent and is not permanently stayed or dismissed within sixty (60) days, or if the Authority offers to the Authority's creditors to effect a composition or extension of time to pay the Authority's debts, or asks, seeks or prays for a reorganization or to effect a plan of reorganization or for readjustment of the Authority's debts, or if the Authority shall make a general assignment or any assignment for the benefit of the Authority's creditors.

Upon any such default it shall be lawful for the City to exercise any and all rights and remedies available pursuant to law, except that no merger of this Lease and of the Sublease shall be deemed to occur as a result thereof; provided, however, that the City shall have no power to terminate this Lease by reason of any default on the part of the Authority.

Neither the City nor the Authority shall in any event be in default in the performance of any of its obligations hereunder or imposed by law unless and until the City or the Authority (as the case may be) shall have failed to perform such obligations within sixty (60) days or such additional time as is reasonably required to correct any such default after notice by the Purchaser, the Authority or the City to the nonperforming party properly specifying wherein such party has failed to perform any such obligation.

#### **SECTION 5. Eminent Domain.**

If the whole or any part of the Facilities shall be taken under the power of eminent domain, the interest of the Authority shall be recognized and is hereby determined to be the amount of the unpaid principal components of Base Rental Projects (as that term is defined in the Sublease) due under the Sublease, including all accrued interest thereon, and the amount of the unpaid Additional Rental (as that term is defined in the Sublease) due under the Sublease, and the balance of the award, if any, shall be paid to the City.

#### **SECTION 6. Right of Entry.**

The City and its assignees shall have the right to enter the Facilities during reasonable business hours (and in emergencies at all times) (a) to inspect the same, (b) for any purpose connected with the City's or the Authority's rights or obligations under this Lease or the Sublease and (c) for all other lawful purposes.

**SECTION 7. Quiet Enjoyment by the Authority.**

The Authority shall at all times during the term of this Lease peaceably and quietly have, hold and enjoy the Facilities without suit, trouble or hindrance from the City. Notwithstanding the foregoing covenant, the Authority shall not have any right to receive a rebate of the advance rental paid pursuant to Section 3 hereof or any portion thereof in the event there is a substantial interference with the use and right to possession by the Authority of the Facilities as a result of material damage, destruction or condemnation.

**SECTION 8. Waiver of Personal Liability.**

All liabilities under this Lease on the part of the Authority shall be solely liabilities of the Authority, as a public entity and agency, and the City hereby releases each and every member, director, officer, agent, or employee of the Authority of and from any personal or individual liability under this Lease. No member, director, officer, agent, or employee of the Authority shall at any time or under any circumstances be individually or personally liable under this Lease to the City or to any other party for any act or omission of the Authority hereunder.

**SECTION 9. Assignment.**

The City acknowledges and affirms the assignment by the Authority of its rights under this Lease to the Purchaser, under the terms of this Assignment Agreement. The Authority shall not otherwise have any rights to assign or sublet the Facilities.

**SECTION 10. Law Governing.**

This Lease shall be governed exclusively by the provisions hereof and by the laws of the State of California.

**SECTION 11. Notices.**

All approvals, authorizations, consents, demands, designations, notices, offers, requests, statements or other communications hereunder by either party to the other shall be in writing and shall be sufficiently given and served upon the other party if delivered personally or if mailed by United States first class mail, postage prepaid, to its address set forth below, or at such other address as such party may provide to the other party in writing from time to time, namely:

If to the City:	City of Madera 205 West Fourth Street Madera, CA 93637 Attention: _____
-----------------	----------------------------------------------------------------------------------

If to the Authority:	Madera Public Financing Authority 205 West Fourth Street Madera, CA 93637
----------------------	---------------------------------------------------------------------------------

Attention: \_\_\_\_\_

**SECTION 12.           Validity and Severability.**

If any one or more of the agreements, conditions, covenants or terms contained herein required to be observed or performed by or on the part of the City or Authority shall be contrary to law, then such agreement or agreements, such condition or conditions, such covenant or covenants or such term or terms shall be null and void and shall be deemed severable from the remaining agreements, conditions, covenants and terms hereof and shall in no way affect the validity hereof. The City and Authority hereby declare that they would have executed and entered into this Lease and each and every other article, section, paragraph, subdivision, sentence, clause and phrase hereof irrespective of the fact that any one or more of the articles, sections, paragraphs, subdivisions, sentences, clauses or phrases hereof or the application thereof to any person or circumstances may be held to be unconstitutional, unenforceable or invalid.

**SECTION 13.           Purpose of Lease.**

The Authority covenants that during the term of this Lease, except as hereinafter provided, it will use, or cause the use of, the Facilities for use for City purposes and for all purposes incidental thereto provided that in the event of default by the City under the Sublease the Authority may exercise the remedies provided in the Sublease.

**SECTION 14.           Waiver.**

Failure of the City to take advantage of any default on the part of the Authority shall not be, or be construed as, a waiver thereof, nor shall any custom or practice which may grow up between the parties in the course of administering this Lease be construed to waive or to lessen the right of the City to insist upon performance by the Authority of any term, covenant or condition hereof, or to exercise any rights given the City on account of such default. A waiver of a particular default shall not be deemed to be a waiver of a subsequent default of the same kind or any other subsequent default. The acceptance of rent hereunder shall not be, nor be construed to be, a waiver of any term, covenant or condition of this Lease.

**SECTION 15.           Section Headings.**

All section headings contained are for convenience of reference only and are not intended to define or limit the scope of any provision of this Lease.

**SECTION 16.           Execution in Counterparts.**

This Lease may be executed in any number of counterparts, each of which shall be deemed to be an original, but all together shall constitute but one and the same Lease.

**IN WITNESS WHEREOF**, the City and the Authority have caused this Lease to be executed by their respective duly authorized officers, all as of the day and year first above written.

CITY OF MADERA, Lessor

By \_\_\_\_\_  
Authorized Officer

Attest:

\_\_\_\_\_  
City Clerk

MADERA PUBLIC FINANCING  
AUTHORITY, Lessee

By \_\_\_\_\_  
Authorized Officer

Attest:

\_\_\_\_\_  
Secretary

## **EXHIBIT A**

### **FACILITIES**

All of that certain real property and improvements thereon situated in the City of Madera, State of California, known as the Corporation Yard described as follows:

APN 011-143-002 – 2.2 acres – C2 (Heavy Commercial) Zoning

APN 011-143-003 – 3.8 acres – PF (Public Facility) Zoning

APN 011-143-011 – 1.1 acres – I (Industrial) Zoning

[attach legal description from Title Company]

WHEN RECORDED RETURN TO:

Orrick, Herrington & Sutcliffe LLP  
405 Howard Street  
San Francisco, California 94105  
Attn: \_\_\_\_\_

---

This document is recorded for the benefit of the City of Madera and the recording is fee-exempt under Section 27383 of the California Government Code.

---

**SUBLEASE**  
**(CITY OF MADERA)**

by and between the

MADERA PUBLIC FINANCING AUTHORITY

and the

CITY OF MADERA

Executed and Entered into as of January 1, 2018

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## SUBLEASE

This Sublease (the "Sublease"), dated as of January 1, 2018, by and between MADERA PUBLIC FINANCING AUTHORITY (the "Authority"), a public entity and agency, duly organized and existing pursuant to an Agreement entitled "Joint Exercise of Powers Agreement" by and between the City of Madera and the Redevelopment Agency of the City of Madera, as lessor, and the CITY OF MADERA (the "City"), a municipal corporation duly organized and validly existing under the laws of the State of California, as lessee;

## WITNESSETH:

**WHEREAS**, the City has leased certain parcels of real property and all buildings, structures and fixtures thereon and improvements thereto (the "Facilities") to the Authority pursuant to a lease, entitled "Lease (City of Madera)," dated as of January 1, 2018, between the City and the Authority (the "Lease"); and

**WHEREAS**, the City will sublease the Facilities from the Authority pursuant to this Sublease; and

**WHEREAS**, all acts, conditions and things required by law to exist, to have happened and to have been performed precedent to and in connection with the execution and entering into of the Sublease do exist, have happened and have been performed in regular and due time, form and manner as required by law, and the parties hereto are now duly authorized to execute and enter into the Sublease;

**NOW, THEREFORE**, in consideration of the premises and of the mutual agreements and covenants contained herein and for other valuable consideration, the parties hereto do hereby agree as follows:

## ARTICLE I

### DEFINITIONS

**Section 1.01. Definitions.** Unless the context otherwise requires, the terms defined in this section shall for all purposes hereof and of any amendment hereof have the meanings defined herein:

***"Additional Rental"*** means all amounts payable to the Authority from the City as Additional Rental pursuant to Section 3.02 hereof.

***"Applicable Environmental Laws"*** means and shall include, but shall not be limited to, the Comprehensive Environmental Response, Compensation, and Liability Act ("CERCLA"), 42 USC Sections 9601 et seq.; the Resource Conservation and Recovery Act ("RCRA"), 42 USC Sections 6901 et seq.; the California Hazardous Waste Control Law ("HWCL"), California Health & Safety Code Sections 25100 et seq.; the Hazardous Substance Account Act ("HSAA"), California Health & Safety Code sections 25300 et seq.; the Porter-Cologne Water Quality Control Act (the "Porter-Cologne Act"), California Water Code Sections 1300 et seq.; the Air Resources Act, California Health & Safety Code Sections 3900 et seq.; the

Safe Drinking Water & Toxic Enforcement Act, California Health & Safety Code Sections 25249.5 et seq.; and the regulations under each thereof; and any other local, state, and/or federal laws or regulations, whether currently in existence or hereafter enacted, that govern:

- (1) the existence, cleanup, and/or remedy of contamination on property;
- (2) the protection of the environment from spilled, deposited, or otherwise emplaced contamination;
- (3) the control of hazardous wastes; or
- (4) the use, generation, transport, treatment, removal, or recovery of Hazardous Substances, including building materials.

***“Assignment Agreement”*** means that certain Assignment Agreement executed and entered into as of the date hereof by and between the Authority and the Purchaser, as originally executed and entered into and as it may from time to time be amended in accordance with its terms.

***“Authority”*** means the Madera Public Financing Authority.

***“Base Rental” or “Base Rental Payments”*** means all amounts payable to the Authority from the City as Base Rental pursuant to Section 3.01 hereof and Exhibit B-3 hereto. The Base Rental Payments shall include the Series A Tax-Exempt Base Rental Payments set forth in Exhibit B-1 hereto and the Series B Taxable Base Rental Payments set forth in Exhibit B-2 hereto.

***“Certification” or “Request”*** means, with respect to the City, an instrument in writing signed on behalf of the City by the Mayor, Director of Finance or City Administrator or any such officer’s designee or any other officer of the City duly authorized by the City for that purpose and, with respect to the Authority, an instrument in writing signed on behalf of the Authority by its Chairperson, Executive Director, Secretary or Treasurer or any other person (whether or not an officer of the Authority) who is specifically authorized by resolution of the Authority to sign or execute such a document on its behalf.

***“City”*** means the City of Madera, California, a municipal corporation duly organized and existing under the laws of the State of California.

***“Code”*** means the Internal Revenue Code of 1986, as amended, and the regulations issued thereunder.

***“Event of Default”*** means any of the events described in Section 7.01 hereof as an “Event of Default.”

***“Expiry Date”*** means \_\_\_\_\_ 1, \_\_\_\_.

***“Facilities”*** means the real property and improvements thereon described in Exhibit A hereto as such property description may be amended or modified (including the

release, addition or substitution of property as part of the Facilities), in accordance with Sections 2.04 of this Sublease, subject, however, to Permitted Encumbrances.

**“Hazardous Substance”** any substance that shall, at any time, be listed as “hazardous” or “toxic” in any Applicable Environmental Law or that has been or shall be determined at any time by any agency or court to be a hazardous or toxic substance regulated under Applicable Environmental Laws; and also means, without limitation, raw materials, building components, the products of any manufacturing, or other activities on the facilities, wastes, petroleum, and source, special nuclear, or by-product material as defined by the Atomic Energy Act of 1954, as amended (42 USC Sections 3011 et seq.)

**“Insurance Consultant”** means an individual or firm employed by the City as an independent contractor, experienced in actuarial analysis or the field of risk management.

**“Interest Payment Date”** means a date on which the interest component of the Base Rental Payments is due and payable.

**“Lease”** means that certain lease, entitled “Lease (City of Madera),” dated as of the date hereof, by and between the City, as lessor and the Authority, as lessee, as originally executed and entered into and as it may from time to time be amended in accordance with its terms.

**“Opinion of Counsel”** means a written opinion of counsel of recognized national standing in the field of law relating to municipal bonds, appointed and paid by the City.

**“Permitted Encumbrances”** means, as of any particular time:

(1) liens for general *ad valorem* taxes and assessments, if any, not then delinquent;

(2) the Lease, as it may be amended from time to time;

(3) the Assignment Agreement, as it may be amended from time to time;

(4) the Sublease, as it may be amended from time to time;

(5) any right or claim of any mechanic, laborer, materialman, supplier or vendor filed or perfected in the manner prescribed by law;

(6) easements, rights of way, mineral rights, drilling rights and other rights, reservations, covenants, conditions or restrictions which exist of record as of the date the term hereof commences and which the City certifies in writing will not materially impair the use of the Facilities by the City; and

(7) easements, rights of way, mineral rights, drilling rights and other rights, reservations, covenants, conditions or restrictions established following the date of recordation of the Sublease and to which the City and the Purchaser consent in writing.

***“Project”*** means the refinancing of the public golf course and police station as described in Exhibit C hereto.

***“Purchaser”*** means the ZB, N.A.

***“Rental Payments”*** means the Base Rental and the Additional Rental.

***“Series A Tax-Exempt Base Rental Payments”*** means the Base Rental Payments set forth in Exhibit B-1 hereto.

***“Series B Taxable Base Rental Payments”*** means the Base Rental Payments set forth in Exhibit B-2 hereto.

***“Sublease”*** means this Sublease (City of Madera), as originally executed and entered into and as it may from time to time be amended in accordance herewith.

## ARTICLE II

### PURPOSE AND TERM

**Section 2.01. Purpose.** The Authority hereby subleases the Facilities to the City and the City hereby subleases the Facilities from the Authority on the conditions and terms hereinafter set forth, and subject to all easements, encumbrances and restrictions that existed at the commencement of the term hereof. The City hereby agrees and covenants during the term hereof that, except as hereinafter provided, it will use the Facilities for public purposes of the City so as to afford the public the benefits contemplated hereby, and the City hereby further agrees and covenants during the term hereof, except as otherwise provided herein, that it will not abandon or vacate the Facilities.

**Section 2.02. Term.** The term hereof shall commence on February 1, 2018, or the date the Sublease is recorded, whichever is earlier, and shall end on the Expiry Date for the related Facilities. If on the Expiry Date, the principal components of the Base Rental Payments and all Additional Rental attributable to the related Facilities shall not have been paid, for any reason, including, without limitation, because the Base Rental Payments shall have been abated at any time and for any reason, then the term hereof with respect to such Facilities shall be extended until 10 days after all the principal components of the Base Rental Payments and all Additional Rental attributable to the related Facilities have been paid, except that the term hereof shall in no event be extended beyond 10 years after the Expiry Date. If prior to an Expiry Date, the principal components of the Base Rental Payments and all Additional Rental attributable to the related Facilities have been paid, or provision therefor made, the term hereof with respect to such Facilities shall end 10 days thereafter or 10 days after written notice by the Authority to the City, whichever is earlier.

**Section 2.03. Occupancy.** It is contemplated that the City will have the use and occupancy of the Facilities for public purposes on the commencement date of this Sublease and that the payments of Base Rental shall be due on the Base Rental Payment Dates, all as provided in Section 3.01 hereof and consistent with Exhibit B attached hereto and made a part hereof.

**Section 2.04. Substitution; Release.** The City and the Authority may substitute real property and the improvements, buildings, fixtures and equipment thereon for all or a part of, or may release a part of, the Facilities for purposes of the Lease and this Sublease, but only with the prior written consent of the Purchaser and after the City shall have filed with the Authority and the Purchaser, all of the following:

(a) Executed copies of the Lease and this Sublease or amendments thereto containing the amended description of the Facilities, including the legal description of the Facilities as modified if necessary.

(b) A Certification of the City, accompanied by a written appraisal from a qualified appraiser, who may but need not be an employee of the City, evidencing that the annual fair rental value of the Facilities which will constitute the Facilities after such substitution (which may be based on the construction or acquisition cost or replacement cost of such facility to the City) or withdrawal will be at least equal to 100% of the maximum amount of Base Rental Payments becoming due in the then current year or in any subsequent year.

(c) With respect to substitution, a leasehold owner's policy or policies or a commitment for such policy or policies or an amendment or endorsement to an existing policy or policies resulting in title insurance with respect to the Facilities after such substitution in an amount at least equal to the amount of such insurance provided with respect to the Facilities prior to such substitution; each such insurance instrument, when issued, shall name the Purchaser as the insured, and shall insure the leasehold estate of the Authority in such substituted property subject only to such exceptions as do not substantially interfere with the City's right to use and occupy such substituted property and as will not result in an abatement of Base Rental Payments payable by the City under this Sublease.

(d) An Opinion of Counsel stating that such amendment or modification (i) will, upon the execution and delivery thereof, be valid and binding upon the City; and (ii) will not, in and of itself, cause the interest component of the Series A Tax-Exempt Base Rental Payments to be included in gross income for federal income tax purposes.

(e) If at any time the Facilities are damaged or destroyed by earthquake or other uninsured casualty for which rental interruption insurance is not available, the City shall, to the extent permitted by law, substitute property for the Facilities pursuant to this Section 2.04; provided, however, that nothing in this paragraph shall supercede the provisions of Section 3.06 hereof.

### **ARTICLE III**

#### **RENTAL PAYMENTS**

**Section 3.01. Base Rental.** The City shall pay as Base Rental hereunder, without deduction or offset of any kind except as otherwise expressly provided herein, annual rental payments with interest and principal components, the interest components being payable semiannually, in accordance with the Base Rental Payment Schedules set forth in Exhibit B hereto and made a part hereof. Each Base Rental Payment shall be payable in funds that are



immediately available to the Authority no later than the due date. The interest components of the Base Rental Payments payable by the City hereunder shall be paid by the City as and shall constitute interest paid on the principal components of the Base Rental Payments payable by the City hereunder calculated on the basis of a 360-day year composed of twelve 30-day months. Each aggregate annual payment of Base Rental shall be for the use of the Facilities for the twelve-month period ending on the day immediately preceding the \_\_\_\_\_ 1 on which the principal component of such Base Rental is due. If the term of the Sublease shall have been extended pursuant to Section 2.02 hereof, Base Rental Payments shall continue to be due on \_\_\_\_\_ 1 and \_\_\_\_\_ 1 in each year, and payable as hereinabove described, continuing to and including the date of termination of the Sublease. Upon such extension of the Sublease, the principal and interest components of the Base Rental Payments shall be established so that the principal components will in the aggregate be sufficient to pay all unpaid principal components and interest components will be sufficient to pay all unpaid interest components plus interest on the extended principal components at a rate equal to the composite rate on the related unpaid Base Rental Payments.

**Section 3.02. Additional Rental.** The City shall pay to the Authority as Additional Rental hereunder such amounts in each year as shall be required by the Authority for the payment in full of all costs and expenses incurred by the Authority in connection with the execution, performance or enforcement hereof or any assignment hereof, including but not limited to payment of all fees, costs and expenses and all administrative costs of the Authority in connection with the Facilities, the Sublease and the Assignment Agreement and all taxes, assessments and governmental charges of any nature whatsoever hereafter levied or imposed by any governmental authority against the Authority, the Facilities or the rentals and the other payments required to be made by the City hereunder. Such additional rental shall be billed to the City by the Authority, from time to time, together with a statement certifying that the amount so billed has been paid by the Authority, for one or more of the items above described, or that such amount is then payable by the Authority, for one or more of such items, and all amounts so billed shall be due and payable by the City within thirty (30) days after receipt of the bill by the City.

**Section 3.03. Fair Rental Value.** Each payment of Base Rental and Additional Rental for each rental payment period during the term hereof shall constitute the total rental for such rental payment period, and shall be paid by the City in each rental payment period for and in consideration of the right to the use and occupancy, and the continued quiet enjoyment, of the Facilities during the rental payment period for which such rental is paid. The parties hereto have agreed and determined that such rental does not exceed the fair rental value of the Facilities. In making such determination, consideration has been given to the appraised value or construction cost of the Facilities, other obligations of the parties hereunder, the uses and purposes which may be served by the Facilities and the benefits therefrom which will accrue to the City, its residents and the general public.

**Section 3.04. Payment Provisions.** Each installment of Base Rental payable hereunder shall be paid in lawful money of the United States of America to or upon the order of the Authority or its assignee, and each installment of Additional Rental payable hereunder shall be paid in lawful money of the United States of America to or upon the order of the Authority. Any such installment of Base Rental or Additional Rental accruing hereunder which shall not be paid when due shall bear interest at the composite rate on the related unpaid Base Rental



Payments, or such lesser rate of interest as may be required by law, from the date when the same is due hereunder until the same shall be paid, and all such delinquent installments of Base Rental and the interest thereon shall be paid to or upon the order of the Authority and all such delinquent installments of Additional Rental and interest thereon shall be paid to or upon the order of the Authority. Notwithstanding any dispute between the Authority and the City, the City shall make all Base Rental Payments when due hereunder without deduction or offset of any kind except as otherwise expressly provided herein and shall not withhold any Base Rental Payments pending the final resolution of such dispute. In the event of a determination that the City was not liable for such Base Rental Payments or any portion thereof, such payments or excess of payments, as the case may be, shall be credited against subsequent Base Rental Payments due hereunder. All Base Rental Payments received shall be applied first to the interest components of the Base Rental due hereunder and then to the principal components of the Base Rental due hereunder, but no such application of any payments which are less than the total Base Rental due and owing shall be deemed a waiver of any default hereunder.

**Section 3.05. Appropriations Covenant.** The City agrees and covenants to take such action as may be necessary to include all Base Rental Payments and Additional Rental Payments due hereunder in its annual budgets and to make the necessary annual appropriations for all such payments, and the City further agrees and covenants to furnish to the Purchaser copies of the portion of annual budget of the City relating to the payment of Base Rental Payments and Additional Payments within sixty (60) days after the final adoption thereof. The agreements and covenants on the part of the City contained herein shall be deemed to be and shall be construed to be duties imposed by law and it shall be the duty of each and every public official of the City to take such actions and do such things as are required by law in the performance of the official duties of such officials to enable the City to carry out and perform the agreements and covenants required to be carried out and performed by it contained herein.

**Section 3.06. Rental Abatement.** Except to the extent the proceeds of insurance maintained pursuant to Article VI hereof are available to pay Rental Payments, the Rental Payments shall be abated proportionately, during any period in which by reason of any damage or destruction (other than by condemnation which is hereinafter provided for) there is substantial interference with the use and occupancy of the Facilities by the City, in the proportion in which the cost of that portion of the Facilities rendered unusable bears to the cost of the whole of the Facilities. Such abatement shall continue for the period commencing with such damage or destruction and ending with the substantial completion of the work of repair or reconstruction. In the event of any such damage or destruction, this Sublease shall continue in full force and effect and the City waives the benefits of California Civil Code Section 1932(2) and 1933(4) and Title 11 of the United States Code, Section 365(h) and all other rights to terminate this Sublease by virtue of any such damage or destruction or interference.

## ARTICLE IV

### USE OF PROCEEDS; TAX COVENANTS

**Section 4.01. Use of Proceeds.** The parties hereto agree that the proceeds of the assignment of this Sublease to the Purchaser in an amount equal to the principal components of the Base Rental payable hereunder together with other available moneys, if any, will be used to refinance the Project and to pay the costs of this financing and incidental and related expenses.

**Section 4.02. Tax Covenants.** The City and the Authority shall at all times do and perform all acts and things permitted by law which are necessary or desirable in order to assure that the interest component of the Series A Tax-Exempt Base Rental set forth in Exhibit B-1 will not be included in the gross income of the owner thereof for federal income tax purposes and shall take no action that would result in such interest being so included. To that end, the City shall comply with the provisions of the Tax Certificate, which is incorporated herein by reference as if set forth at this place.

## ARTICLE V

### MAINTENANCE; ALTERATIONS AND ADDITIONS

**Section 5.01. Maintenance and Utilities.** During such time as the City is in possession of the Facilities, all maintenance and repair, both ordinary and extraordinary, of the Facilities shall be the responsibility of the City, which shall at all times maintain or otherwise arrange for the maintenance of the Facilities in first class condition, and the City shall pay for or otherwise arrange for the payment of all utility services supplied to the Facilities, which may include, without limitation, janitor service, security, power, gas, telephone, light, heating, ventilation, air conditioning, water and all other utility services, and shall pay for or otherwise arrange for payment of the cost of the repair and replacement of the Facilities resulting from ordinary wear and tear or want of care on the part of the City or any assignee or sublessee thereof or any other cause and shall pay for or otherwise arrange for the payment of all insurance policies required to be maintained with respect to the Facilities. In exchange for the rental herein provided, the Authority agrees to provide only the Facilities.

**Section 5.02. Changes to the Facilities.** The City shall, at its own expense, have the right to remodel the Facilities or to make additions, modifications and improvements to the Facilities. All such additions, modifications and improvements shall thereafter comprise part of the Facilities and be subject to the provisions of this Sublease. Such additions, modifications and improvements shall not in any way damage the Facilities or cause it to be used for purposes other than those authorized under the provisions of state and federal law; and the Facilities, upon completion of any additions, modifications and improvements made pursuant to this Section, shall be of a value which is at least equal to the value of the Facilities immediately prior to the making of such additions, modifications and improvements.

**Section 5.03. Installation of City's Equipment.** The City and any sublessee may at any time and from time to time, in its sole discretion and at its own expense, install or permit to be installed other items of equipment or other personal property in or upon the

Facilities. All such items shall remain the sole property of such party, in which neither the Authority nor the Purchaser shall have any interest, and may be modified or removed by such party at any time provided that such party shall repair and restore any and all damage to the Facilities resulting from the installation, modification or removal of any such items. Nothing in this Sublease shall prevent the City from purchasing items to be installed pursuant to this Section under a conditional sale or lease purchase contract, or subject to a vendor's lien or security agreement as security for the unpaid portion of the purchase price thereof, provided that no such lien or security interest shall attach to any part of the Facilities.

## ARTICLE VI

### INSURANCE

**Section 6.01. Fire and Extended Coverage Insurance.** The City shall procure or cause to be procured and maintain or cause to be maintained, throughout the term of this Sublease, insurance against loss or damage to any structures constituting any part of the Facilities by fire and lightning, with extended coverage insurance, vandalism and malicious mischief insurance and sprinkler system leakage insurance. Said extended coverage insurance shall, as nearly as practicable, cover loss or damage by explosion, windstorm, riot, aircraft, vehicle damage, smoke and such other hazards as are normally covered by such insurance. Such insurance shall be in an amount equal to the replacement cost (without deduction for depreciation) of all structures constituting any part of the Facilities, excluding the cost of excavations, of grading and filling, and of the land except that such insurance may be subject to deductible clauses for any one loss of not to exceed two hundred fifty thousand dollars (\$250,000). Such insurance may be part of a joint purchase insurance program.

Should the Facilities be damaged or destroyed as a result of an event for which Federal or State disaster aid is available, the Authority and/or the City shall promptly apply for disaster aid. Any disaster aid proceeds received shall be used to repair, reconstruct, restore or replace the damaged or destroyed portions of the Facilities, or, at the option of the City and the Authority, to prepay the Base Rental Payments if permitted under the disaster aid program.

As an alternative to providing the insurance required by the first paragraph of this Section, or any portion thereof, the City may provide a self-insurance method or plan of protection if and to the extent such self-insurance method or plan of protection shall afford reasonable coverage for the risks required to be insured against, in light of all circumstances, giving consideration to cost, availability and similar plans or methods of protection adopted by public entities in the State other than the City. Before such other method or plan may be provided by the City, and annually thereafter so long as such method or plan is being provided to satisfy the requirements of this Sublease, there shall be filed with the Authority a certificate of an actuary, insurance consultant or other qualified person (who may be an employee of the City), stating that, in the opinion of the signer, the substitute method or plan of protection is in accordance with the requirements of this Section and, when effective, would afford reasonable coverage for the risks required to be insured against. There shall also be filed a certificate of the City setting forth the details of such substitute method or plan. In the event of loss covered by any such self-insurance method, the liability of the City hereunder shall be limited to the amounts in the self-insurance reserve fund or funds created under such method.

**Section 6.02. Title Insurance.** The City shall obtain a leasehold owner's policy or policies or a commitment for such policy or policies or an amendment or endorsement to an existing policy or policies resulting in title insurance with respect to the Facilities in an amount at least equal to the principal component of the Base Rental Payments. Such insurance instrument, when issued, shall name the Purchaser as the insured, and shall insure the leasehold estate of the Authority subject only to such exceptions as do not substantially interfere with the City's right to use and occupy the property and as will not result in an abatement of Base Rental Payments payable by the City under this Sublease.

**Section 6.03. Liability Insurance.** Except as hereinafter provided, the City shall procure or cause to be procured and maintain or cause to be maintained, throughout the term of this Sublease, a standard comprehensive general liability insurance policy or policies in protection of the Authority and its members, directors, officers, agents and employees, indemnifying said parties against all direct or contingent loss or liability for damages for personal injury, death or property damage occasioned by reason of the operation of the Facilities, with minimum liability limits of one million dollars (\$1,000,000) for personal injury or death of each person and three million dollars (\$3,000,000) for personal injury or deaths of two or more persons in each accident or event, and in a minimum amount of three hundred thousand dollars (\$300,000) for damage to property resulting from each accident or event. Such public liability and property damage insurance may, however, be in the form of a single limit policy in the amount of three million dollars (\$3,000,000) covering all such risks. Such liability insurance may be part of a joint-purchase insurance program.

As an alternative to providing the insurance required by the first paragraph of this Section, or any portion thereof, the City may provide a self-insurance method or plan of protection if and to the extent such self-insurance method or plan of protection shall afford reasonable protection to the Authority, its members, directors, officers, agents and employees, in light of all circumstances, giving consideration to cost, availability and similar plans or methods of protection adopted by public entities in the State other than the City. Before such other method or plan may be provided by the City, and annually thereafter so long as such method or plan is being provided to satisfy the requirements of this Sublease, there shall be filed with the Authority a certificate of an actuary, independent insurance consultant or other qualified person (who may be an employee of the City), stating that, in the opinion of the signer, the substitute method or plan of protection is in accordance with the requirements of this Section and, when effective, would afford reasonable protection to the Authority, its members, directors, officers, agents and employees against loss and damage from the hazards and risks covered thereby. There shall also be filed a certificate of the City setting forth the details of such substitute method or plan. In the event of loss covered by any such self-insurance method, the liability of the City hereunder shall be limited to the amounts in the self-insurance reserve fund or funds created under such method.

**Section 6.04. Rental Interruption or Use and Occupancy Insurance.** The Authority shall procure or cause to be procured and maintain or cause to be maintained throughout the term of this Sublease, rental interruption or use and occupancy insurance to cover loss, total or partial, of the rental income from or the use of the Facilities as the result of any of the hazards covered by the insurance required by Section 6.01 hereof, in an amount sufficient to pay the maximum annual Base Rental Payments hereunder for any two year period, except that

such insurance may be subject to a deductible clause of not to exceed fifty thousand dollars (\$50,000). Such insurance may be part of a joint-purchase insurance program. Any proceeds of such insurance shall be applied to pay the Base Rental Payments for a period of time during which the payment of rental under this Sublease is abated, and any proceeds of such insurance not so used shall be applied as provided in Section 3.02 to the extent required for the payment of Additional Payments. Notwithstanding anything to the contrary herein, such rental interruption or use and occupancy insurance shall not be self-insured.

**Section 6.05. Insurance Proceeds; Form of Policies.** All policies of insurance required by this Sublease shall provide that the Purchaser shall be given thirty (30) days notice of each expiration thereof or any intended cancellation thereof or reduction of the coverage provided thereby. The Purchaser shall be included as a loss payee or additional insured under the insurance required by Sections 6.01 and 6.03 hereof. The City shall pay when due the premiums for all insurance policies required by this Sublease, and, if requested in writing by the Purchaser, shall promptly furnish evidence of such payments to the Purchaser.

If requested in writing by the Purchaser, the City shall deliver to the Purchaser certificates or duplicate originals or certified copies of each insurance policy described in such schedule.

If the Facilities or any portion thereof are damaged or destroyed, in whole or in part, the City and the Authority shall cause the proceeds of any insurance claim, to be applied to the prompt repair, reconstruction, or replacement of the Facilities, unless the City has exercised its right to prepay this Sublease as provided herein. Any balance of the proceeds not required for such repair, reconstruction, or replacement shall be paid to the City.

## **ARTICLE VII**

### **DEFAULTS AND REMEDIES**

**Section 7.01. Defaults and Remedies.** (a) If the City shall fail to pay any rental payable hereunder when the same becomes due and payable, time being expressly declared to be of the essence of this Sublease, or the City shall fail to keep, observe or perform any other term, covenant or condition contained herein to be kept or performed by the City for a period of thirty (30) days after notice of the same has been given to the City by the Authority, or the Purchaser or for such additional time as is reasonably required, in the sole discretion of the Purchaser, to correct the same, or upon the happening of any of the events specified in subsection (b) of this Section (any such case above being an "Event of Default"), the City shall be deemed to be in default hereunder and it shall be lawful for the Authority to exercise any and all remedies available pursuant to law or granted pursuant to this Sublease. Upon any such default, the Authority, in addition to all other rights and remedies it may have at law, shall have the option to do any of the following:

(1) To terminate this Sublease in the manner hereinafter provided on account of default by the City, notwithstanding any re-entry or re-letting of the Facilities as hereinafter provided for in subparagraph (2) hereof, and to re-enter the Facilities and remove all persons in possession thereof and all personal property whatsoever situated upon the Facilities and place



such personal property in storage in any warehouse or other suitable place located within the City of Madera, California. In the event of such termination, the City agrees to surrender immediately possession of the Facilities, without let or hindrance, and to pay the Authority all damages recoverable at law that the Authority may incur by reason of default by the City, including, without limitation, any costs, loss or damage whatsoever arising out of, in connection with, or incident to any such re-entry upon the Facilities and removal and storage of such property by the Authority or its duly authorized agents in accordance with the provisions herein contained. Neither notice to pay rent or to deliver up possession of the Facilities given pursuant to law nor any entry or re-entry by the Authority nor any proceeding in unlawful detainer, or otherwise, brought by the Authority for the purpose of effecting such re-entry or obtaining possession of the Facilities nor the appointment of a receiver upon initiative of the Authority to protect the Authority's interest under this Sublease shall of itself operate to terminate this Sublease, and no termination of this Sublease on account of default by the City shall be or become effective by operation of law or acts of the parties hereto, or otherwise, unless and until the Authority shall have given written notice to the City of the election on the part of the Authority to terminate this Sublease.

(2) Without terminating this Sublease, (i) to collect each installment of rent as it becomes due and enforce any other terms or provision hereof to be kept or performed by the City, regardless of whether or not the City has abandoned the Facilities, or (ii) to exercise any and all rights of re-entry upon the Facilities. In the event the Authority does not elect to terminate this Sublease in the manner provided for in subparagraph (1) hereof, the City shall remain liable and agrees to keep or perform all covenants and conditions herein contained to be kept or performed by the City and, if the Facilities are not re-let, to pay the full amount of the rent to the end of the term of this Sublease or, in the event that the Facilities are re-let, to pay any deficiency in rent that results therefrom; and further agrees to pay said rent and/or rent deficiency punctually at the same time and in the same manner as hereinabove provided for the payment of rent hereunder (without acceleration), notwithstanding the fact that the Authority may have received in previous years or may receive thereafter in subsequent years rental in excess of the rental herein specified, and notwithstanding any entry or re-entry by the Authority or suit in unlawful detainer, or otherwise, brought by the Authority for the purpose of effecting such entry or re-entry or obtaining possession of the Facilities. Should the Authority elect to enter or re-enter as herein provided, the City hereby irrevocably appoints the Authority as the agent and attorney-in-fact of the City to re-let the Facilities, or any part thereof, from time to time, either in the Authority's name or otherwise, upon such terms and conditions and for such use and period as the Authority may deem advisable, and to remove all persons in possession thereof and all personal property whatsoever situated upon the Facilities and to place such personal property in storage in any warehouse or other suitable place located in the City of Madera, California, for the account of and at the expense of the City, and the City hereby exempts and agrees to save harmless the Authority from any costs, loss or damage whatsoever arising out of, in connection with, or incident to any such re-entry upon and re-letting of the Facilities and removal and storage of such property by the Authority or its duly authorized agents in accordance with the provisions herein contained. The City agrees that the terms of this Sublease constitute full and sufficient notice of the right of the Authority to re-let the Facilities and to do all other acts to maintain or preserve the Facilities as the Authority deems necessary or desirable in the event of such re-entry without effecting a surrender of this Sublease, and further agrees that no acts of the Authority in effecting such re-letting shall constitute a surrender or termination of this Sublease

irrespective of the use or the term for which such re-letting is made or the terms and conditions of such re-letting, or otherwise, but that, on the contrary, in the event of such default by the City the right to terminate this Sublease shall vest in the Authority to be effected in the sole and exclusive manner provided for in sub-paragraph (1) hereof. The City further waives the right to any rental obtained by the Authority in excess of the rental herein specified and hereby conveys and releases such excess to the Authority as compensation to the Authority for its services in re-letting the Facilities or any part thereof.

The City hereby waives any and all claims for damages caused or which may be caused by the Authority in re-entering and taking possession of the Facilities as herein provided and all claims for damages that may result from the destruction of the Facilities and all claims for damages to or loss of any property belonging to the City, or any other person, that may be in or upon the Facilities.

(b) If (1) the City's interest in this Sublease or any part thereof be assigned or transferred, either voluntarily or by operation of law or otherwise, without the written consent of the Authority, as hereinafter provided for, or (2) the City or any assignee shall file any petition or institute any proceeding under any act or acts, state or federal, dealing with or relating to the subject or subjects of bankruptcy or insolvency, or under any amendment of such act or acts, either as a bankrupt or as an insolvent, or as a debtor, or in any similar capacity, wherein or whereby the City asks or seeks or prays to be adjudicated a bankrupt, or is to be discharged from any or all of the City's debts or obligations, or offers to the City's creditors to effect a composition or extension of time to pay the City's debts or asks, seeks or prays for reorganization or to effect a plan of reorganization, or for a readjustment of the City's debts, or for any other similar relief, or if any such petition or any such proceedings of the same or similar kind or character be filed or be instituted or taken against the City, or if a receiver of the business or of the property or assets of the City shall be appointed by any court, except a receiver appointed at the instance or request of the Authority, or if the City shall make a general or any assignment for the benefit of the City's creditors, or if (3) the City shall abandon or vacate the Facilities, then the City shall be deemed to be in default hereunder.

(c) The Authority shall in no event be in default in the performance of any of its obligations hereunder or imposed by any statute or rule of law unless and until the Authority shall have failed to perform such obligations within thirty (30) days or such additional time as is reasonably required to correct any such default after notice by the City to the Authority properly specifying wherein the Authority has failed to perform any such obligation. In the event of default by the Authority, the City shall be entitled to pursue any remedy provided by law.

(d) In addition to the other remedies set forth in this Section, upon the occurrence of an event of default as described in this Section, the Authority, shall be entitled to proceed to protect and enforce the rights vested in the Authority by this Sublease or by law. The provisions of this Sublease and the duties of the City and of its trustees, officers or employees shall be enforceable by the Authority by mandamus or other appropriate suit, action or proceeding in any court of competent jurisdiction. Without limiting the generality of the foregoing, the Authority shall have the right to bring the following actions:



(1) Accounting. By action or suit in equity to require the City and its trustees, officers and employees and its assigns to account as the trustee of an express trust.

(2) Injunction. By action or suit in equity to enjoin any acts or things which may be unlawful or in violation of the rights of the Authority.

(3) Mandamus. By mandamus or other suit, action or proceeding at law or in equity to enforce the Authority's rights against the City (and its board, officers and employees) and to compel the City to perform and carry out its duties and obligations under the law and its covenants and agreements with the City as provided herein.

Excepting as otherwise provided herein, each and all of the remedies given to the Authority hereunder or by any law now or hereafter enacted are cumulative and the single or partial exercise of any right, power or privilege hereunder shall not impair the right of the Authority to other or further exercise thereof or the exercise of any or all other rights, powers or privileges. The Authority expressly waives the right to receive any amount from the Lessee pursuant to section 1951.2(a)(3) of the California Civil Code. The term "re-let" or "re-letting" as used in this Section shall include, but not be limited to, re-letting by means of the operation by the Authority of the Facilities. If any statute or rule of law validly shall limit the remedies given to the Authority hereunder, the Authority nevertheless shall be entitled to whatever remedies are allowable under any statute or rule of law.

In the event the Authority shall prevail in any action brought to enforce any of the terms and provisions of this Sublease, the City agrees to pay a reasonable amount as and for attorney's fees incurred by the Authority in attempting to enforce any of the remedies available to the Authority hereunder, whether or not a lawsuit has been filed and whether or not any lawsuit culminates in a judgment.

**Section 7.02. Waiver.** Failure of the Authority to take advantage of any default on the part of the City shall not be, or be construed as, a waiver thereof, nor shall any custom or practice which may grow up between the parties in the course of administering this instrument be construed to waive or to lessen the right of the Authority to insist upon performance by the City of any term, covenant or condition hereof, or to exercise any rights given the Authority on account of such default. A waiver of a particular default shall not be deemed to be a waiver of the same or any subsequent default. The acceptance of rent hereunder shall not be, or be construed to be, a waiver of any term, covenant or condition of this Sublease.

**Section 7.03. Assignment.** (a) The Authority and City hereby acknowledge and agree that any assignment of this Sublease shall only be effective against the City unless and until the assignment agreement or a written notice thereof is provided to the City. When presented with the assignment agreement or a notice of the assignment, the City will acknowledge the assignment in writing for the benefit of the Authority or any assignee. The Authority and City agree to keep a complete and accurate record of all such assignments.

(b) The City hereby acknowledges that, pursuant to the Assignment Agreement, all rights, privileges and agreements of the Authority herein, including the giving or receiving of notice, have been assigned to the Purchaser.

## ARTICLE VIII

### EMINENT DOMAIN; PREPAYMENT

**Section 8.01. Eminent Domain.** If the whole of the Facilities or so much thereof as to render the remainder unusable for the purposes for which it was used by the City shall be taken under the power or threat of eminent domain, the term of this Sublease shall cease as of the day that possession shall be so taken. If less than the whole of the Facilities shall be taken under the power or threat of eminent domain and the remainder is usable for the purposes for which it was used by the City at the time of such taking, then this Sublease shall continue in full force and effect as to such remainder, and the parties waive the benefits of any law to the contrary, and in such event there shall be a partial abatement of the rental due hereunder in an amount equivalent to the amount by which the annual payments of principal and interest components of the unpaid Base Rental Payments will be reduced by the application of the award in eminent domain to the prepayment of Base Rental Payments. So long as any Base Rental Payments remain unpaid, any award made in eminent domain proceedings for taking the Facilities or any portion thereof shall be paid to the Purchaser and applied to the prepayment of the Base Rental Payments as provided in Section 8.02 hereof. Any such award made after all of the Base Rental Payments and Additional Payments have been fully paid, or provision therefor made, shall be paid to the City.

**Section 8.02. Prepayment.** (a) The City shall prepay on any date from insurance and eminent domain proceeds, to the extent provided in Sections 6.01 and 8.01 hereof, and from any proceeds of title insurance obtained in connection with the Facilities, all or any part (in an integral multiple of \$5,000) of Base Rental Payments then unpaid so that the aggregate principal and interest components of the Base Rental Payments which shall be payable after such prepayment date shall be as nearly proportional as practicable to the aggregate annual principal and interest components of the Base Rental Payments unpaid prior to the prepayment date, at a prepayment amount equal to the principal and interest components of the Base Rental Payments to the date of prepayment.

(b) [The City may prepay the Series A Tax-Exempt Base Rental Payments in whole on any date on or after \_\_\_\_\_ 1, \_\_\_\_ by giving written notice to the Purchaser at least forty-five (45) days before the date fixed for prepayment and paying to the Purchaser a prepayment price equal the unpaid principal components of the Series A Tax-Exempt Base Rental Payments plus the unpaid interest component thereof from the last payment date to the date fixed for prepayment. The City agrees that if following such prepayment the Facilities are damaged or destroyed or taken by eminent domain, it is not entitled to, and by such prepayment waives the right of, abatement of such prepaid Base Rental Payments and shall not be entitled to any reimbursement of such Base Rental Payments.]

(c) [The City may prepay the Series B Taxable Base Rental Payments in whole on any date on or after \_\_\_\_\_ 1, \_\_\_\_ by giving written notice to the Purchaser at least forty-five (45) days before the date fixed for prepayment and paying to the Purchaser a prepayment price equal the unpaid principal components of the Series B Taxable Base Rental Payments plus the unpaid interest component thereof from the last payment date to the date fixed for prepayment. The City agrees that if following such prepayment the Facilities are damaged or

destroyed or taken by eminent domain, it is not entitled to, and by such prepayment waives the right of, abatement of such prepaid Base Rental Payments and shall not be entitled to any reimbursement of such Base Rental Payments.]

(d) When there shall have been deposited in trust with a financial institution at or prior to the due dates of the Base Rental Payments or date when the City may exercise its option to prepay the Base Rental Payments, in trust for the benefit of the Purchaser and irrevocably appropriated and set aside to the payment of the Base Rental Payments, sufficient moneys or direct obligations of the United States of America (the "Federal Securities"), not redeemable prior to maturity, the principal of and interest on which when due will provide money sufficient to pay all principal of and interest to the due date of the Base Rental Payments or dates when the City may exercise its option to prepay the Base Rental Payments, as the case may be; then and in that event the right, title and interest of the Purchaser in such Base Rental Payments and the obligations of the City hereunder shall thereupon cease, terminate, become void and be completely discharged and satisfied (except for the right of the Purchaser and the obligation of the City to have such moneys and such Federal Securities applied to the payment of the Base Rental Payments) and the Purchaser's interest in and title to the Facilities shall be transferred and conveyed to the City.

## ARTICLE IX

### COVENANTS

**Section 9.01. Right of Entry.** The Authority and its assignees shall have the right (but not the duty) to enter upon and to examine and inspect the Facilities during reasonable business hours (and in emergencies at all times) (a) to inspect the same, (b) for any purpose connected with the Authority's or the City's rights or obligations under this Sublease, and (c) for all other lawful purposes.

**Section 9.02. Liens.** In the event the City shall at any time during the term of this Sublease cause any changes, alterations, additions, improvements or other work to be done or performed or materials to be supplied, in or upon the Facilities, the City shall pay, when due, all sums of money that may become due for, or purporting to be for, any labor, services, materials, supplies or equipment furnished or alleged to have been furnished to or for the City in, upon or about the Facilities and shall keep the Facilities free of any and all mechanics' or materialmen's liens or other liens against the Facilities or the Authority's interest therein. In the event any such lien attaches to or is filed against the Facilities or the Authority's interest therein, the City shall cause each such lien to be fully discharged and released at the time the performance of any obligation secured by any such lien matures or becomes due, except that if the City desires to contest any such lien it may do so in good faith. If any such lien shall be reduced to final judgment and such judgment or such process as may be issued for the enforcement thereof is not promptly stayed, or if so stayed and said stay thereafter expires, the City shall forthwith pay and discharge said judgment. The City agrees to and shall, to the maximum extent permitted by law, indemnify and hold the Authority and its respective members, directors, agents, successors and assigns, harmless from and against, and defend each of them against, any claim, demand, loss, damage, liability or expense (including attorney's fees)

as a result of any such lien or claim of lien against the Facilities or the Authority's interest therein.

**Section 9.03. Quiet Enjoyment.** The parties hereto mutually covenant that the City, by keeping and performing the covenants and agreements herein contained and if not in default hereunder, shall at all times during the term of this Sublease peaceably and quietly have, hold and enjoy the Facilities without suit, trouble or hindrance from the Authority.

**Section 9.04. Authority Not Liable.** The Authority and its members, directors, officers, agents, employees and assignees shall not be liable to the City or to any other party whomsoever for any death, injury or damage that may result to any person or property by or from any cause whatsoever in, on or about the Facilities. The City, to the extent permitted by law, shall indemnify and hold the Authority and its members, directors, officers, agents, employees and assignees, harmless from, and defend each of them against, any and all claims, liens and judgments arising from the construction or operation of the Facilities, including, without limitation, death of or injury to any person or damage to property whatsoever occurring in, on or about the Facilities regardless of responsibility for negligence, but excepting the active negligence of the person or entity seeking indemnity.

**Section 9.05. Assignment and Subleasing.** Neither this Sublease nor any interest of the City hereunder shall be mortgaged, pledged, assigned, sublet or transferred by the City by voluntary act or by operation of law or otherwise, except with the prior written consent of the Purchaser, which in the case of subletting, shall not be unreasonably withheld; provided such subletting shall not affect the tax-exempt status of the interest components of the Series A Tax-Exempt Base Rental Payments payable by the City hereunder, as evidenced by an Opinion of Counsel to such effect. No such mortgage, pledge, assignment, sublease or transfer shall in any event affect or reduce the obligation of the City to make the Base Rental Payments and Additional Payments required hereunder.

**Section 9.06. Title to Facilities.** During the term of this Sublease, the Authority shall hold leasehold title to the Facilities and any and all additions which comprise fixtures, repairs, replacements or modifications thereof, except for those fixtures, repairs, replacements or modifications which are added thereto by the City and which may be removed without damaging the Facilities, and except for any items added to the Facilities by the City pursuant to Section 5.03 hereof. This provision shall not operate to the benefit of any insurance company if there is a rental interruption covered by insurance pursuant to Section 6.03 hereof. During the term of this Sublease, the Authority shall have a leasehold interest in the Facilities pursuant to the Facilities Lease.

Upon the termination of this Sublease (other than as provided in Sections 7.01 and 8.01 of this Sublease) or upon the Expiry Date for each Facility, title to the related Facility shall vest in the City pursuant to the Facilities Lease. Upon any such termination or expiration, the Authority shall execute such conveyances, deeds, and other documents as may be necessary to effect such vesting of record.

**Section 9.07. Purpose of Lease.** The City covenants that during the term of this Sublease, except as hereinafter provided, (a) it will use, or cause the use of, the Facilities for

public purposes and for the purposes for which the Facilities are customarily used, (b) it will not vacate or abandon the Facilities or any part thereof, and (c) it will not make any use of the Facilities which would jeopardize in any way the insurance coverage required to be maintained pursuant to Article VI hereof.

**Section 9.08. Environmental Covenants; Indemnification.** (a) The City will comply with all Applicable Environmental Laws with respect to the Facilities and will not use, store, generate, treat, transport, or dispose of any Hazardous Substance thereon or in a manner that would cause any Hazardous Substance to later flow, migrate, leak, leach, or otherwise come to rest on or in the property.

(b) The City will transmit copies of all notices, orders, or statements received from any governmental entity concerning violations or asserted violations of Applicable Environmental Laws with respect to the Facilities and any operations conducted thereon or any conditions existing thereon to the Purchaser, and the City will notify the Purchaser in writing immediately of any release, discharge, spill, or deposit of any Hazardous Substances that has occurred or is occurring that in any way affects or threatens to affect the Facilities, or the people, structures, or other property thereon, provided that no such notifications shall create any liability or obligation on the part of the Purchaser.

(c) The City shall permit the Purchaser, its agents, or any experts designated by the Purchaser to have full access to the Facilities during reasonable business hours for purposes of such independent investigation of compliance with all Applicable Environmental Laws, provided that the Purchaser has no obligation to do so, or any liability for any failure to do so, or any liability should it do so.

To the extent permitted by law, the City shall and hereby agrees to indemnify and save the Authority and the Purchaser, and their respective officers, agents, successors and assigns, harmless from and against all claims, losses and damages, including legal fees and expenses, arising out of (a) the use, maintenance, condition or management of, or from any work or thing done on the Facilities by the City, (b) any breach or default on the part of the City in the performance of any of its obligations under this Sublease, (c) any act or negligence of the City or of any of its agents, contractors, servants, employees or licensees with respect to the Facilities, (d) the use, presence, storage, disposal of any Hazardous Substances on or about the Facilities, (e) the failure to comply with any Applicable Environmental Laws, or (f) any act or negligence of any sublessee of the City with respect to the Facilities. No indemnification is made under this Section 9.09 or elsewhere in this Sublease for misconduct or negligence under this Sublease by the Authority or the Purchaser or any of their respective officers, agents, employees, successors or assigns.

**Section 9.09. Financial Statements; Budgets.** Within \_\_\_\_\_ ( ) days following the end of each fiscal year of the City during the term hereof, or if later, within ten (10) days of publication, the City shall provide the Purchaser with a copy of its audited financial statements for such fiscal year. Such audited financial statements shall include a balance sheet, a statement of revenues, expenses and changes in fund balances for budget and actual, a statement of cash flows, notes, schedules and any attachments to the financial statements and such other financial information as the Purchaser shall reasonably request. Within ten (10) days of its



becoming publicly available during the term of this Sublease, the City will provide the Purchaser with a copy of its annual proposed and adopted budget documents.

## **ARTICLE X**

### **DISCLAIMER OF WARRANTIES; VENDOR'S WARRANTIES; USE OF THE FACILITIES**

**Section 10.01. Disclaimer of Warranties.** THE AUTHORITY MAKES NO AGREEMENT, WARRANTY OR REPRESENTATION, EITHER EXPRESS OR IMPLIED, AS TO THE VALUE, DESIGN, CONDITION, MERCHANTABILITY, FITNESS FOR PARTICULAR PURPOSE OR FITNESS FOR USE OF THE FACILITIES, OR WARRANTY WITH RESPECT THERETO. THE CITY ACKNOWLEDGES THAT THE AUTHORITY IS NOT A MANUFACTURER OF THE FACILITIES OR A DEALER THEREIN, THAT THE CITY LEASES THE FACILITIES AS-IS, IT BEING AGREED THAT ALL OF THE AFOREMENTIONED RISKS ARE TO BE BORNE BY THE CITY. In no event shall the Authority be liable for any incidental, indirect, special or consequential damage in connection with or arising out of this Sublease or the existence, furnishing, functioning or the City's use of any item or products or services provided for in this Sublease.

**Section 10.02. Vendor's Warranties.** The Authority hereby irrevocably appoints the City its agent and attorney-in-fact during the term of this Sublease, so long as the City shall not be in default hereunder, to assert from time to time whatever claims and rights, including warranties of the Facilities, which the Authority may have against the manufacturers, vendors and contractors of the Facilities. The City's sole remedy for the breach of such warranty, indemnification or representation shall be against the manufacturer or vendor or contractor of the Facilities, and not against the Authority, nor shall such matter have any effect whatsoever on the rights and obligations of the Authority with respect to this Sublease, including the right to receive full and timely payments hereunder. The City expressly acknowledges that the Authority makes, and has made, no representation or warranties whatsoever as to the existence or availability of such warranties of the manufacturer, vendor or contractor.

**Section 10.03. Use of the Facilities.** The City will not install, use, operate or maintain the Facilities improperly, carelessly, in violation of any applicable law or in a manner contrary to that contemplated by this Sublease. The City shall provide all permits and licenses, if any, necessary for the installation and operation of the Facilities. In addition, the City agrees to comply in all respects (including, without limitation, with respect to the use, maintenance and operation of the Facilities) with all laws of the jurisdictions in which its operations may extend and any legislative, executive, administrative or judicial body exercising any power or jurisdiction over the Facilities; provided, however, that the City may contest in good faith the validity or application of any such law or rule in any reasonable manner which does not, in the opinion of the Authority, adversely affect the estate of the Authority in and to the Facilities or its interest or rights under this Sublease.

**Section 10.04. Tax Covenants.** The City and the Authority shall at all times do and perform all acts and things permitted by law which are necessary or desirable in order to assure that the interest component of the Series A Tax-Exempt Base Rental Payments will not be

included in the gross income of the owner thereof for federal income tax purposes and shall take no action that would result in such interest being so included. To that end, the City shall comply with the provisions of the Tax Certificate, which is incorporated herein by reference as if set forth at this place.

## ARTICLE XI

### MISCELLANEOUS

**Section 11.01. Law Governing.** This Sublease shall be governed exclusively by the provisions hereof and by the laws of the State as the same from time to time exist.

**Section 11.02. Notices.** All notices, statements, demands, consents, approvals, authorizations, offers, designations, requests, agreements or promises or other communications hereunder by either party to the other shall be in writing and shall be sufficiently given and served upon the other party if delivered personally or if mailed by United States registered mail, return receipt requested, postage prepaid:

If to the City:                      City of Madera  
                                                 205 West Fourth Street  
                                                 Madera, CA 93637  
                                                 Attention: \_\_\_\_\_

If to the Authority:                Madera Public Financing Authority  
                                                 205 West Fourth Street  
                                                 Madera, CA 93637  
                                                 Attention: \_\_\_\_\_

If to the Purchaser:                ZB, N.A.  
                                                 1 South Main, 18<sup>th</sup> Floor  
                                                 Salt Lake City, UT 84133  
                                                 Attention: Todd Harris

With a copy to:  
ZB, N.A.  
1 South Main, 11<sup>th</sup> Floor  
Salt Lake City, UT 84133  
Attention: Corporate Legal

or to such other addresses as the respective parties may from time to time designate by notice in writing.

**Section 11.03. Validity and Severability.** If any one or more of the agreements, conditions, covenants or terms contained herein required to be observed or performed by or on the part of the City or Authority shall be contrary to law, then such agreement or agreements, such condition or conditions, such covenant or covenants or such term or terms shall be null and void and shall be deemed separable from the remaining agreements, conditions, covenants and



terms hereof and shall in no way affect the validity hereof. The City and Authority hereby declare that they would have executed and entered into this Sublease and each and every other article, section, paragraph, subdivision, sentence, clause and phrase hereof of the fact that any one or more of the articles, sections, paragraphs, subdivisions, sentences, clauses or phrases hereof or the application thereof to any person or circumstance may be held to be unconstitutional, unenforceable or invalid.

**Section 11.04. Net-Net-Net Lease.** This Sublease shall be deemed and construed to be a "net-net-net lease" and the City hereby agrees that the rentals provided for herein shall be an absolute net return to the Authority, free and clear of any expenses, charges or set-offs whatsoever.

**Section 11.05. Taxes.** The City shall pay or cause to be paid all taxes and assessments of any type or nature charged to the Authority or affecting the Facilities or the respective interests or estates therein; provided that with respect to special assessments or other governmental charges that may lawfully be paid in installments over a period of years, the City shall be obligated to pay only such installments as are required to be paid during the term of this Sublease as and when the same become due.

The City shall also pay directly such amounts, if any, in each year as shall be required by the Authority for the payment of all license and registration fees and all taxes (including, without limitation, income, excise, license, franchise, capital stock, recording, sales, use, value-added, property, occupational, excess profits and stamp taxes), levies, imposts, duties, charges, withholdings, assessments and governmental charges of any nature whatsoever, together with any additions to tax, penalties, fines or interest thereon, including, without limitation, penalties, fines or interest arising out of any delay or failure by the City to pay any of the foregoing or failure to file or furnish to the Authority for filing in a timely manner any returns, hereinafter levied or imposed against the Authority or the Facilities, the rentals and other payments required hereunder or any parts thereof or interests of the City or the Authority therein by any governmental authority.

The City may, at the City's expense and in its name, in good faith contest any such taxes, assessments and other charges and, in the event of any such contest, may permit the taxes, assessments or other charges so contested to remain unpaid during the period of such contest and any appeal therefrom unless the Authority shall notify the City that, in the opinion of independent counsel, by nonpayment of any such items, the interest of the Authority in the Facilities will be materially endangered or the Facilities, or any part thereof, will be subject to loss or forfeiture. In the event of such notice, the City shall promptly pay such taxes, assessments or charges or provide the Authority with full security, in form satisfactory to the Authority and the Trustee, against any loss, which may result from nonpayment.

**Section 11.06. Section Headings.** All section headings contained herein are for convenience of reference only and are not intended to define or limit the scope of any provision of this Sublease.

**Section 11.07. Amendment or Termination.** Without the prior written consent of the Purchaser, (i) the City and the Authority will not alter, modify or cancel, or agree or

consent to alter, modify or cancel this Sublease, except in connection with a substitution, addition or release permitted by Section 2.04.

**Section 11.08. Execution.** This Sublease may be executed in any number of counterparts, each of which shall be deemed to be an original, but all together shall constitute but one and the same Sublease. It is also agreed that the Authority and City may each execute separate counterparts of this Sublease, all with the same force and effect as though both had executed the same counterpart.

IN WITNESS WHEREOF, the Authority and the City have caused this Sublease to be executed by their respective officers thereunto duly authorized, all as of the day and year first above written.

MADERA PUBLIC FINANCING  
AUTHORITY, as Lessor

By \_\_\_\_\_  
Authorized Officer

Attest:

\_\_\_\_\_  
Secretary

CITY OF MADERA, as Lessee

By \_\_\_\_\_  
Authorized Officer

Attest:

\_\_\_\_\_  
City Clerk

## **EXHIBIT A**

### **DESCRIPTION OF FACILITIES**

All of that certain real property and improvements thereon situated in the City of Madera, State of California, known as the Corporation Yard described as follows:

APN 011-143-002 – 2.2 acres – C2 (Heavy Commercial) Zoning

APN 011-143-003 – 3.8 acres – PF (Public Facility) Zoning

APN 011-143-011 – 1.1 acres – I (Industrial) Zoning

[attach legal description from Title Company]

**EXHIBIT B-1**

**SERIES A TAX-EXEMPT BASE RENTAL**

<b>Due Date</b>	<b>Principal Component</b>	<b>Interest Component</b>
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**EXHIBIT B-2**

**SERIES B TAXABLE BASE RENTAL**

<b><u>Due Date</u></b>	<b><u>Principal Component</u></b>	<b><u>Interest Component</u></b>
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**EXHIBIT B-3**

**BASE RENTAL PAYMENT SCHEDULE  
(AGGREGATE BASE RENTAL)**

<b><u>Due Date</u></b>	<b><u>Principal Component</u></b>	<b><u>Interest Component</u></b>	<b><u>Total Base Rental</u></b>	<b><u>Total Annual Base Rental</u></b>
------------------------	---------------------------------------	--------------------------------------	-------------------------------------	--------------------------------------------



**EXHIBIT C**

**PROJECT**

[Description of Golf Course and Police Station to come]

WHEN RECORDED RETURN TO:

Orrick, Herrington & Sutcliffe LLP  
405 Howard Street  
San Francisco, California 94105  
Attn: \_\_\_\_\_

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This document is recorded for the benefit of the City of Madera and the recording is fee-exempt under Section 27383 of the California Government Code.

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**ASSIGNMENT AGREEMENT**

by and between the

MADERA PUBLIC FINANCING AUTHORITY

and

ZB, N.A.

Relating to the Assignment of Certain Rights  
Under a Lease and a Sublease,  
Each Dated the Date Hereof, Between

CITY OF MADERA  
AND  
MADERA PUBLIC FINANCING AUTHORITY

Executed and Entered into as of January 1, 2018

## **ASSIGNMENT AGREEMENT**

THIS ASSIGNMENT AGREEMENT (this "Assignment") is made as of January 1, 2018, by and between the Madera Public Financing Authority, a joint powers authority duly organized and existing under the laws of the State of California ("Authority"), whose principal address is 205 West Fourth Street, Madera, CA 93637 and ZB, N.A. ("Purchaser"), whose mailing address is 1 South Main, 18th Floor, Salt Lake City, UT 84133.

### **WITNESSETH:**

WHEREAS, Authority desires to assign, sell, transfer and convey to Purchaser, and Purchaser desires to purchase all of Authority's right, title and interest in and to the Lease and Sublease (as hereinafter defined), the Base Rental Payments and other amounts payable thereunder and certain other property and interests as herein provided upon the terms and conditions stated below;

WHEREAS, the Sublease provides for the leasing of the real property described in Exhibit A attached hereto;

NOW, THEREFORE, in consideration of the premises, the covenants contained herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto hereby agree as follows:

1. Assignment; Payment of Purchase Price.

(a) Authority hereby sells, transfers, delivers, assigns and conveys, without recourse, to Purchaser, its successors and assigns, forever, all of Authority's right, title, interest, estate, claims and demands in and to (i) all of its rights to receive the Base Rental Payments (as such term is defined in the Sublease) and all other rental payments scheduled to be paid by the City of Madera (the "City") under and pursuant to the Sublease (City of Madera), by and between the Authority, as lessor and the City, as lessee, dated as of January 1, 2018 (the "Sublease"), (ii) all rents, profits, products and offspring from the Facilities (as such term is defined in the Sublease) to which the Authority has any right or claim whatsoever, (iii) the right to take all actions and give all consents under the Sublease, (iv) the right of access more particularly described in the Sublease, and (v) all other right, title, and interest of Authority in, to and under the Sublease and the Lease (City of Madera), by and between the City, as lessor and the Authority, as lessee, dated as of January 1, 2018 (the "Lease"). Authority acknowledges that upon the execution and delivery of this Assignment Agreement, it shall have no right, title, or interest in or to the Base Rental Payments, the Sublease or the Lease; provided that nothing contained in this paragraph shall abrogate Authority's rights to be indemnified as provided in the Sublease and the Lease. All the foregoing rights, titles, interests, property, estate, claims and demands so sold, transferred, delivered and assigned, are herein collectively referred to as the "Assigned Property." This assignment is absolute and unconditional and is not intended to be merely the grant of a security

interest to Purchaser. This assignment is made without recourse to Authority, except as provided herein.

It is intended that the conveyance of Authority's right, title and interest in the Assigned Property pursuant to this Assignment shall constitute a purchase and sale and not a loan for federal and relevant state tax, bankruptcy and other purposes and hereafter Authority shall have no interest in the Assigned Property, and in the event of the bankruptcy of Authority the Assigned Property shall not be part of Authority's bankruptcy estate. Nonetheless, as a precaution in the event that, contrary to the intent of the parties hereto, it is contended that Authority has not sold or absolutely assigned the Assigned Property, but rather has received from Purchaser a loan or extension of credit secured by the Assigned Property, with Authority retaining an ownership interest therein, Authority hereby assigns, pledges and grants to Purchaser a first priority lien on and security interest in all right, title and interest Authority now or hereafter acquires in and to the Assigned Property sold, transferred, delivered, assigned and conveyed by Authority under this Assignment, as security for the repayment of such ostensible loan or extension of credit, as well as for the full and timely performance by Authority of each of its obligations hereunder.

(b) In consideration of the sale, transfer, conveyance and assignment provided for in subparagraph (a) of this Paragraph 1, Purchaser has paid or caused to be paid to or for the benefit of Authority, in immediately available funds, the purchase price of \$ \_\_\_\_\_.

2. Assigned Payments. Authority has given written notice of this Assignment to the City, and all Base Rental Payments that are or become payable pursuant to the Sublease from and after the date of this Assignment shall be made directly to Purchaser at \_\_\_\_\_ or as otherwise directed by Purchaser.

3. Warranties and Covenants. Authority hereby represents, warrants and covenants to and with Purchaser that, as of the date hereof:

(a) Authority is a joint powers authority duly organized and validly existing under the laws of the State of California, with powers and authority to own its properties and carry on its operations as now being conducted.

(b) Authority has full power, authority and legal right to enter into and perform its obligations under this Assignment and with respect to the Assigned Property. The execution, delivery and performance of this Assignment have been duly authorized by all necessary action on the part of Authority.

(c) The execution, delivery and performance of this Assignment do not contravene any law, governmental rule, regulation, order or ordinance of any governmental entity having jurisdiction over and binding on Authority or the organizational document or bylaws of Authority and do not and will not result in any breach of or constitute a default under any indenture, mortgage, contract, agreement or instrument to which Authority is a party or by which it or its property is bound.

(d) There are no pending or threatened actions or proceedings before any court or administrative agency that will materially adversely affect the condition, business or operation of Authority or the ability of Authority to perform its obligations under this Assignment.

(e) The Lease, the Sublease and this Assignment are legal, valid and binding obligations of Authority, which are enforceable in accordance with their respective terms, except as such enforceability may be limited by applicable laws relating to bankruptcy, moratorium, insolvency or creditors' rights or by the application of principles of equity.

(f) Immediately prior to the transfer and assignment provided for by this Assignment, Authority had good and marketable title to the Assigned Property, free and clear of all claims, liens, security interests and encumbrances. This Assignment vests in Purchaser full right, title and interest in and to the Assigned Property, in each instance free and clear of all claims, liens, security interests and encumbrances of any kind or character, and the same shall be and remain free of all claims, liens, security interests and encumbrances arising through any act or omission of Authority or any person claiming by, through or under it.

(g) Authority has not assigned, sold, transferred, pledged or otherwise granted an interest, and hereby covenants that it will not assign, sell, transfer, pledge or otherwise grant an interest in or to the whole or any part of the Assigned Property sold, transferred, delivered, conveyed and assigned pursuant to this Assignment to anyone other than Purchaser. Authority will make appropriate notations on its books and records with entries regarding the Assigned Property indicating the entering into of this Assignment.

(h) No event of default has occurred and is continuing under the Lease or Sublease, and, to the best knowledge of Authority, no event has occurred that, with the lapse of time or the giving of notice or both, would constitute an event of default under the Lease or Sublease.

(i) Authority has given notice to the City of this Assignment and obtained the written acknowledgment of the City to this Assignment.

(j) Authority has no right or obligation to repurchase the Assigned Property from Purchaser. Authority retains no interest whatsoever in the Assigned Property, except for rights of indemnification.

(k) Authority will make no amendment or modification to the Assigned Property without the prior written consent of Purchaser.

(l) No arrangement exists whereby Authority is to protect Purchaser against (i) the risk of fluctuations in the market value of the Assigned Property or (ii) the risk of nonpayment by the City.

(m) The principal place of business and chief executive office of Authority is located at City Hall, 205 West Fourth Street, Madera, CA 93637.

4. Purchaser Representations, Warranties and Acknowledgements. Purchaser represents, warrants and acknowledges as follows:

(a) The Purchaser acknowledges that any transfer of the Sublease or the Lease Certificates shall be restricted as provided in clause (b) below and that any transfer shall only be effective unless and until a notice of assignment is given to the Authority and the City. When presented with notice of the assignment, the Authority and City will acknowledge the assignment for the benefit of the Purchaser or any assignee;

(b) The Sublease is being acquired by the Purchaser for investment and not with a view to resell the Sublease, and the Purchaser acknowledges that the Sublease shall only be transferred or resold to any affiliate of Purchaser or to a "qualified institutional buyer" as defined in Rule 144A of the Securities Act of 1933; that the Sublease shall only be transferred in whole and that the Purchaser shall not transfer any fractional interest in the Sublease;

(c) The Purchaser is a "qualified institutional buyer," as defined in Rule 144A of the Securities Act of 1933 and has such knowledge and experience in financial and business matters in general and in particular with respect to this type of investment that it is capable of evaluating the merits and risks of an investment in the Assigned Property, has evaluated and understands the risks and terms of investing in the Assigned Property and is able to bear the economic risk of an entire loss in this investment;

(d) All documents, records and books pertaining to this investment requested by Purchaser have been made available to the Purchaser and its attorneys, accountants or investor representatives, and the Purchaser has been afforded the opportunity to ask questions concerning the purchase of the Assigned Property; and

(e) The Purchaser acknowledges that the Assigned Property is exempt from the requirements of Rule 15c2-12 of the Securities and Exchange Commission and that neither the Authority nor the City has undertaken to provide any continuing disclosure with respect to the Assigned Property.

5. Further Assurances. Authority, from time to time, at the request and cost and expense of Purchaser, shall execute and deliver such further acknowledgments, agreements and instruments of assignment, transfer and assurance and do all such further acts and things as may be reasonably necessary or appropriate in the opinion of Purchaser to give effect to the provisions hereof and to further confirm the rights, titles and interests hereby sold, assigned and transferred to Purchaser.

6. Severability; Rights Cumulative. If any part of this Assignment shall be contrary to any law that Purchaser might seek to apply or enforce or should otherwise be defective, the other provisions hereof shall not be affected thereby but shall continue in full force and effect, to which end they are hereby declared severable. All rights, remedies and powers of Purchaser hereunder are irrevocable and cumulative, and not alternative or exclusive, and shall be in addition to all rights, remedies and powers given hereunder, or in or by any other instrument or any other law now existing or hereafter enacted.

7. Notices. Any notice required or permitted to be given by Authority or Purchaser to the other shall be deemed to have been given upon the actual receipt thereof or on the third day after it is deposited in the United States mail, certified mail, return receipt requested, with proper postage prepaid, whichever is the earlier, and addressed to the party at such address as shown at the beginning of this Assignment or at such other address as one party shall hereafter furnish to the other in writing.

8. Headings. The headings of the paragraphs of this Assignment are for convenience only and shall not be used to interpret or construe this Assignment.

9. Defined Terms. Capitalized terms used, but not defined, herein shall have the same meanings when such terms are used in the Sublease.

10. Entirety; Amendments. This Assignment contains the entire agreement between Authority and Purchaser with respect to the subject matter hereof and supersedes all prior agreements and understandings relating thereto. No other agreements will be effective to change, modify or terminate this Assignment in whole or in part unless such agreement is in writing and duly executed by Authority and Purchaser. No representations, inducements, promises or agreements, oral or otherwise, that are not embodied herein (or any other written instrument or document delivered pursuant hereto or in connection herewith) will be of any force or effect.

11. Parties Bound. This Assignment shall be binding on Authority and its successors and assigns, and shall inure to the benefit of Purchaser and its successors and assigns.

12. Governing Law. The substantive laws of the State of California shall govern the validity, construction, enforcement and interpretation of this Assignment and the rights of the parties hereunder.

13. Counterparts. The Assignment may be executed in any number of separate counterparts by the parties hereto and each counterpart when so executed shall be deemed to be our original and all such counterparts when taken together shall constitute one and the same agreement.



IN WITNESS WHEREOF, Authority and Purchaser have duly executed this Assignment by one of their respective officers thereunto duly authorized, as of the date first above written.

MADERA PUBLIC FINANCING  
AUTHORITY

By: \_\_\_\_\_  
Authorized Officer

Attest:

\_\_\_\_\_  
Secretary

ZB, N.A.

By: \_\_\_\_\_  
Authorized Officer

APPROVED:  
CITY OF MADERA

\_\_\_\_\_  
Authorized Officer

## **EXHIBIT A**

### **FACILITIES**

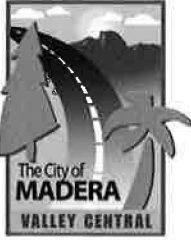
All of that certain real property and improvements thereon situated in the City of Madera, State of California, known as the Corporation Yard described as follows:

APN 011-143-002 – 2.2 acres – C2 (Heavy Commercial) Zoning

APN 011-143-003 – 3.8 acres – PF (Public Facility) Zoning

APN 011-143-011 – 1.1 acres – I (Industrial) Zoning

[attach legal description from Title Company]



## REPORT TO MADERA PUBLIC FINANCING AUTHORITY BOARD

Approved by:

Council Meeting of: December 20, 2017

Agenda Number: C-2

  
\_\_\_\_\_  
Department Director

  
\_\_\_\_\_  
City Administrator

**SUBJECT:** CONSIDERATION OF A RESOLUTION OF THE MADERA PUBLIC FINANCING AUTHORITY APPROVING A LEASE, A SUBLEASE AND AN ASSIGNMENT AGREEMENT; AND AUTHORIZING EXECUTION OF DOCUMENTS AND THE TAKING OF ALL NECESSARY ACTIONS RELATING TO THE LEASE FINANCING

**RECOMMENDATION:** MPFA Board to adopt resolution approving a lease, a sublease and an assignment agreement: and authorizing execution of documents and the taking of all necessary actions relating to the lease financing.

**SUMMARY:** The City's Municipal Advisor, Del Rio Advisors, LLC, examined all the outstanding debt of the City for possible refunding opportunities. The Municipal Advisor has identified several candidates, two of which are before the Council tonight for consideration:

**Madera Public Financing Authority  
1993 Variable Rate Demand Bonds  
(Madera Municipal Golf Course Refinancing Project)  
Remarketed on October 25, 2012  
(the "Bonds")**

The Bonds were originally issued in 1989 to finance the construction of the Madera Municipal Golf Course. The Bonds were refunded on a variable rate basis in 1993 with a Letter of Credit provided by CalSTRS. The Letter of Credit was replaced in 2012 with a Letter of Credit provided by MUFG Bank formerly Union Bank (the "Bank"). The Bonds are outstanding in the amount of \$1.9 million with principal payable each November 1 to November 1, 2023. Since the 2012 remarketing, the Letter of Credit has been extended several times with the most recent extension expiring on November 12, 2017. The Bank has indicated they no longer wish to provide the Letter of Credit but did extend the expiration date to January 12, 2018.

The current interest rate is averaging 0.92%. The City also pays a Letter of Credit fee of 2.00% to the Bank and pays RBC Capital Markets approximately 0.25% to remarket the Bonds each week. This brings the current "all-in" interest rate to approximately 3.17%. The Bonds are callable at

par (100%) only on an interest payment date with the next date being May 1, 2018. However, upon expiration of the Letter of Credit, the Bonds are subject to mandatory tender (investors must surrender them) five (5) business days prior or in this case on January 5, 2018. The original leased asset was the golf course but was replaced with City Hall on January 7, 2014.

**City of Madera  
Police Station  
Lease Purchase Agreement  
Dated: December 15, 2005  
(the "Lease")**

The Lease was originally issued to complete construction of the Police Administration Building and it currently serves as the leased asset. The Lease is outstanding in the amount of \$847,856, is payable semiannually on each June 1 and December 1 and has a final maturity of December 1, 2025. The Lease pays a fixed rate of interest at 5.12%. The original lender was LaSalle Bank which was acquired by Banc of America. The Lease was ultimately sold to Capital One Public Funding, LLC and is callable at par (100%) on any interest payment date with the next date being June 1, 2018.

The Municipal Advisor reached out to the current owner Capital One Public Funding, LLC ("Cap One") and they were willing to allow the City to pay off the Lease early on January 5, 2018 by paying Cap One all the outstanding principal and the accrued interest otherwise due to them through June 1, 2018.

**DISCUSSION:** After the remarketing on October 25, 2012. The letter of credit with MUFG Bank originally expired on November 12, 2013. However, the Letter of Credit has been extended several times with the most recent extension to November 12, 2017. The Bank has indicated they no longer wish to provide the Letter of Credit but, to give time for the City to look at alternatives, did extend the expiration date to January 12, 2018. The current interest rate is averaging 0.92%. The City also pays a Letter of Credit fee of 2.00% to the Bank and pays RBC Capital Markets approximately 0.25% to remarket the Bonds each week. This brings the current "all-in" interest rate to approximately 3.17%.

The market for letter of credit arrangements is very limited and almost non-existent for municipalities with transactions under \$10 million. The Golf Course transaction balance currently sits at \$1.9 million. Beside the extension to January 12, 2018, The Bank has indicated they are not willing to extend beyond that date due to the amount of work involved and the due diligence required in reviewing the credit worthiness of municipalities for small transactions of this size. They simply do not make enough money to merit the extra work. While a refunding of this obligation will cost the City money each year, the refunding will eliminate any variable interest rate risk. In addition, since the golf course is now under private management, the City is required to refund the Bonds on a taxable basis. The current leased asset is City Hall.

The Lease agreement for the Police Station will be refunded for purely economic reasons. The leased asset is the current Police Administration Building.

In October, the Municipal Advisor sent out a request for fee proposals for firms to act as Placement Agent on the proposed refunding. The Municipal Advisor received three (3) fee quotes with Hilltop Securities providing the least expensive alternative at \$5,000.

The City's Municipal Advisor, Del Rio Advisors, LLC working in conjunction with the Placement Agent, Hilltop Securities, considered the Refunding as both a public offering to both institutional and retail investors and as a direct placement to commercial banks and other lending institutions that operate in the municipal finance market. A public offering requires an official statement and a bond rating from one or more of the rating agencies (S&P, Moody's Investors Service or Fitch Ratings). While interest rates can be lower in a public offering, the increased costs and time associated with conducting a public offering often makes it less economically attractive than a direct placement, particularly for smaller short-term obligations like the ones proposed here.

In November, the Placement Agent sent out a term sheet to the universe of direct placement lenders that operate in the municipal finance market. The Placement Agent received ten (10) qualifying responses. The low interest rate alternative was provided by Zions Bank / California Bank & Trust (the "Lender") at 3.19%. The interest rate is locked for sixty (60) days and the lease can be prepaid anytime at par. The cover bid was from BB&T at 3.22% but the Refunding would be non-callable. A summary of the bids has been attached as an exhibit to this staff report.

The Municipal Advisor and Placement Agent then approached the Lender to get a tax-exempt interest rate for the refunding of the Lease. The Lender quoted an interest rate of 2.76%. The interest rate for this is also locked for sixty (60) days and the obligation can also be prepaid anytime at par.

The proposed plan is to refund the Bonds on a taxable basis and refund the Lease on a tax-exempt basis. The City will make one lease payment to the lender a portion of which will be applied to the taxable refunding of the Bonds and a portion applied to the tax-exempt refunding of the Lease. The leased asset will be the Corporation Yard and associated buildings and will release both City Hall and the Police Station for future use.

The results of the refunding are as follows:

Refunding	Prior Issue Par Amount	Prior Issue Total Debt Service	Proposed Par Amount	Proposed Debt Service	Total (Savings) / Cost	Avg. Annual (Savings) / Cost	NPV (Savings) / Cost	NPV as % of Prior
Bonds	\$1,900,000	\$1,911,743 <sup>(*)</sup>	\$1,762,400	\$1,952,579	\$40,836	\$7,014	\$26,716	1.41%
Lease	\$847,856	\$1,043,976	\$895,700	\$999,486	(\$44,490)	(\$5,688)	(\$37,721)	(4.45%)
<b>Total</b>	<b>\$2,747,856</b>	<b>\$2,955,719</b>	<b>\$2,658,100</b>	<b>\$2,952,065</b>	<b>(\$3,654)</b>	<b>(\$467)</b>	<b>(\$11,005)</b>	<b>(0.40%)</b>

**Note**

(\*) Includes current market variable rate of interest at 0.92% plus letter of credit and remarketing fees less reserve fund earnings at 1.00% and reserve fund corpus used to pay final year of debt service on the Bonds

The Refunding will not extend either existing obligation beyond its current final maturity (2023 for the Bonds and 2025 for the Lease).

**FINANCIAL IMPACT:** Adoption of this resolution is estimated to save the City's General Fund \$3,654 over the life of the obligation or an estimated \$467 per year.

The costs of issuance are fully contingent and will be paid at closing from the proceeds of the Refunding. The costs of issuance are fully accounted for in the calculation of the estimated (savings) / costs listed above. Here is a table showing the current estimated costs of issuance:

<b>Madera Public Financing Authority Refunding Lease Agreement (Lease Refinancing Project) Costs of Issuance</b>	
Bond Counsel	35,000.00
Municipal Advisor	17,500.00
Paying Agent / Trustee / Legal	10,000.00
Verification Report	2,500.00
Bank Counsel	-
Placement Agent	10,000.00
CDIAC	664.53
Title Insurance	5,048.00
Miscellaneous	2,500.00
Rounding Adjustment	30.83
<b>Total</b>	<b>83,243.35</b>

**CONSISTENCY WITH THE VISION MADERA 2025 PLAN:** Refunding these existing obligations is not addressed in the vision or action plans. The requested action does not conflict with any of the actions or goals contained in those plans.

**MPFA RESOLUTION NO. \_\_**

**A MADERA PUBLIC FINANCING AUTHORITY RESOLUTION  
AUTHORIZING THE EXECUTION AND DELIVERY OF A LEASE, A  
SUBLEASE AND AN ASSIGNMENT AGREEMENT; AND AUTHORIZING  
THE TAKING OF ALL NECESSARY ACTIONS RELATING TO THE  
LEASE FINANCING**

WHEREAS, the City of Madera (the "City") and the Redevelopment Agency of the City of Madera (the "Agency") have executed a Joint Exercise of Powers Agreement, dated July 17, 1989, as amended (the "Joint Powers Agreement"), between the City and the Agency that creates and establishes the Madera Public Financing Authority (the "Authority"); and

WHEREAS, pursuant to Article 4 of Chapter 5 of Division 7 of Title 1 of the Government Code of the State of California (the "Marks-Roos Local Bond Pooling Act of 1985") and the Joint Powers Agreement, the Authority is authorized to finance and refinance public capital improvements and equipment, working capital, liability and other insurance needs or projects whenever there are significant public benefits; and

WHEREAS, the City has financed its public golf course pursuant to a lease agreement, dated as of May 1, 1993, by and between the Authority and the City, as amended and supplemented (the "1993 Lease Agreement"); and

WHEREAS, the City has financed a police station pursuant to a lease purchase agreement, dated as of December 15, 2005, by and between LaSalle Bank National Association and the City (the "2005 Lease Agreement" and together with the 1993 Lease, the "Prior Leases"); and

WHEREAS, the City desires to prepay and refinance the Prior Leases by entering into the Lease and Sublease (as hereinafter defined); and

WHEREAS, to achieve such public purpose, and assist in refinancing the Projects, the Authority desires to lease from the City certain property described in Exhibit A hereto (the "Facilities") pursuant to a Lease (the "Lease") between the City and the Authority, and the Authority desires to lease the Facilities back to the City pursuant to a Sublease (the "Sublease") between the Authority and the City; and

WHEREAS, the Authority desires to assign, sell, transfer and convey all of its right, title and interest in the Lease and Sublease to the Purchaser (the "Purchaser"), pursuant to the terms of that certain Assignment Agreement (the "Assignment Agreement"), by and between the Authority and the Purchaser; and

WHEREAS, there are on file with the Secretary of the Authority proposed forms of the Lease, the Sublease and the Assignment Agreement, and copies thereof have been presented to the members of the governing board of the Authority;

NOW THEREFORE, BE IT RESOLVED by the governing board of the Madera Public Financing Authority, as follows:



**Section 1.** All of the above recitals are true and correct, and this Board so finds and determines.

**Section 2.** The proposed form of Lease, between the Authority and the City, on file with the Secretary of the Authority, a copy of which have been delivered to the governing board of the Authority, and which is incorporated into this Resolution by reference, is hereby approved. The Chairperson, Executive Director or Treasurer of the Authority, jointly and severally, or any person acting in such capacity, or any such officer's designee (collectively, the "Authorized Officers"), are each hereby authorized and directed, on behalf of the Authority, to execute and deliver the Lease in substantially said form, with such changes therein as such officer may require or approve, subject to review by the City Attorney's Office, such approval to be conclusively evidenced by the execution and delivery thereof; provided, however, the term of the Lease shall end no later than November 1, 2025, plus an extension period of not to exceed ten (10) years.

**Section 3.** The proposed form of Sublease, between the Authority and City, on file with the Secretary of the Authority, a copy of which has been delivered to the governing board of the Authority, and which is incorporated into this Resolution by reference, is hereby approved. The Authorized Officers are each hereby authorized and directed on behalf of the Authority, to execute and deliver the Sublease in substantially said form, with such changes therein as such officer may require or approve, subject to review of the City Attorney's Office, such approval to be conclusively evidenced by the execution and delivery thereof; provided, however, that the principal components of the Sublease shall not exceed \$2,900,000, the term of the Sublease shall end no later than November 1, 2025 plus an extension period of not to exceed ten (10) years and the interest rate shall not exceed a true interest cost of 3.25% per annum.

**Section 4.** The proposed form of Assignment Agreement, by and between the Authority and the Purchaser, on file with the Secretary of the Authority, a copy of which has been delivered to the governing board of the Authority, and which is incorporated into this Resolution by reference, is hereby approved. The Authorized Officers are each hereby authorized and directed, on behalf of the Authority, to execute and deliver the Assignment Agreement in substantially said form, with such changes therein as such officer may require or approve, subject to review of the City Attorney's Office, such approval to be conclusively evidenced by the execution and delivery thereof.

**Section 5.** The officers and directors of the Authority are hereby authorized and directed, jointly and severally, to do any and all things and to execute and deliver any and all documents and certificates which they deem necessary or advisable to consummate the execution and delivery of the documents mentioned herein, and otherwise to effectuate the purposes of this Resolution, the Lease, the Sublease, the Assignment Agreement and the transactions contemplated by each such document.

**Section 6.** This Resolution shall take effect immediately upon its adoption by the Board.

CERTIFICATE OF THE SECRETARY OF THE  
MADERA PUBLIC FINANCING AUTHORITY

I, Sonia Alvarez, Secretary of the Madera Public Financing Authority (the "Authority"), hereby certify that the foregoing MPFA Resolution No. \_\_\_\_\_ is a full, true and correct copy of a resolution duly adopted at a regular meeting of the Authority duly held in Madera, California on December 20, 2017, of which meeting all of the members of said Authority had due notice.

I further certify that I have carefully compared the foregoing copy with the original minutes of said meeting on file and of record in my office; that said copy is a full, true and correct copy of the original resolution adopted at said meeting and entered in said minutes; and that said resolution has not been amended, modified, rescinded or revoked in any manner since the date of its adoption, and the same is now in full force and effect.

An agenda of said meeting was posted at least 72 hours before the meeting at City Hall, 205 West Fourth Street, Madera, CA 93637, a location freely accessible to members of the public, and a brief general description of said resolution appeared on said agenda.

Notice of said meeting was delivered to each member of the Governing Board of the Authority at least 24 hours before said meeting.

Dated: \_\_\_\_\_

\_\_\_\_\_  
Secretary of the Madera Public Financing  
Authority

## **EXHIBIT A**

### **FACILITIES**

All of that certain real property and improvements thereon situated in the City of Madera, State of California, known as the Corporation Yard described as follows:

APN 011-143-002 – 2.2 acres – C2 (Heavy Commercial) Zoning

APN 011-143-003 – 3.8 acres – PF (Public Facility) Zoning

APN 011-143-011 – 1.1 acres – I (Industrial) Zoning

[attach legal description from Title Company]

**City of Madera**  
**Taxable Lease Revenue Bond**  
**Summary of Bank Bids**  
**As of 11/8/17**

The City of  
**MADERA**

Order Received	Bank	Rate	Rate Lock	Rate Notes	Call Feature	Bank Counsel	Legal Fees	Bank Loan Fees (other than legal)	DSRF	Reporting Requirements	Other
1)	Capital One	3.750%	Yes? Rate subject to change if not closed by 01/05/18	will lock thru 1/5/18 closing	No call until 11/01/20, then in whole at par on any interest payment date		Legal fees paid by bank.	City shall be responsible for normal borrower COI (including CDIAF fees).		City shall send copy of audited financials within 270 days of the FYE.	
2)	Opus	3.680%	expects to be able to hold the rate but it is not locked		Option 1: Years 1-2 at 105% Year 3 at 104% Year 4 at 103% Year 5 at 102% Year 6 at 101% (See other)		\$ 15,000	The City will be responsible for all costs of issuance (including legal and CDIAF). Additional fee of \$1,000 if they disburse COI wires at closing.			- Up to 10% of outstanding principal can be prepaid every year, as long as such prepayment is not through refinancing. - The par amount cannot exceed 90% of insured value of the essential asset
3)	Co-Biz	3.780%	No. Can lock within 30 days prior to close	3 Year LIBOR + 1.85%	Non-callable		\$ 5,000	Bank charges a \$500 admin fee			
4)	BBVA	3.730%	No. Subject to change daily until rates are locked in writing on the Pricing Date. Rate lock: upon formal credit approval and at the Borrower's option, subject to break-funding, fixed rate may be locked up to 30 days prior to close.	Interest Rate is Indexed to a spread of 1.72% over the prevailing 4 Year LIBOR swap rate. Based on the current rate of 2.01% for the sap index as of 11/07/17, the interest rate on funded balances today would be 3.73%.		Scott Shaver, Stradling Yocca Carlson & Rauth	NTE \$10,000	Responsible for all reasonable costs of issuance (including legal and CDIAF)		Audits due within 210 days of fiscal year end. Budget due within 30 days of fiscal year end.	
5)	Western Alliance	Option 1: 5.03% as of 11/8/17 (Lock 2 Weeks prior to close) Option 2: 5.08% as of 11/08/17 (Rate Lock Upon Award and Selection as Lender).	Option 1 - May be locked 2 weeks prior to funding. Option 2 - May be locked upon award of purchasing the Bonds and the rate lock will be good through 12/31/17.	Option 1 - the sum of the 3-Year LIBOR Interest Rate Swap Rate plus 3.10% Option 2 - the sum of the 3-Year LIBOR Interest Rate Swap Rate plus 3.15%.	Not subject to optional prepayment prior to the final maturity.	Stradling Yocca Carlson & Rauth	NTE \$8,500,000	City shall be responsible for delivery costs, legal and CDIAF fees.	None	Within 9 months of the end of each fiscal year, Purchaser shall receive: audited financials for preceding fiscal year and certification that the City is not aware of any default of Event of Default hereunder or in connection with the Lease.	
6)	Zions Bank/California Bank & Trust	3.190%	Yes. Fixed for 60 calendar days from the bid date.	will lock thru 1/5/18 closing	Prepaid, in whole or in part, anytime at par plus accrued interest		Internal counsel will be used, so fee is \$0.	City will pay CDIAF and other usual COI		Issuer shall provide to the Purchaser annual audited financial statements within 270 days of fiscal year end.	
7)	Banner Bank	4.299%	Can be locked upon approval	3 Year Des Moines FHLB + 2.20%	No call provision		\$ 7,500				
8)	Umpqua	4.200%	10-15 bps reduction for depository relationship	lock 3 weeks prior to closing	103 in yr 1 - 102 yr 2 101 yr 3 nd and par thereafter		\$ 12,500	default rate +3%			
9)	BBT	3.220%	good thru 1/5/18		non callable		\$ 8,500			within 270 days audited financials	will pay up to 4 disbursements - no paying agent needed
10)	JMPC	3.280%	accepted by 11/10 and Closing by 12/19	rate can be locked with passage of City of Resolution	no optional call provision		\$ 8,500			within 270 days audited financials and copy of budget within 30 days of adaption	

Prepared by HilltopSecurities - Cardiff by the Sea, CA

**Madera Public Financing Authority**  
**Refunding Lease Agreement**  
**(Lease Refinancing Project)**

**Sources and Uses of Funds (Direct Placement)**

Allocation Percentage		68.60%	31.40%	100.00%
Sources of Funds		Golf Course	Police Station	Total
Par Amount of Bonds		1,762,400.00	895,700.00	2,658,100.00
Plus: Accrued Interest		-	-	-
Less: (OID) Plus: OIP		-	-	-
<b>Net Proceeds at Closing</b>		<b>1,762,400.00</b>	<b>895,700.00</b>	<b>2,658,100.00</b>
Outstanding Reserve Fund		194,704.02	-	194,704.02
Other Source of Funds		-	-	-
<b>Total Other Sources of Funds</b>		<b>194,704.02</b>	<b>-</b>	<b>194,704.02</b>
<b>Total Sources of Funds</b>		<b>1,957,104.02</b>	<b>895,700.00</b>	<b>2,852,804.02</b>
<b>Uses of Funds</b>				
Cost to Payoff Prior Issue (Cash)		1,900,000.00	869,560.67	2,769,560.67
Beginning Escrow Cash Balance		-	-	-
Reserve Fund (1)		-	-	-
Surety Premium (2)		-	-	-
Underwriter's Discount (3)		-	-	-
Costs of Issuance (4)		57,107.38	26,135.97	83,243.35
Bond Insurance Premium (5)		-	-	-
Other Use of Funds		-	-	-
<b>Total Uses of Funds</b>		<b>1,957,107.38</b>	<b>895,696.64</b>	<b>2,852,804.02</b>
<b>Rounding Adjustment</b>		<b>(3.36)</b>	<b>3.36</b>	<b>-</b>

**Assumptions**

- (1) Not Applicable
- (2) Not Applicable
- (3) Not Applicable
- (4) See Attached Schedule
- (5) Not Applicable

Run Date December 6, 2017  
Run Time 5:00 AM

<p><b>Madera Public Financing Authority</b> <b>Refunding Lease Agreement</b> <b>(Lease Refinancing Project)</b> <b>Costs of Issuance</b></p>
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Bond Counsel	35,000.00
Municipal Advisor	17,500.00
Paying Agent / Trustee / Legal	10,000.00
Verification Report	2,500.00
Bank Counsel	-
Placement Agent	10,000.00
CDIAC	664.53
Title Insurance	5,048.00
Miscellaneous	2,500.00
Rounding Adjustment	30.83
<b>Total</b>	<b>83,243.35</b>

<p><b>Madera Public Financing Authority</b> <b>Refunding Lease Agreement</b> <b>(Lease Refinancing Project)</b> <b>Summary Statistics</b></p>
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Arbitrage Yield (Tax-Exempt)	2.76055 %
Arbitrage Yield (Combined Series)	3.02642 %
TIC (Combined Series)	3.02642 %
"All-In" TIC (Combined Series)	3.97279 %
NIC (Combined Series)	3.02368 %
Average Coupon (Combined Series)	3.02368 %
Average Life (Combined Series)	3.658 Years



**Madera Public Financing Authority**  
**Refunding Lease Agreement**  
**(Lease Refinancing Project)**

**Gross Debt Service Schedule and (Savings) / Cost Calculation (Combined Series)**

<b>Date</b>	<b>Principal</b>	<b>Rate</b>	<b>Interest</b>	<b>Periodic Debt Service</b>	<b>Fiscal Year Debt Service</b>	<b>Prior Issue Fiscal Year Debt Service</b>	<b>Fiscal Year (Savings) / Cost</b>
1/5/2018							
5/1/2018	65,100	N/A	26,081.27	91,181.27	91,181.27	94,318.15	(3,136.88)
11/1/2018	197,800	N/A	39,549.77	237,349.77			
5/1/2019	200,900	N/A	36,504.30	237,404.30	474,754.07	469,273.51	5,480.56
11/1/2019	204,000	N/A	33,410.88	237,410.88			
5/1/2020	207,100	N/A	30,269.53	237,369.53	474,780.41	470,114.15	4,666.25
11/1/2020	210,300	N/A	27,080.23	237,380.23			
5/1/2021	213,600	N/A	23,841.40	237,441.40	474,821.63	475,492.20	(670.57)
11/1/2021	216,800	N/A	20,551.66	237,351.66			
5/1/2022	220,200	N/A	17,212.38	237,412.38	474,764.03	480,428.02	(5,663.99)
11/1/2022	223,600	N/A	13,820.59	237,420.59			
5/1/2023	226,900	N/A	10,376.29	237,276.29	474,696.87	479,967.40	(5,270.53)
11/1/2023	230,400	N/A	6,880.86	237,280.86			
5/1/2024	59,100	N/A	3,331.32	62,431.32	299,712.18	290,380.21	9,331.96
11/1/2024	59,900	N/A	2,515.74	62,415.74			
5/1/2025	60,800	N/A	1,689.12	62,489.12	124,904.86	130,497.02	(5,592.16)
11/1/2025	61,600	N/A	850.08	62,450.08			
5/1/2026					62,450.08	65,248.51	(2,798.43)
<b>Totals</b>	<b>2,658,100</b>		<b>293,965.39</b>	<b>2,952,065.39</b>	<b>2,952,065.39</b>	<b>2,955,719.17</b>	<b>(3,653.78)</b>

**Madera Public Financing Authority**  
**Refunding Lease Agreement**  
**(Lease Refinancing Project)**

**Gross Debt Service Schedule (Golf Course, Taxable)**

<b>Date</b>	<b>Principal</b>	<b>Rate</b>	<b>Interest</b>	<b>Periodic Debt Service</b>	<b>Fiscal Year Debt Service</b>
1/5/2018					
2/1/2018					
5/1/2018	10,600.00	3.190	18,115.51	28,715.51	28,715.51
8/1/2018					
11/1/2018	146,900.00	3.190	27,941.21	174,841.21	
2/1/2019					
5/1/2019	149,300.00	3.190	25,598.16	174,898.16	349,739.37
8/1/2019					
11/1/2019	151,700.00	3.190	23,216.82	174,916.82	
2/1/2020					
5/1/2020	154,100.00	3.190	20,797.21	174,897.21	349,814.03
8/1/2020					
11/1/2020	156,600.00	3.190	18,339.31	174,939.31	
2/1/2021					
5/1/2021	159,100.00	3.190	15,841.54	174,941.54	349,880.85
8/1/2021					
11/1/2021	161,600.00	3.190	13,303.90	174,903.90	
2/1/2022					
5/1/2022	164,200.00	3.190	10,726.38	174,926.38	349,830.27
8/1/2022					
11/1/2022	166,800.00	3.190	8,107.39	174,907.39	
2/1/2023					
5/1/2023	169,400.00	3.190	5,446.93	174,846.93	349,754.31
8/1/2023					
11/1/2023	172,100.00	3.190	2,745.00	174,845.00	
2/1/2024					
5/1/2024					174,845.00
<b>Totals</b>	<b>1,762,400.00</b>		<b>190,179.33</b>	<b>1,952,579.33</b>	<b>1,952,579.33</b>

**Madera Public Financing Authority**  
**Refunding Lease Agreement**  
**(Lease Refinancing Project)**

**Net Debt Service Schedule and Savings Calculation (Cash Flow NPV Basis, Golf Course, Taxable)**

		Prior Issue Reserve Fund		194,704.02					
		Investment Yield		1.00					
Date	Periodic Debt Service	Fiscal Year Debt Service	Prior Issue Periodic Debt Service (*)	Less: RF Earnings	Prior Issue Net Periodic Debt Service	Prior Issue Net Fiscal Year Debt Service	Net Fiscal Year (Savings) / Cost	2.76055 Present Value	
1/5/2018									
2/1/2018			15,093.42		15,093.42			(15,063.56)	
5/1/2018	28,715.51	28,715.51	14,949.75	(973.52)	13,976.23	29,069.64	(354.13)	14,609.65	
8/1/2018			15,093.42		15,093.42			(14,858.47)	
11/1/2018	174,841.21		300,093.42	(973.52)	299,119.90			(121,508.46)	
2/1/2019			12,829.41		12,829.41			(12,457.75)	
5/1/2019	174,898.16	349,739.37	12,707.28	(973.52)	11,733.76	338,776.49	10,962.88	157,355.44	
8/1/2019			12,829.41		12,829.41			(12,288.14)	
11/1/2019	174,916.82		307,829.41	(973.52)	306,855.89			(125,509.41)	
2/1/2020			10,485.95		10,485.95			(9,906.82)	
5/1/2020	174,897.21	349,814.03	10,419.41	(973.52)	9,445.89	339,617.13	10,196.89	155,245.72	
8/1/2020			10,485.95		10,485.95			(9,771.94)	
11/1/2020	174,939.31		320,485.95	(973.52)	319,512.43			(133,808.44)	
2/1/2021			8,023.34		8,023.34			(7,375.21)	
5/1/2021	174,941.54	349,880.85	7,946.97	(973.52)	6,973.45	344,995.18	4,885.67	153,344.87	
8/1/2021			8,023.34		8,023.34			(7,274.80)	
11/1/2021	174,903.90		333,023.34	(973.52)	332,049.82			(141,511.63)	
2/1/2022			5,441.57		5,441.57			(4,866.73)	
5/1/2022	174,926.38	349,830.27	5,389.78	(973.52)	4,416.26	349,931.00	(100.73)	151,455.72	
8/1/2022			5,441.57		5,441.57			(4,800.47)	
11/1/2022	174,907.39		340,441.57	(973.52)	339,468.05			(144,181.02)	
2/1/2023			2,780.37		2,780.37			(2,419.40)	
5/1/2023	174,846.93	349,754.31	2,753.90	(973.52)	1,780.38	349,470.38	283.93	149,569.03	
8/1/2023			2,780.37		2,780.37			(2,386.46)	
11/1/2023	174,845.00		352,780.37	(195,677.54)	157,102.83			15,124.53	
2/1/2024									
5/1/2024	-	174,845.00				159,883.19	14,961.80		
<b>Totals</b>	<b>1,952,579.33</b>	<b>1,952,579.33</b>	<b>2,118,129.27</b>	<b>(206,386.26)</b>	<b>1,911,743.01</b>	<b>1,911,743.01</b>	<b>40,836.32</b>	<b>26,716.27</b>	

**Notes**

(\*) Includes Letter of Credit and Remarketing Fees

**Savings % New -1.01%**  
**Savings % Prior -1.41%**

Madera Public Financing Authority  
Refunding Lease Agreement  
(Lease Refinancing Project)  
Prior Issue Debt Service Schedule and Redemption Provisions (Golf Course)

Date	Beginning Principal	Principal	Ending Principal	Rate	Interest	Periodic Debt Service	Fiscal Year Debt Service	200bp Plus: Letter of Credit Fees	25bp Plus: Remarketing Fees	Adjusted Periodic Debt Service	Adjusted Fiscal Year Debt Service	1/5/2018 Called Bonds	0.00% Call Premium	Periodic Debt Service (*)	Defeasance Debt Service
1/5/2018	1,900,000		1,900,000												1,900,000.00
2/1/2018	1,900,000		1,900,000	0.920	4,405.92	4,405.92		9,500.00	1,187.50	15,093.42					
5/1/2018	1,900,000		1,900,000	0.920	4,262.25	4,262.25	8,668.16	9,500.00	1,187.50	14,949.75	30,043.16				
8/1/2018	1,900,000		1,900,000	0.920	4,405.92	4,405.92		9,500.00	1,187.50	15,093.42					
11/1/2018	1,900,000	285,000	1,615,000	0.920	4,405.92	289,405.92		9,500.00	1,187.50	300,093.42		285,000	-		
2/1/2019	1,615,000		1,615,000	0.920	3,745.03	3,745.03		8,075.00	1,009.38	12,829.41					
5/1/2019	1,615,000		1,615,000	0.920	3,622.91	3,622.91	301,179.78	8,075.00	1,009.38	12,707.28	340,723.53				
8/1/2019	1,615,000		1,615,000	0.920	3,745.03	3,745.03		8,075.00	1,009.38	12,829.41					
11/1/2019	1,615,000	295,000	1,320,000	0.920	3,745.03	298,745.03		8,075.00	1,009.38	307,829.41		295,000	-		
2/1/2020	1,320,000		1,320,000	0.920	3,060.95	3,060.95		6,500.00	825.00	10,485.95					
5/1/2020	1,320,000		1,320,000	0.920	2,994.41	2,994.41	308,545.42	6,500.00	825.00	10,419.41	341,564.17				
8/1/2020	1,320,000		1,320,000	0.920	3,060.95	3,060.95		6,500.00	825.00	10,485.95					
11/1/2020	1,320,000	310,000	1,010,000	0.920	3,060.95	313,060.95		6,500.00	825.00	320,485.95		310,000	-		
2/1/2021	1,010,000		1,010,000	0.920	2,342.09	2,342.09		5,050.00	631.25	8,023.34					
5/1/2021	1,010,000		1,010,000	0.920	2,265.72	2,265.72	320,729.72	5,050.00	631.25	7,946.97	346,942.22				
8/1/2021	1,010,000		1,010,000	0.920	2,342.09	2,342.09		5,050.00	631.25	8,023.34					
11/1/2021	1,010,000	325,000	685,000	0.920	2,342.09	327,342.09		5,050.00	631.25	333,023.34		325,000	-		
2/1/2022	685,000		685,000	0.920	1,588.45	1,588.45		3,425.00	428.13	5,441.57					
5/1/2022	685,000		685,000	0.920	1,536.65	1,536.65	332,809.29	3,425.00	428.13	5,389.78	351,878.04				
8/1/2022	685,000		685,000	0.920	1,588.45	1,588.45		3,425.00	428.13	5,441.57					
11/1/2022	685,000	335,000	350,000	0.920	1,588.45	336,588.45		3,425.00	428.13	340,441.57		335,000	-		
2/1/2023	350,000		350,000	0.920	811.62	811.62		1,750.00	218.75	2,780.37					
5/1/2023	350,000		350,000	0.920	785.15	785.15	339,773.67	1,750.00	218.75	2,753.90	351,417.42				
8/1/2023	350,000		350,000	0.920	811.62	811.62		1,750.00	218.75	2,780.37					
11/1/2023	350,000	350,000	-	0.920	811.62	350,811.62		1,750.00	218.75	352,780.37		350,000	-		
2/1/2024							351,623.23				355,560.73				
5/1/2024															
<b>Totals</b>		<b>1,900,000</b>			<b>63,329.27</b>	<b>1,963,329.27</b>	<b>1,963,329.27</b>	<b>137,600.00</b>	<b>17,200.00</b>	<b>2,118,129.27</b>	<b>2,118,129.27</b>	<b>1,900,000</b>	<b>-</b>	<b>-</b>	<b>1,900,000.00</b>

Notes

(\*) Includes Interest on Outstanding Balance at 12.00% During Escrow Period

**Madera Public Financing Authority**  
**Refunding Lease Agreement**  
**(Lease Refinancing Project)**

Gross Debt Service Schedule and Savings Calculation (Cash Flow NPV Basis, Police Station, Tax-Exempt)

Date	Principal	Rate	Interest	Periodic Debt Service	Fiscal Year Debt Service	Prior Issue Periodic Debt Service	Prior Issue Fiscal Year Debt Service	Fiscal Year (Savings) / Cost	2.76055 Present Value
1/5/2018									
5/1/2018	54,500.00	2.760	7,965.76	62,465.76					61,916.35
6/1/2018					62,465.76	65,248.51	65,248.51	(2,782.75)	(64,527.03)
11/1/2018	50,900.00	2.760	11,608.56	62,508.56					61,115.21
12/1/2018						65,248.51			(63,648.50)
5/1/2019	51,600.00	2.760	10,906.14	62,506.14					60,280.81
6/1/2019					125,014.70	65,248.51	130,497.02	(5,482.32)	(62,781.94)
11/1/2019	52,300.00	2.760	10,194.06	62,494.06					59,448.60
12/1/2019						65,248.51			(61,927.17)
5/1/2020	53,000.00	2.760	9,472.32	62,472.32					58,618.82
6/1/2020					124,966.38	65,248.51	130,497.02	(5,530.64)	(61,084.04)
11/1/2020	53,700.00	2.760	8,740.92	62,440.92					57,791.67
12/1/2020						65,248.51			(60,252.39)
5/1/2021	54,500.00	2.760	7,999.86	62,499.86					57,058.65
6/1/2021					124,940.78	65,248.51	130,497.02	(5,556.24)	(59,432.06)
11/1/2021	55,200.00	2.760	7,247.76	62,447.76					56,234.89
12/1/2021						65,248.51			(58,622.91)
5/1/2022	56,000.00	2.760	6,486.00	62,486.00					55,503.23
6/1/2022					124,933.76	65,248.51	130,497.02	(5,563.26)	(57,824.76)
11/1/2022	56,800.00	2.760	5,713.20	62,513.20					54,771.39
12/1/2022						65,248.51			(57,037.49)
5/1/2023	57,500.00	2.760	4,929.36	62,429.36					53,953.23
6/1/2023					124,942.56	65,248.51	130,497.02	(5,554.46)	(56,260.93)
11/1/2023	58,300.00	2.760	4,135.86	62,435.86					53,224.21
12/1/2023						65,248.51			(55,494.95)
5/1/2024	59,100.00	2.760	3,331.32	62,431.32					52,495.75
6/1/2024					124,867.18	65,248.51	130,497.02	(5,629.84)	(54,739.39)
11/1/2024	59,900.00	2.760	2,515.74	62,415.74					51,768.10
12/1/2024						65,248.51			(53,994.12)
5/1/2025	60,800.00	2.760	1,689.12	62,489.12					51,123.32
6/1/2025					124,904.86	65,248.51	130,497.02	(5,592.16)	(53,259.00)
11/1/2025	61,600.00	2.760	850.08	62,450.08					50,395.78
12/1/2025						65,248.51			(52,533.89)
5/1/2026									-
6/1/2026					62,450.08		65,248.51	(2,798.43)	-
<b>Totals</b>	<b>895,700.00</b>		<b>103,786.06</b>	<b>999,486.06</b>	<b>999,486.06</b>	<b>1,043,976.16</b>	<b>1,043,976.16</b>	<b>(44,490.10)</b>	<b>(37,720.57)</b>
									-
									-
								<b>(44,490.10)</b>	<b>(37,720.57)</b>
								<b>Savings % New</b>	<b>4.21%</b>
								<b>Savings % Prior</b>	<b>4.45%</b>

**Madera Public Financing Authority  
Refunding Lease Agreement  
(Lease Refinancing Project)**

**Prior Issue Debt Service Schedule and Redemption Provisions (Police Station)**

Date	Beginning Principal	Principal	Ending Principal	Rate	Interest	Periodic Debt Service	Fiscal Year Debt Service	6/1/2018 Called Bonds	0.00% Call Premium	Periodic Debt Service (*)	Defeasance Debt Service
1/5/2018											
6/1/2018	847,855.57	43,543.41	804,312.16	5.120	21,705.10	65,248.51	65,248.51			65,248.51	869,560.67
12/1/2018	804,312.16	44,658.12	759,654.04	5.120	20,590.39	65,248.51		44,658.12	-		
6/1/2019	759,654.04	45,801.37	713,852.67	5.120	19,447.14	65,248.51		45,801.37	-		
12/1/2019	713,852.67	46,973.88	666,878.79	5.120	18,274.63	65,248.51		46,973.88	-		
6/1/2020	666,878.79	48,176.41	618,702.38	5.120	17,072.10	65,248.51	260,994.04	48,176.41	-		
12/1/2020	618,702.38	49,409.73	569,292.65	5.120	15,838.78	65,248.51		49,409.73	-		
6/1/2021	569,292.65	50,674.62	518,618.03	5.120	14,573.89	65,248.51		50,674.62	-		
12/1/2021	518,618.03	51,971.89	466,646.14	5.120	13,276.62	65,248.51		51,971.89	-		
6/1/2022	466,646.14	53,302.37	413,343.77	5.120	11,946.14	65,248.51	260,994.04	53,302.37	-		
12/1/2022	413,343.77	54,666.91	358,676.86	5.120	10,581.60	65,248.51		54,666.91	-		
6/1/2023	358,676.86	56,066.38	302,610.48	5.120	9,182.13	65,248.51		56,066.38	-		
12/1/2023	302,610.48	57,501.68	245,108.80	5.120	7,746.83	65,248.51		57,501.68	-		
6/1/2024	245,108.80	58,973.72	186,135.08	5.120	6,274.79	65,248.51	260,994.04	58,973.72	-		
12/1/2024	186,135.08	60,483.45	125,651.63	5.120	4,765.06	65,248.51		60,483.45	-		
6/1/2025	125,651.63	62,031.83	63,619.80	5.120	3,216.68	65,248.51		62,031.83	-		
12/1/2025	63,619.80	63,619.80	-	5.120	1,628.71	65,248.51		63,619.80	-		
6/1/2026							195,745.53				
<b>Totals</b>		<b>847,855.57</b>			<b>196,120.59</b>	<b>1,043,976.16</b>	<b>1,043,976.16</b>	<b>804,312.16</b>	<b>-</b>	<b>65,248.51</b>	<b>869,560.67</b>

WHEN RECORDED RETURN TO:

Orrick, Herrington & Sutcliffe LLP  
405 Howard Street  
San Francisco, California 94105  
Attn: \_\_\_\_\_

---

This document is recorded for the benefit of the City of Madera and the recording is fee-exempt under Section 27383 of the California Government Code.

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**LEASE**  
**(CITY OF MADERA)**

by and between the

**MADERA PUBLIC FINANCING AUTHORITY**

and the

**CITY OF MADERA**

Executed and entered into as of January 1, 2018



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## LEASE

This Lease, dated as of January 1, 2018, between the CITY OF MADERA, a municipal corporation duly organized and existing under the laws of the State of California (the "City"), as lessor, and the MADERA PUBLIC FINANCING AUTHORITY, a public entity and agency, duly organized and existing pursuant to an Agreement entitled "Joint Exercise of Powers Agreement by and between the City of Madera and the Redevelopment Agency of the City of Madera" (the "Authority"), as lessee;

### WITNESSETH:

**WHEREAS**, the City presently owns the parcels of real property described in Exhibit A attached hereto and by this reference incorporated herein, and the City wishes to lease said parcels of real property and all buildings, structures, fixtures and improvements thereon (the "Facilities") to the Authority; and

**WHEREAS**, all acts, conditions and things required by law to exist, to have happened and to have been performed precedent to and in connection with the execution and entering into of the Lease do exist, have happened and have been performed in regular and due time, form and manner as required by law, and the parties hereto are now duly authorized to execute and enter into this Lease;

**NOW, THEREFORE**, in consideration of the premises and of the mutual agreements and covenants contained herein and for other valuable consideration, the parties hereto do hereby agree as follows:

#### SECTION 1. Definitions.

Unless the context otherwise requires, the terms defined in this Section shall, for all purposes of this Lease, have the meanings herein specified, the following definitions to be equally applicable to both the singular and plural forms of any of the terms herein defined. Capitalized terms used herein and not otherwise defined shall have the meanings set forth in the Sublease.

**"Assignment Agreement"** means that certain Assignment Agreement executed and entered into as of the date hereof by and between the Authority and the Purchaser, as originally executed and entered into and as it may from time to time be amended in accordance therewith.

**"Authority"** means Madera Public Financing Authority, acting as lessee hereunder.

**"City"** means the City of Madera, a municipal corporation duly organized and existing under and by virtue of the laws of the State of California.

**"Expiry Date"** means \_\_\_\_\_ 1, \_\_\_\_, with respect to the Facilities.

**“Facilities”** means the real property and improvements thereon described in Exhibit A hereto as such property description may be amended or modified (including the release, addition or substitution of property as part of the Facilities), in accordance with Sections 2.03 of the Sublease, subject , however, to Permitted Encumbrances.

**“Lease”** means this lease, as originally executed and entered into and as it may from time to time be amended in accordance herewith.

**“Purchaser”** means ZB, N.A.

**“Sublease”** means that certain sublease entitled “Sublease (City of Madera),” dated as of the date hereof, entered into between the Authority, as sublessor, and the City, as sublessee, as originally executed and entered into and as it may from time to time be amended in accordance therewith.

## **SECTION 2. Purpose and Term.**

The City hereby leases to the Authority and the Authority hereby hires from the City, on the terms and conditions hereinafter set forth, the Facilities. The parties hereto hereby agree that said lease of the Facilities by the City to the Authority serves the public purposes of the City and the Authority.

The term of this Lease shall commence on February 1, 2018 or the date the Lease is recorded, whichever is earlier, and shall end on the Expiry Date, unless such term is extended or sooner terminated as hereinafter provided. If on an Expiry Date, the principal components of the Base Rental Payments and all Additional Rental attributable to the related Facilities shall not have been paid, or provision therefor made in accordance with Section 8.02 of the Sublease, for any reason, including, without limitation, because the Base Rental Payments shall have been abated at any time and for any reason, then the term hereof with respect to such Facilities shall be extended until 10 days after all the principal components of the Base Rental Payments and all Additional Rental attributable to the related Facilities have been paid, or provision therefor made in accordance with Section 8.02 of the Sublease, except that the term hereof shall in no event be extended beyond 10 years after the Expiry Date. If prior to the Expiry Date, the principal components of the Base Rental Payments and all Additional Rental attributable to the related Facilities have been paid, or provision therefor made, the term hereof with respect to such Facilities shall end 10 days thereafter or 10 days after written notice by the Authority to the City, whichever is earlier.

## **SECTION 3. Rental.**

The Authority agrees to pay to the City as advance rental for the use and right to possession of the Facilities for the term of this Lease the sum of \_\_\_\_\_ Dollars (\$\_\_\_\_\_). Said advance rental shall be paid from proceeds of the assignment of this Lease and Sublease to the Purchaser. The Authority hereby waives any right that it may have under the laws of the State of California to a rebate of such rental in full or in part in the event there is substantial interference with the use and right to possession by the Authority of the Facilities or portion thereof as a result of material damage, destruction or condemnation.

#### **SECTION 4. Default.**

The Authority shall be deemed to be in default hereunder:

(a) if the Authority shall fail to keep, observe or perform any term, covenant or condition contained herein to be kept or performed by the Authority, or

(b) if (1) the Authority's interest in this Lease or any part thereof be assigned or transferred without the written consent of the City, either voluntarily or by operation of law or otherwise, or if (2) any proceeding under the United States Bankruptcy Code or any federal or state bankruptcy, insolvency or similar law or any law providing for the appointment of a receiver, liquidator, trustee or similar official of the Authority or of all or substantially all of its assets is instituted by or with the consent of the Authority, or is instituted without its consent and is not permanently stayed or dismissed within sixty (60) days, or if the Authority offers to the Authority's creditors to effect a composition or extension of time to pay the Authority's debts, or asks, seeks or prays for a reorganization or to effect a plan of reorganization or for readjustment of the Authority's debts, or if the Authority shall make a general assignment or any assignment for the benefit of the Authority's creditors.

Upon any such default it shall be lawful for the City to exercise any and all rights and remedies available pursuant to law, except that no merger of this Lease and of the Sublease shall be deemed to occur as a result thereof; provided, however, that the City shall have no power to terminate this Lease by reason of any default on the part of the Authority.

Neither the City nor the Authority shall in any event be in default in the performance of any of its obligations hereunder or imposed by law unless and until the City or the Authority (as the case may be) shall have failed to perform such obligations within sixty (60) days or such additional time as is reasonably required to correct any such default after notice by the Purchaser, the Authority or the City to the nonperforming party properly specifying wherein such party has failed to perform any such obligation.

#### **SECTION 5. Eminent Domain.**

If the whole or any part of the Facilities shall be taken under the power of eminent domain, the interest of the Authority shall be recognized and is hereby determined to be the amount of the unpaid principal components of Base Rental Projects (as that term is defined in the Sublease) due under the Sublease, including all accrued interest thereon, and the amount of the unpaid Additional Rental (as that term is defined in the Sublease) due under the Sublease, and the balance of the award, if any, shall be paid to the City.

#### **SECTION 6. Right of Entry.**

The City and its assignees shall have the right to enter the Facilities during reasonable business hours (and in emergencies at all times) (a) to inspect the same, (b) for any purpose connected with the City's or the Authority's rights or obligations under this Lease or the Sublease and (c) for all other lawful purposes.

## **SECTION 7. Quiet Enjoyment by the Authority.**

The Authority shall at all times during the term of this Lease peaceably and quietly have, hold and enjoy the Facilities without suit, trouble or hindrance from the City. Notwithstanding the foregoing covenant, the Authority shall not have any right to receive a rebate of the advance rental paid pursuant to Section 3 hereof or any portion thereof in the event there is a substantial interference with the use and right to possession by the Authority of the Facilities as a result of material damage, destruction or condemnation.

## **SECTION 8. Waiver of Personal Liability.**

All liabilities under this Lease on the part of the Authority shall be solely liabilities of the Authority, as a public entity and agency, and the City hereby releases each and every member, director, officer, agent, or employee of the Authority of and from any personal or individual liability under this Lease. No member, director, officer, agent, or employee of the Authority shall at any time or under any circumstances be individually or personally liable under this Lease to the City or to any other party for any act or omission of the Authority hereunder.

## **SECTION 9. Assignment.**

The City acknowledges and affirms the assignment by the Authority of its rights under this Lease to the Purchaser, under the terms of this Assignment Agreement. The Authority shall not otherwise have any rights to assign or sublet the Facilities.

## **SECTION 10. Law Governing.**

This Lease shall be governed exclusively by the provisions hereof and by the laws of the State of California.

## **SECTION 11. Notices.**

All approvals, authorizations, consents, demands, designations, notices, offers, requests, statements or other communications hereunder by either party to the other shall be in writing and shall be sufficiently given and served upon the other party if delivered personally or if mailed by United States first class mail, postage prepaid, to its address set forth below, or at such other address as such party may provide to the other party in writing from time to time, namely:

If to the City:	City of Madera 205 West Fourth Street Madera, CA 93637 Attention: _____
-----------------	----------------------------------------------------------------------------------

If to the Authority:	Madera Public Financing Authority 205 West Fourth Street Madera, CA 93637
----------------------	---------------------------------------------------------------------------------

Attention: \_\_\_\_\_

**SECTION 12.           Validity and Severability.**

If any one or more of the agreements, conditions, covenants or terms contained herein required to be observed or performed by or on the part of the City or Authority shall be contrary to law, then such agreement or agreements, such condition or conditions, such covenant or covenants or such term or terms shall be null and void and shall be deemed severable from the remaining agreements, conditions, covenants and terms hereof and shall in no way affect the validity hereof. The City and Authority hereby declare that they would have executed and entered into this Lease and each and every other article, section, paragraph, subdivision, sentence, clause and phrase hereof irrespective of the fact that any one or more of the articles, sections, paragraphs, subdivisions, sentences, clauses or phrases hereof or the application thereof to any person or circumstances may be held to be unconstitutional, unenforceable or invalid.

**SECTION 13.           Purpose of Lease.**

The Authority covenants that during the term of this Lease, except as hereinafter provided, it will use, or cause the use of, the Facilities for use for City purposes and for all purposes incidental thereto provided that in the event of default by the City under the Sublease the Authority may exercise the remedies provided in the Sublease.

**SECTION 14.           Waiver.**

Failure of the City to take advantage of any default on the part of the Authority shall not be, or be construed as, a waiver thereof, nor shall any custom or practice which may grow up between the parties in the course of administering this Lease be construed to waive or to lessen the right of the City to insist upon performance by the Authority of any term, covenant or condition hereof, or to exercise any rights given the City on account of such default. A waiver of a particular default shall not be deemed to be a waiver of a subsequent default of the same kind or any other subsequent default. The acceptance of rent hereunder shall not be, nor be construed to be, a waiver of any term, covenant or condition of this Lease.

**SECTION 15.           Section Headings.**

All section headings contained are for convenience of reference only and are not intended to define or limit the scope of any provision of this Lease.

**SECTION 16.           Execution in Counterparts.**

This Lease may be executed in any number of counterparts, each of which shall be deemed to be an original, but all together shall constitute but one and the same Lease.

**IN WITNESS WHEREOF**, the City and the Authority have caused this Lease to be executed by their respective duly authorized officers, all as of the day and year first above written.

CITY OF MADERA, Lessor

By \_\_\_\_\_  
Authorized Officer

Attest:

\_\_\_\_\_  
City Clerk

MADERA PUBLIC FINANCING  
AUTHORITY, Lessee

By \_\_\_\_\_  
Authorized Officer

Attest:

\_\_\_\_\_  
Secretary



## **EXHIBIT A**

### **FACILITIES**

All of that certain real property and improvements thereon situated in the City of Madera, State of California, known as the Corporation Yard described as follows:

APN 011-143-002 – 2.2 acres – C2 (Heavy Commercial) Zoning

APN 011-143-003 – 3.8 acres – PF (Public Facility) Zoning

APN 011-143-011 – 1.1 acres – I (Industrial) Zoning

[attach legal description from Title Company]

WHEN RECORDED RETURN TO:

Orrick, Herrington & Sutcliffe LLP  
405 Howard Street  
San Francisco, California 94105  
Attn: \_\_\_\_\_

---

This document is recorded for the benefit of the City of Madera and the recording is fee-exempt under Section 27383 of the California Government Code.

---

**SUBLEASE**  
**(CITY OF MADERA)**

by and between the

MADERA PUBLIC FINANCING AUTHORITY

and the

CITY OF MADERA

Executed and Entered into as of January 1, 2018

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## SUBLEASE

This Sublease (the "Sublease"), dated as of January 1, 2018, by and between MADERA PUBLIC FINANCING AUTHORITY (the "Authority"), a public entity and agency, duly organized and existing pursuant to an Agreement entitled "Joint Exercise of Powers Agreement" by and between the City of Madera and the Redevelopment Agency of the City of Madera, as lessor, and the CITY OF MADERA (the "City"), a municipal corporation duly organized and validly existing under the laws of the State of California, as lessee;

## WITNESSETH:

**WHEREAS**, the City has leased certain parcels of real property and all buildings, structures and fixtures thereon and improvements thereto (the "Facilities") to the Authority pursuant to a lease, entitled "Lease (City of Madera)," dated as of January 1, 2018, between the City and the Authority (the "Lease"); and

**WHEREAS**, the City will sublease the Facilities from the Authority pursuant to this Sublease; and

**WHEREAS**, all acts, conditions and things required by law to exist, to have happened and to have been performed precedent to and in connection with the execution and entering into of the Sublease do exist, have happened and have been performed in regular and due time, form and manner as required by law, and the parties hereto are now duly authorized to execute and enter into the Sublease;

**NOW, THEREFORE**, in consideration of the premises and of the mutual agreements and covenants contained herein and for other valuable consideration, the parties hereto do hereby agree as follows:

## ARTICLE I

### DEFINITIONS

**Section 1.01. Definitions.** Unless the context otherwise requires, the terms defined in this section shall for all purposes hereof and of any amendment hereof have the meanings defined herein:

***"Additional Rental"*** means all amounts payable to the Authority from the City as Additional Rental pursuant to Section 3.02 hereof.

***"Applicable Environmental Laws"*** means and shall include, but shall not be limited to, the Comprehensive Environmental Response, Compensation, and Liability Act ("CERCLA"), 42 USC Sections 9601 et seq.; the Resource Conservation and Recovery Act ("RCRA"), 42 USC Sections 6901 et seq.; the California Hazardous Waste Control Law ("HWCL"), California Health & Safety Code Sections 25100 et seq.; the Hazardous Substance Account Act ("HSAA"), California Health & Safety Code sections 25300 et seq.; the Porter-Cologne Water Quality Control Act (the "Porter-Cologne Act"), California Water Code Sections 1300 et seq.; the Air Resources Act, California Health & Safety Code Sections 3900 et seq.; the

Safe Drinking Water & Toxic Enforcement Act, California Health & Safety Code Sections 25249.5 et seq.; and the regulations under each thereof; and any other local, state, and/or federal laws or regulations, whether currently in existence or hereafter enacted, that govern:

- (1) the existence, cleanup, and/or remedy of contamination on property;
- (2) the protection of the environment from spilled, deposited, or otherwise emplaced contamination;
- (3) the control of hazardous wastes; or
- (4) the use, generation, transport, treatment, removal, or recovery of Hazardous Substances, including building materials.

***“Assignment Agreement”*** means that certain Assignment Agreement executed and entered into as of the date hereof by and between the Authority and the Purchaser, as originally executed and entered into and as it may from time to time be amended in accordance with its terms.

***“Authority”*** means the Madera Public Financing Authority.

***“Base Rental” or “Base Rental Payments”*** means all amounts payable to the Authority from the City as Base Rental pursuant to Section 3.01 hereof and Exhibit B-3 hereto. The Base Rental Payments shall include the Series A Tax-Exempt Base Rental Payments set forth in Exhibit B-1 hereto and the Series B Taxable Base Rental Payments set forth in Exhibit B-2 hereto.

***“Certification” or “Request”*** means, with respect to the City, an instrument in writing signed on behalf of the City by the Mayor, Director of Finance or City Administrator or any such officer’s designee or any other officer of the City duly authorized by the City for that purpose and, with respect to the Authority, an instrument in writing signed on behalf of the Authority by its Chairperson, Executive Director, Secretary or Treasurer or any other person (whether or not an officer of the Authority) who is specifically authorized by resolution of the Authority to sign or execute such a document on its behalf.

***“City”*** means the City of Madera, California, a municipal corporation duly organized and existing under the laws of the State of California.

***“Code”*** means the Internal Revenue Code of 1986, as amended, and the regulations issued thereunder.

***“Event of Default”*** means any of the events described in Section 7.01 hereof as an “Event of Default.”

***“Expiry Date”*** means \_\_\_\_\_ 1, \_\_\_\_.

***“Facilities”*** means the real property and improvements thereon described in Exhibit A hereto as such property description may be amended or modified (including the

release, addition or substitution of property as part of the Facilities), in accordance with Sections 2.04 of this Sublease, subject, however, to Permitted Encumbrances.

**“Hazardous Substance”** any substance that shall, at any time, be listed as “hazardous” or “toxic” in any Applicable Environmental Law or that has been or shall be determined at any time by any agency or court to be a hazardous or toxic substance regulated under Applicable Environmental Laws; and also means, without limitation, raw materials, building components, the products of any manufacturing, or other activities on the facilities, wastes, petroleum, and source, special nuclear, or by-product material as defined by the Atomic Energy Act of 1954, as amended (42 USC Sections 3011 et seq.)

**“Insurance Consultant”** means an individual or firm employed by the City as an independent contractor, experienced in actuarial analysis or the field of risk management.

**“Interest Payment Date”** means a date on which the interest component of the Base Rental Payments is due and payable.

**“Lease”** means that certain lease, entitled “Lease (City of Madera),” dated as of the date hereof, by and between the City, as lessor and the Authority, as lessee, as originally executed and entered into and as it may from time to time be amended in accordance with its terms.

**“Opinion of Counsel”** means a written opinion of counsel of recognized national standing in the field of law relating to municipal bonds, appointed and paid by the City.

**“Permitted Encumbrances”** means, as of any particular time:

(1) liens for general *ad valorem* taxes and assessments, if any, not then delinquent;

(2) the Lease, as it may be amended from time to time;

(3) the Assignment Agreement, as it may be amended from time to time;

(4) the Sublease, as it may be amended from time to time;

(5) any right or claim of any mechanic, laborer, materialman, supplier or vendor filed or perfected in the manner prescribed by law;

(6) easements, rights of way, mineral rights, drilling rights and other rights, reservations, covenants, conditions or restrictions which exist of record as of the date the term hereof commences and which the City certifies in writing will not materially impair the use of the Facilities by the City; and

(7) easements, rights of way, mineral rights, drilling rights and other rights, reservations, covenants, conditions or restrictions established following the date of recordation of the Sublease and to which the City and the Purchaser consent in writing.



***“Project”*** means the refinancing of the public golf course and police station as described in Exhibit C hereto.

***“Purchaser”*** means the ZB, N.A.

***“Rental Payments”*** means the Base Rental and the Additional Rental.

***“Series A Tax-Exempt Base Rental Payments”*** means the Base Rental Payments set forth in Exhibit B-1 hereto.

***“Series B Taxable Base Rental Payments”*** means the Base Rental Payments set forth in Exhibit B-2 hereto.

***“Sublease”*** means this Sublease (City of Madera), as originally executed and entered into and as it may from time to time be amended in accordance herewith.

## ARTICLE II

### PURPOSE AND TERM

**Section 2.01. Purpose.** The Authority hereby subleases the Facilities to the City and the City hereby subleases the Facilities from the Authority on the conditions and terms hereinafter set forth, and subject to all easements, encumbrances and restrictions that existed at the commencement of the term hereof. The City hereby agrees and covenants during the term hereof that, except as hereinafter provided, it will use the Facilities for public purposes of the City so as to afford the public the benefits contemplated hereby, and the City hereby further agrees and covenants during the term hereof, except as otherwise provided herein, that it will not abandon or vacate the Facilities.

**Section 2.02. Term.** The term hereof shall commence on February 1, 2018, or the date the Sublease is recorded, whichever is earlier, and shall end on the Expiry Date for the related Facilities. If on the Expiry Date, the principal components of the Base Rental Payments and all Additional Rental attributable to the related Facilities shall not have been paid, for any reason, including, without limitation, because the Base Rental Payments shall have been abated at any time and for any reason, then the term hereof with respect to such Facilities shall be extended until 10 days after all the principal components of the Base Rental Payments and all Additional Rental attributable to the related Facilities have been paid, except that the term hereof shall in no event be extended beyond 10 years after the Expiry Date. If prior to an Expiry Date, the principal components of the Base Rental Payments and all Additional Rental attributable to the related Facilities have been paid, or provision therefor made, the term hereof with respect to such Facilities shall end 10 days thereafter or 10 days after written notice by the Authority to the City, whichever is earlier.

**Section 2.03. Occupancy.** It is contemplated that the City will have the use and occupancy of the Facilities for public purposes on the commencement date of this Sublease and that the payments of Base Rental shall be due on the Base Rental Payment Dates, all as provided in Section 3.01 hereof and consistent with Exhibit B attached hereto and made a part hereof.

**Section 2.04. Substitution; Release.** The City and the Authority may substitute real property and the improvements, buildings, fixtures and equipment thereon for all or a part of, or may release a part of, the Facilities for purposes of the Lease and this Sublease, but only with the prior written consent of the Purchaser and after the City shall have filed with the Authority and the Purchaser, all of the following:

(a) Executed copies of the Lease and this Sublease or amendments thereto containing the amended description of the Facilities, including the legal description of the Facilities as modified if necessary.

(b) A Certification of the City, accompanied by a written appraisal from a qualified appraiser, who may but need not be an employee of the City, evidencing that the annual fair rental value of the Facilities which will constitute the Facilities after such substitution (which may be based on the construction or acquisition cost or replacement cost of such facility to the City) or withdrawal will be at least equal to 100% of the maximum amount of Base Rental Payments becoming due in the then current year or in any subsequent year.

(c) With respect to substitution, a leasehold owner's policy or policies or a commitment for such policy or policies or an amendment or endorsement to an existing policy or policies resulting in title insurance with respect to the Facilities after such substitution in an amount at least equal to the amount of such insurance provided with respect to the Facilities prior to such substitution; each such insurance instrument, when issued, shall name the Purchaser as the insured, and shall insure the leasehold estate of the Authority in such substituted property subject only to such exceptions as do not substantially interfere with the City's right to use and occupy such substituted property and as will not result in an abatement of Base Rental Payments payable by the City under this Sublease.

(d) An Opinion of Counsel stating that such amendment or modification (i) will, upon the execution and delivery thereof, be valid and binding upon the City; and (ii) will not, in and of itself, cause the interest component of the Series A Tax-Exempt Base Rental Payments to be included in gross income for federal income tax purposes.

(e) If at any time the Facilities are damaged or destroyed by earthquake or other uninsured casualty for which rental interruption insurance is not available, the City shall, to the extent permitted by law, substitute property for the Facilities pursuant to this Section 2.04; provided, however, that nothing in this paragraph shall supercede the provisions of Section 3.06 hereof.

### **ARTICLE III**

#### **RENTAL PAYMENTS**

**Section 3.01. Base Rental.** The City shall pay as Base Rental hereunder, without deduction or offset of any kind except as otherwise expressly provided herein, annual rental payments with interest and principal components, the interest components being payable semiannually, in accordance with the Base Rental Payment Schedules set forth in Exhibit B hereto and made a part hereof. Each Base Rental Payment shall be payable in funds that are

immediately available to the Authority no later than the due date. The interest components of the Base Rental Payments payable by the City hereunder shall be paid by the City as and shall constitute interest paid on the principal components of the Base Rental Payments payable by the City hereunder calculated on the basis of a 360-day year composed of twelve 30-day months. Each aggregate annual payment of Base Rental shall be for the use of the Facilities for the twelve-month period ending on the day immediately preceding the \_\_\_\_\_ 1 on which the principal component of such Base Rental is due. If the term of the Sublease shall have been extended pursuant to Section 2.02 hereof, Base Rental Payments shall continue to be due on \_\_\_\_\_ 1 and \_\_\_\_\_ 1 in each year, and payable as hereinabove described, continuing to and including the date of termination of the Sublease. Upon such extension of the Sublease, the principal and interest components of the Base Rental Payments shall be established so that the principal components will in the aggregate be sufficient to pay all unpaid principal components and interest components will be sufficient to pay all unpaid interest components plus interest on the extended principal components at a rate equal to the composite rate on the related unpaid Base Rental Payments.

**Section 3.02. Additional Rental.** The City shall pay to the Authority as Additional Rental hereunder such amounts in each year as shall be required by the Authority for the payment in full of all costs and expenses incurred by the Authority in connection with the execution, performance or enforcement hereof or any assignment hereof, including but not limited to payment of all fees, costs and expenses and all administrative costs of the Authority in connection with the Facilities, the Sublease and the Assignment Agreement and all taxes, assessments and governmental charges of any nature whatsoever hereafter levied or imposed by any governmental authority against the Authority, the Facilities or the rentals and the other payments required to be made by the City hereunder. Such additional rental shall be billed to the City by the Authority, from time to time, together with a statement certifying that the amount so billed has been paid by the Authority, for one or more of the items above described, or that such amount is then payable by the Authority, for one or more of such items, and all amounts so billed shall be due and payable by the City within thirty (30) days after receipt of the bill by the City.

**Section 3.03. Fair Rental Value.** Each payment of Base Rental and Additional Rental for each rental payment period during the term hereof shall constitute the total rental for such rental payment period, and shall be paid by the City in each rental payment period for and in consideration of the right to the use and occupancy, and the continued quiet enjoyment, of the Facilities during the rental payment period for which such rental is paid. The parties hereto have agreed and determined that such rental does not exceed the fair rental value of the Facilities. In making such determination, consideration has been given to the appraised value or construction cost of the Facilities, other obligations of the parties hereunder, the uses and purposes which may be served by the Facilities and the benefits therefrom which will accrue to the City, its residents and the general public.

**Section 3.04. Payment Provisions.** Each installment of Base Rental payable hereunder shall be paid in lawful money of the United States of America to or upon the order of the Authority or its assignee, and each installment of Additional Rental payable hereunder shall be paid in lawful money of the United States of America to or upon the order of the Authority. Any such installment of Base Rental or Additional Rental accruing hereunder which shall not be paid when due shall bear interest at the composite rate on the related unpaid Base Rental

Payments, or such lesser rate of interest as may be required by law, from the date when the same is due hereunder until the same shall be paid, and all such delinquent installments of Base Rental and the interest thereon shall be paid to or upon the order of the Authority and all such delinquent installments of Additional Rental and interest thereon shall be paid to or upon the order of the Authority. Notwithstanding any dispute between the Authority and the City, the City shall make all Base Rental Payments when due hereunder without deduction or offset of any kind except as otherwise expressly provided herein and shall not withhold any Base Rental Payments pending the final resolution of such dispute. In the event of a determination that the City was not liable for such Base Rental Payments or any portion thereof, such payments or excess of payments, as the case may be, shall be credited against subsequent Base Rental Payments due hereunder. All Base Rental Payments received shall be applied first to the interest components of the Base Rental due hereunder and then to the principal components of the Base Rental due hereunder, but no such application of any payments which are less than the total Base Rental due and owing shall be deemed a waiver of any default hereunder.

**Section 3.05. Appropriations Covenant.** The City agrees and covenants to take such action as may be necessary to include all Base Rental Payments and Additional Rental Payments due hereunder in its annual budgets and to make the necessary annual appropriations for all such payments, and the City further agrees and covenants to furnish to the Purchaser copies of the portion of annual budget of the City relating to the payment of Base Rental Payments and Additional Payments within sixty (60) days after the final adoption thereof. The agreements and covenants on the part of the City contained herein shall be deemed to be and shall be construed to be duties imposed by law and it shall be the duty of each and every public official of the City to take such actions and do such things as are required by law in the performance of the official duties of such officials to enable the City to carry out and perform the agreements and covenants required to be carried out and performed by it contained herein.

**Section 3.06. Rental Abatement.** Except to the extent the proceeds of insurance maintained pursuant to Article VI hereof are available to pay Rental Payments, the Rental Payments shall be abated proportionately, during any period in which by reason of any damage or destruction (other than by condemnation which is hereinafter provided for) there is substantial interference with the use and occupancy of the Facilities by the City, in the proportion in which the cost of that portion of the Facilities rendered unusable bears to the cost of the whole of the Facilities. Such abatement shall continue for the period commencing with such damage or destruction and ending with the substantial completion of the work of repair or reconstruction. In the event of any such damage or destruction, this Sublease shall continue in full force and effect and the City waives the benefits of California Civil Code Section 1932(2) and 1933(4) and Title 11 of the United States Code, Section 365(h) and all other rights to terminate this Sublease by virtue of any such damage or destruction or interference.

## ARTICLE IV

### USE OF PROCEEDS; TAX COVENANTS

**Section 4.01. Use of Proceeds.** The parties hereto agree that the proceeds of the assignment of this Sublease to the Purchaser in an amount equal to the principal components of the Base Rental payable hereunder together with other available moneys, if any, will be used to refinance the Project and to pay the costs of this financing and incidental and related expenses.

**Section 4.02. Tax Covenants.** The City and the Authority shall at all times do and perform all acts and things permitted by law which are necessary or desirable in order to assure that the interest component of the Series A Tax-Exempt Base Rental set forth in Exhibit B-1 will not be included in the gross income of the owner thereof for federal income tax purposes and shall take no action that would result in such interest being so included. To that end, the City shall comply with the provisions of the Tax Certificate, which is incorporated herein by reference as if set forth at this place.

## ARTICLE V

### MAINTENANCE; ALTERATIONS AND ADDITIONS

**Section 5.01. Maintenance and Utilities.** During such time as the City is in possession of the Facilities, all maintenance and repair, both ordinary and extraordinary, of the Facilities shall be the responsibility of the City, which shall at all times maintain or otherwise arrange for the maintenance of the Facilities in first class condition, and the City shall pay for or otherwise arrange for the payment of all utility services supplied to the Facilities, which may include, without limitation, janitor service, security, power, gas, telephone, light, heating, ventilation, air conditioning, water and all other utility services, and shall pay for or otherwise arrange for payment of the cost of the repair and replacement of the Facilities resulting from ordinary wear and tear or want of care on the part of the City or any assignee or sublessee thereof or any other cause and shall pay for or otherwise arrange for the payment of all insurance policies required to be maintained with respect to the Facilities. In exchange for the rental herein provided, the Authority agrees to provide only the Facilities.

**Section 5.02. Changes to the Facilities.** The City shall, at its own expense, have the right to remodel the Facilities or to make additions, modifications and improvements to the Facilities. All such additions, modifications and improvements shall thereafter comprise part of the Facilities and be subject to the provisions of this Sublease. Such additions, modifications and improvements shall not in any way damage the Facilities or cause it to be used for purposes other than those authorized under the provisions of state and federal law; and the Facilities, upon completion of any additions, modifications and improvements made pursuant to this Section, shall be of a value which is at least equal to the value of the Facilities immediately prior to the making of such additions, modifications and improvements.

**Section 5.03. Installation of City's Equipment.** The City and any sublessee may at any time and from time to time, in its sole discretion and at its own expense, install or permit to be installed other items of equipment or other personal property in or upon the



Facilities. All such items shall remain the sole property of such party, in which neither the Authority nor the Purchaser shall have any interest, and may be modified or removed by such party at any time provided that such party shall repair and restore any and all damage to the Facilities resulting from the installation, modification or removal of any such items. Nothing in this Sublease shall prevent the City from purchasing items to be installed pursuant to this Section under a conditional sale or lease purchase contract, or subject to a vendor's lien or security agreement as security for the unpaid portion of the purchase price thereof, provided that no such lien or security interest shall attach to any part of the Facilities.

## ARTICLE VI

### INSURANCE

**Section 6.01. Fire and Extended Coverage Insurance.** The City shall procure or cause to be procured and maintain or cause to be maintained, throughout the term of this Sublease, insurance against loss or damage to any structures constituting any part of the Facilities by fire and lightning, with extended coverage insurance, vandalism and malicious mischief insurance and sprinkler system leakage insurance. Said extended coverage insurance shall, as nearly as practicable, cover loss or damage by explosion, windstorm, riot, aircraft, vehicle damage, smoke and such other hazards as are normally covered by such insurance. Such insurance shall be in an amount equal to the replacement cost (without deduction for depreciation) of all structures constituting any part of the Facilities, excluding the cost of excavations, of grading and filling, and of the land except that such insurance may be subject to deductible clauses for any one loss of not to exceed two hundred fifty thousand dollars (\$250,000). Such insurance may be part of a joint purchase insurance program.

Should the Facilities be damaged or destroyed as a result of an event for which Federal or State disaster aid is available, the Authority and/or the City shall promptly apply for disaster aid. Any disaster aid proceeds received shall be used to repair, reconstruct, restore or replace the damaged or destroyed portions of the Facilities, or, at the option of the City and the Authority, to prepay the Base Rental Payments if permitted under the disaster aid program.

As an alternative to providing the insurance required by the first paragraph of this Section, or any portion thereof, the City may provide a self-insurance method or plan of protection if and to the extent such self-insurance method or plan of protection shall afford reasonable coverage for the risks required to be insured against, in light of all circumstances, giving consideration to cost, availability and similar plans or methods of protection adopted by public entities in the State other than the City. Before such other method or plan may be provided by the City, and annually thereafter so long as such method or plan is being provided to satisfy the requirements of this Sublease, there shall be filed with the Authority a certificate of an actuary, insurance consultant or other qualified person (who may be an employee of the City), stating that, in the opinion of the signer, the substitute method or plan of protection is in accordance with the requirements of this Section and, when effective, would afford reasonable coverage for the risks required to be insured against. There shall also be filed a certificate of the City setting forth the details of such substitute method or plan. In the event of loss covered by any such self-insurance method, the liability of the City hereunder shall be limited to the amounts in the self-insurance reserve fund or funds created under such method.

**Section 6.02. Title Insurance.** The City shall obtain a leasehold owner's policy or policies or a commitment for such policy or policies or an amendment or endorsement to an existing policy or policies resulting in title insurance with respect to the Facilities in an amount at least equal to the principal component of the Base Rental Payments. Such insurance instrument, when issued, shall name the Purchaser as the insured, and shall insure the leasehold estate of the Authority subject only to such exceptions as do not substantially interfere with the City's right to use and occupy the property and as will not result in an abatement of Base Rental Payments payable by the City under this Sublease.

**Section 6.03. Liability Insurance.** Except as hereinafter provided, the City shall procure or cause to be procured and maintain or cause to be maintained, throughout the term of this Sublease, a standard comprehensive general liability insurance policy or policies in protection of the Authority and its members, directors, officers, agents and employees, indemnifying said parties against all direct or contingent loss or liability for damages for personal injury, death or property damage occasioned by reason of the operation of the Facilities, with minimum liability limits of one million dollars (\$1,000,000) for personal injury or death of each person and three million dollars (\$3,000,000) for personal injury or deaths of two or more persons in each accident or event, and in a minimum amount of three hundred thousand dollars (\$300,000) for damage to property resulting from each accident or event. Such public liability and property damage insurance may, however, be in the form of a single limit policy in the amount of three million dollars (\$3,000,000) covering all such risks. Such liability insurance may be part of a joint-purchase insurance program.

As an alternative to providing the insurance required by the first paragraph of this Section, or any portion thereof, the City may provide a self-insurance method or plan of protection if and to the extent such self-insurance method or plan of protection shall afford reasonable protection to the Authority, its members, directors, officers, agents and employees, in light of all circumstances, giving consideration to cost, availability and similar plans or methods of protection adopted by public entities in the State other than the City. Before such other method or plan may be provided by the City, and annually thereafter so long as such method or plan is being provided to satisfy the requirements of this Sublease, there shall be filed with the Authority a certificate of an actuary, independent insurance consultant or other qualified person (who may be an employee of the City), stating that, in the opinion of the signer, the substitute method or plan of protection is in accordance with the requirements of this Section and, when effective, would afford reasonable protection to the Authority, its members, directors, officers, agents and employees against loss and damage from the hazards and risks covered thereby. There shall also be filed a certificate of the City setting forth the details of such substitute method or plan. In the event of loss covered by any such self-insurance method, the liability of the City hereunder shall be limited to the amounts in the self-insurance reserve fund or funds created under such method.

**Section 6.04. Rental Interruption or Use and Occupancy Insurance.** The Authority shall procure or cause to be procured and maintain or cause to be maintained throughout the term of this Sublease, rental interruption or use and occupancy insurance to cover loss, total or partial, of the rental income from or the use of the Facilities as the result of any of the hazards covered by the insurance required by Section 6.01 hereof, in an amount sufficient to pay the maximum annual Base Rental Payments hereunder for any two year period, except that



such insurance may be subject to a deductible clause of not to exceed fifty thousand dollars (\$50,000). Such insurance may be part of a joint-purchase insurance program. Any proceeds of such insurance shall be applied to pay the Base Rental Payments for a period of time during which the payment of rental under this Sublease is abated, and any proceeds of such insurance not so used shall be applied as provided in Section 3.02 to the extent required for the payment of Additional Payments. Notwithstanding anything to the contrary herein, such rental interruption or use and occupancy insurance shall not be self-insured.

**Section 6.05. Insurance Proceeds; Form of Policies.** All policies of insurance required by this Sublease shall provide that the Purchaser shall be given thirty (30) days notice of each expiration thereof or any intended cancellation thereof or reduction of the coverage provided thereby. The Purchaser shall be included as a loss payee or additional insured under the insurance required by Sections 6.01 and 6.03 hereof. The City shall pay when due the premiums for all insurance policies required by this Sublease, and, if requested in writing by the Purchaser, shall promptly furnish evidence of such payments to the Purchaser.

If requested in writing by the Purchaser, the City shall deliver to the Purchaser certificates or duplicate originals or certified copies of each insurance policy described in such schedule.

If the Facilities or any portion thereof are damaged or destroyed, in whole or in part, the City and the Authority shall cause the proceeds of any insurance claim, to be applied to the prompt repair, reconstruction, or replacement of the Facilities, unless the City has exercised its right to prepay this Sublease as provided herein. Any balance of the proceeds not required for such repair, reconstruction, or replacement shall be paid to the City.

## **ARTICLE VII**

### **DEFAULTS AND REMEDIES**

**Section 7.01. Defaults and Remedies.** (a) If the City shall fail to pay any rental payable hereunder when the same becomes due and payable, time being expressly declared to be of the essence of this Sublease, or the City shall fail to keep, observe or perform any other term, covenant or condition contained herein to be kept or performed by the City for a period of thirty (30) days after notice of the same has been given to the City by the Authority, or the Purchaser or for such additional time as is reasonably required, in the sole discretion of the Purchaser, to correct the same, or upon the happening of any of the events specified in subsection (b) of this Section (any such case above being an "Event of Default"), the City shall be deemed to be in default hereunder and it shall be lawful for the Authority to exercise any and all remedies available pursuant to law or granted pursuant to this Sublease. Upon any such default, the Authority, in addition to all other rights and remedies it may have at law, shall have the option to do any of the following:

(1) To terminate this Sublease in the manner hereinafter provided on account of default by the City, notwithstanding any re-entry or re-letting of the Facilities as hereinafter provided for in subparagraph (2) hereof, and to re-enter the Facilities and remove all persons in possession thereof and all personal property whatsoever situated upon the Facilities and place

such personal property in storage in any warehouse or other suitable place located within the City of Madera, California. In the event of such termination, the City agrees to surrender immediately possession of the Facilities, without let or hindrance, and to pay the Authority all damages recoverable at law that the Authority may incur by reason of default by the City, including, without limitation, any costs, loss or damage whatsoever arising out of, in connection with, or incident to any such re-entry upon the Facilities and removal and storage of such property by the Authority or its duly authorized agents in accordance with the provisions herein contained. Neither notice to pay rent or to deliver up possession of the Facilities given pursuant to law nor any entry or re-entry by the Authority nor any proceeding in unlawful detainer, or otherwise, brought by the Authority for the purpose of effecting such re-entry or obtaining possession of the Facilities nor the appointment of a receiver upon initiative of the Authority to protect the Authority's interest under this Sublease shall of itself operate to terminate this Sublease, and no termination of this Sublease on account of default by the City shall be or become effective by operation of law or acts of the parties hereto, or otherwise, unless and until the Authority shall have given written notice to the City of the election on the part of the Authority to terminate this Sublease.

(2) Without terminating this Sublease, (i) to collect each installment of rent as it becomes due and enforce any other terms or provision hereof to be kept or performed by the City, regardless of whether or not the City has abandoned the Facilities, or (ii) to exercise any and all rights of re-entry upon the Facilities. In the event the Authority does not elect to terminate this Sublease in the manner provided for in subparagraph (1) hereof, the City shall remain liable and agrees to keep or perform all covenants and conditions herein contained to be kept or performed by the City and, if the Facilities are not re-let, to pay the full amount of the rent to the end of the term of this Sublease or, in the event that the Facilities are re-let, to pay any deficiency in rent that results therefrom; and further agrees to pay said rent and/or rent deficiency punctually at the same time and in the same manner as hereinabove provided for the payment of rent hereunder (without acceleration), notwithstanding the fact that the Authority may have received in previous years or may receive thereafter in subsequent years rental in excess of the rental herein specified, and notwithstanding any entry or re-entry by the Authority or suit in unlawful detainer, or otherwise, brought by the Authority for the purpose of effecting such entry or re-entry or obtaining possession of the Facilities. Should the Authority elect to enter or re-enter as herein provided, the City hereby irrevocably appoints the Authority as the agent and attorney-in-fact of the City to re-let the Facilities, or any part thereof, from time to time, either in the Authority's name or otherwise, upon such terms and conditions and for such use and period as the Authority may deem advisable, and to remove all persons in possession thereof and all personal property whatsoever situated upon the Facilities and to place such personal property in storage in any warehouse or other suitable place located in the City of Madera, California, for the account of and at the expense of the City, and the City hereby exempts and agrees to save harmless the Authority from any costs, loss or damage whatsoever arising out of, in connection with, or incident to any such re-entry upon and re-letting of the Facilities and removal and storage of such property by the Authority or its duly authorized agents in accordance with the provisions herein contained. The City agrees that the terms of this Sublease constitute full and sufficient notice of the right of the Authority to re-let the Facilities and to do all other acts to maintain or preserve the Facilities as the Authority deems necessary or desirable in the event of such re-entry without effecting a surrender of this Sublease, and further agrees that no acts of the Authority in effecting such re-letting shall constitute a surrender or termination of this Sublease

irrespective of the use or the term for which such re-letting is made or the terms and conditions of such re-letting, or otherwise, but that, on the contrary, in the event of such default by the City the right to terminate this Sublease shall vest in the Authority to be effected in the sole and exclusive manner provided for in sub-paragraph (1) hereof. The City further waives the right to any rental obtained by the Authority in excess of the rental herein specified and hereby conveys and releases such excess to the Authority as compensation to the Authority for its services in re-letting the Facilities or any part thereof.

The City hereby waives any and all claims for damages caused or which may be caused by the Authority in re-entering and taking possession of the Facilities as herein provided and all claims for damages that may result from the destruction of the Facilities and all claims for damages to or loss of any property belonging to the City, or any other person, that may be in or upon the Facilities.

(b) If (1) the City's interest in this Sublease or any part thereof be assigned or transferred, either voluntarily or by operation of law or otherwise, without the written consent of the Authority, as hereinafter provided for, or (2) the City or any assignee shall file any petition or institute any proceeding under any act or acts, state or federal, dealing with or relating to the subject or subjects of bankruptcy or insolvency, or under any amendment of such act or acts, either as a bankrupt or as an insolvent, or as a debtor, or in any similar capacity, wherein or whereby the City asks or seeks or prays to be adjudicated a bankrupt, or is to be discharged from any or all of the City's debts or obligations, or offers to the City's creditors to effect a composition or extension of time to pay the City's debts or asks, seeks or prays for reorganization or to effect a plan of reorganization, or for a readjustment of the City's debts, or for any other similar relief, or if any such petition or any such proceedings of the same or similar kind or character be filed or be instituted or taken against the City, or if a receiver of the business or of the property or assets of the City shall be appointed by any court, except a receiver appointed at the instance or request of the Authority, or if the City shall make a general or any assignment for the benefit of the City's creditors, or if (3) the City shall abandon or vacate the Facilities, then the City shall be deemed to be in default hereunder.

(c) The Authority shall in no event be in default in the performance of any of its obligations hereunder or imposed by any statute or rule of law unless and until the Authority shall have failed to perform such obligations within thirty (30) days or such additional time as is reasonably required to correct any such default after notice by the City to the Authority properly specifying wherein the Authority has failed to perform any such obligation. In the event of default by the Authority, the City shall be entitled to pursue any remedy provided by law.

(d) In addition to the other remedies set forth in this Section, upon the occurrence of an event of default as described in this Section, the Authority, shall be entitled to proceed to protect and enforce the rights vested in the Authority by this Sublease or by law. The provisions of this Sublease and the duties of the City and of its trustees, officers or employees shall be enforceable by the Authority by mandamus or other appropriate suit, action or proceeding in any court of competent jurisdiction. Without limiting the generality of the foregoing, the Authority shall have the right to bring the following actions:

(1) Accounting. By action or suit in equity to require the City and its trustees, officers and employees and its assigns to account as the trustee of an express trust.

(2) Injunction. By action or suit in equity to enjoin any acts or things which may be unlawful or in violation of the rights of the Authority.

(3) Mandamus. By mandamus or other suit, action or proceeding at law or in equity to enforce the Authority's rights against the City (and its board, officers and employees) and to compel the City to perform and carry out its duties and obligations under the law and its covenants and agreements with the City as provided herein.

Excepting as otherwise provided herein, each and all of the remedies given to the Authority hereunder or by any law now or hereafter enacted are cumulative and the single or partial exercise of any right, power or privilege hereunder shall not impair the right of the Authority to other or further exercise thereof or the exercise of any or all other rights, powers or privileges. The Authority expressly waives the right to receive any amount from the Lessee pursuant to section 1951.2(a)(3) of the California Civil Code. The term "re-let" or "re-letting" as used in this Section shall include, but not be limited to, re-letting by means of the operation by the Authority of the Facilities. If any statute or rule of law validly shall limit the remedies given to the Authority hereunder, the Authority nevertheless shall be entitled to whatever remedies are allowable under any statute or rule of law.

In the event the Authority shall prevail in any action brought to enforce any of the terms and provisions of this Sublease, the City agrees to pay a reasonable amount as and for attorney's fees incurred by the Authority in attempting to enforce any of the remedies available to the Authority hereunder, whether or not a lawsuit has been filed and whether or not any lawsuit culminates in a judgment.

**Section 7.02. Waiver.** Failure of the Authority to take advantage of any default on the part of the City shall not be, or be construed as, a waiver thereof, nor shall any custom or practice which may grow up between the parties in the course of administering this instrument be construed to waive or to lessen the right of the Authority to insist upon performance by the City of any term, covenant or condition hereof, or to exercise any rights given the Authority on account of such default. A waiver of a particular default shall not be deemed to be a waiver of the same or any subsequent default. The acceptance of rent hereunder shall not be, or be construed to be, a waiver of any term, covenant or condition of this Sublease.

**Section 7.03. Assignment.** (a) The Authority and City hereby acknowledge and agree that any assignment of this Sublease shall only be effective against the City unless and until the assignment agreement or a written notice thereof is provided to the City. When presented with the assignment agreement or a notice of the assignment, the City will acknowledge the assignment in writing for the benefit of the Authority or any assignee. The Authority and City agree to keep a complete and accurate record of all such assignments.

(b) The City hereby acknowledges that, pursuant to the Assignment Agreement, all rights, privileges and agreements of the Authority herein, including the giving or receiving of notice, have been assigned to the Purchaser.

## ARTICLE VIII

### EMINENT DOMAIN; PREPAYMENT

**Section 8.01. Eminent Domain.** If the whole of the Facilities or so much thereof as to render the remainder unusable for the purposes for which it was used by the City shall be taken under the power or threat of eminent domain, the term of this Sublease shall cease as of the day that possession shall be so taken. If less than the whole of the Facilities shall be taken under the power or threat of eminent domain and the remainder is usable for the purposes for which it was used by the City at the time of such taking, then this Sublease shall continue in full force and effect as to such remainder, and the parties waive the benefits of any law to the contrary, and in such event there shall be a partial abatement of the rental due hereunder in an amount equivalent to the amount by which the annual payments of principal and interest components of the unpaid Base Rental Payments will be reduced by the application of the award in eminent domain to the prepayment of Base Rental Payments. So long as any Base Rental Payments remain unpaid, any award made in eminent domain proceedings for taking the Facilities or any portion thereof shall be paid to the Purchaser and applied to the prepayment of the Base Rental Payments as provided in Section 8.02 hereof. Any such award made after all of the Base Rental Payments and Additional Payments have been fully paid, or provision therefor made, shall be paid to the City.

**Section 8.02. Prepayment.** (a) The City shall prepay on any date from insurance and eminent domain proceeds, to the extent provided in Sections 6.01 and 8.01 hereof, and from any proceeds of title insurance obtained in connection with the Facilities, all or any part (in an integral multiple of \$5,000) of Base Rental Payments then unpaid so that the aggregate principal and interest components of the Base Rental Payments which shall be payable after such prepayment date shall be as nearly proportional as practicable to the aggregate annual principal and interest components of the Base Rental Payments unpaid prior to the prepayment date, at a prepayment amount equal to the principal and interest components of the Base Rental Payments to the date of prepayment.

(b) [The City may prepay the Series A Tax-Exempt Base Rental Payments in whole on any date on or after \_\_\_\_\_ 1, \_\_\_\_ by giving written notice to the Purchaser at least forty-five (45) days before the date fixed for prepayment and paying to the Purchaser a prepayment price equal the unpaid principal components of the Series A Tax-Exempt Base Rental Payments plus the unpaid interest component thereof from the last payment date to the date fixed for prepayment. The City agrees that if following such prepayment the Facilities are damaged or destroyed or taken by eminent domain, it is not entitled to, and by such prepayment waives the right of, abatement of such prepaid Base Rental Payments and shall not be entitled to any reimbursement of such Base Rental Payments.]

(c) [The City may prepay the Series B Taxable Base Rental Payments in whole on any date on or after \_\_\_\_\_ 1, \_\_\_\_ by giving written notice to the Purchaser at least forty-five (45) days before the date fixed for prepayment and paying to the Purchaser a prepayment price equal the unpaid principal components of the Series B Taxable Base Rental Payments plus the unpaid interest component thereof from the last payment date to the date fixed for prepayment. The City agrees that if following such prepayment the Facilities are damaged or



destroyed or taken by eminent domain, it is not entitled to, and by such prepayment waives the right of, abatement of such prepaid Base Rental Payments and shall not be entitled to any reimbursement of such Base Rental Payments.]

(d) When there shall have been deposited in trust with a financial institution at or prior to the due dates of the Base Rental Payments or date when the City may exercise its option to prepay the Base Rental Payments, in trust for the benefit of the Purchaser and irrevocably appropriated and set aside to the payment of the Base Rental Payments, sufficient moneys or direct obligations of the United States of America (the "Federal Securities"), not redeemable prior to maturity, the principal of and interest on which when due will provide money sufficient to pay all principal of and interest to the due date of the Base Rental Payments or dates when the City may exercise its option to prepay the Base Rental Payments, as the case may be; then and in that event the right, title and interest of the Purchaser in such Base Rental Payments and the obligations of the City hereunder shall thereupon cease, terminate, become void and be completely discharged and satisfied (except for the right of the Purchaser and the obligation of the City to have such moneys and such Federal Securities applied to the payment of the Base Rental Payments) and the Purchaser's interest in and title to the Facilities shall be transferred and conveyed to the City.

## ARTICLE IX

### COVENANTS

**Section 9.01. Right of Entry.** The Authority and its assignees shall have the right (but not the duty) to enter upon and to examine and inspect the Facilities during reasonable business hours (and in emergencies at all times) (a) to inspect the same, (b) for any purpose connected with the Authority's or the City's rights or obligations under this Sublease, and (c) for all other lawful purposes.

**Section 9.02. Liens.** In the event the City shall at any time during the term of this Sublease cause any changes, alterations, additions, improvements or other work to be done or performed or materials to be supplied, in or upon the Facilities, the City shall pay, when due, all sums of money that may become due for, or purporting to be for, any labor, services, materials, supplies or equipment furnished or alleged to have been furnished to or for the City in, upon or about the Facilities and shall keep the Facilities free of any and all mechanics' or materialmen's liens or other liens against the Facilities or the Authority's interest therein. In the event any such lien attaches to or is filed against the Facilities or the Authority's interest therein, the City shall cause each such lien to be fully discharged and released at the time the performance of any obligation secured by any such lien matures or becomes due, except that if the City desires to contest any such lien it may do so in good faith. If any such lien shall be reduced to final judgment and such judgment or such process as may be issued for the enforcement thereof is not promptly stayed, or if so stayed and said stay thereafter expires, the City shall forthwith pay and discharge said judgment. The City agrees to and shall, to the maximum extent permitted by law, indemnify and hold the Authority and its respective members, directors, agents, successors and assigns, harmless from and against, and defend each of them against, any claim, demand, loss, damage, liability or expense (including attorney's fees)

as a result of any such lien or claim of lien against the Facilities or the Authority's interest therein.

**Section 9.03. Quiet Enjoyment.** The parties hereto mutually covenant that the City, by keeping and performing the covenants and agreements herein contained and if not in default hereunder, shall at all times during the term of this Sublease peaceably and quietly have, hold and enjoy the Facilities without suit, trouble or hindrance from the Authority.

**Section 9.04. Authority Not Liable.** The Authority and its members, directors, officers, agents, employees and assignees shall not be liable to the City or to any other party whomsoever for any death, injury or damage that may result to any person or property by or from any cause whatsoever in, on or about the Facilities. The City, to the extent permitted by law, shall indemnify and hold the Authority and its members, directors, officers, agents, employees and assignees, harmless from, and defend each of them against, any and all claims, liens and judgments arising from the construction or operation of the Facilities, including, without limitation, death of or injury to any person or damage to property whatsoever occurring in, on or about the Facilities regardless of responsibility for negligence, but excepting the active negligence of the person or entity seeking indemnity.

**Section 9.05. Assignment and Subleasing.** Neither this Sublease nor any interest of the City hereunder shall be mortgaged, pledged, assigned, sublet or transferred by the City by voluntary act or by operation of law or otherwise, except with the prior written consent of the Purchaser, which in the case of subletting, shall not be unreasonably withheld; provided such subletting shall not affect the tax-exempt status of the interest components of the Series A Tax-Exempt Base Rental Payments payable by the City hereunder, as evidenced by an Opinion of Counsel to such effect. No such mortgage, pledge, assignment, sublease or transfer shall in any event affect or reduce the obligation of the City to make the Base Rental Payments and Additional Payments required hereunder.

**Section 9.06. Title to Facilities.** During the term of this Sublease, the Authority shall hold leasehold title to the Facilities and any and all additions which comprise fixtures, repairs, replacements or modifications thereof, except for those fixtures, repairs, replacements or modifications which are added thereto by the City and which may be removed without damaging the Facilities, and except for any items added to the Facilities by the City pursuant to Section 5.03 hereof. This provision shall not operate to the benefit of any insurance company if there is a rental interruption covered by insurance pursuant to Section 6.03 hereof. During the term of this Sublease, the Authority shall have a leasehold interest in the Facilities pursuant to the Facilities Lease.

Upon the termination of this Sublease (other than as provided in Sections 7.01 and 8.01 of this Sublease) or upon the Expiry Date for each Facility, title to the related Facility shall vest in the City pursuant to the Facilities Lease. Upon any such termination or expiration, the Authority shall execute such conveyances, deeds, and other documents as may be necessary to effect such vesting of record.

**Section 9.07. Purpose of Lease.** The City covenants that during the term of this Sublease, except as hereinafter provided, (a) it will use, or cause the use of, the Facilities for



public purposes and for the purposes for which the Facilities are customarily used, (b) it will not vacate or abandon the Facilities or any part thereof, and (c) it will not make any use of the Facilities which would jeopardize in any way the insurance coverage required to be maintained pursuant to Article VI hereof.

**Section 9.08. Environmental Covenants; Indemnification.** (a) The City will comply with all Applicable Environmental Laws with respect to the Facilities and will not use, store, generate, treat, transport, or dispose of any Hazardous Substance thereon or in a manner that would cause any Hazardous Substance to later flow, migrate, leak, leach, or otherwise come to rest on or in the property.

(b) The City will transmit copies of all notices, orders, or statements received from any governmental entity concerning violations or asserted violations of Applicable Environmental Laws with respect to the Facilities and any operations conducted thereon or any conditions existing thereon to the Purchaser, and the City will notify the Purchaser in writing immediately of any release, discharge, spill, or deposit of any Hazardous Substances that has occurred or is occurring that in any way affects or threatens to affect the Facilities, or the people, structures, or other property thereon, provided that no such notifications shall create any liability or obligation on the part of the Purchaser.

(c) The City shall permit the Purchaser, its agents, or any experts designated by the Purchaser to have full access to the Facilities during reasonable business hours for purposes of such independent investigation of compliance with all Applicable Environmental Laws, provided that the Purchaser has no obligation to do so, or any liability for any failure to do so, or any liability should it do so.

To the extent permitted by law, the City shall and hereby agrees to indemnify and save the Authority and the Purchaser, and their respective officers, agents, successors and assigns, harmless from and against all claims, losses and damages, including legal fees and expenses, arising out of (a) the use, maintenance, condition or management of, or from any work or thing done on the Facilities by the City, (b) any breach or default on the part of the City in the performance of any of its obligations under this Sublease, (c) any act or negligence of the City or of any of its agents, contractors, servants, employees or licensees with respect to the Facilities, (d) the use, presence, storage, disposal of any Hazardous Substances on or about the Facilities, (e) the failure to comply with any Applicable Environmental Laws, or (f) any act or negligence of any sublessee of the City with respect to the Facilities. No indemnification is made under this Section 9.09 or elsewhere in this Sublease for misconduct or negligence under this Sublease by the Authority or the Purchaser or any of their respective officers, agents, employees, successors or assigns.

**Section 9.09. Financial Statements; Budgets.** Within \_\_\_\_\_ ( ) days following the end of each fiscal year of the City during the term hereof, or if later, within ten (10) days of publication, the City shall provide the Purchaser with a copy of its audited financial statements for such fiscal year. Such audited financial statements shall include a balance sheet, a statement of revenues, expenses and changes in fund balances for budget and actual, a statement of cash flows, notes, schedules and any attachments to the financial statements and such other financial information as the Purchaser shall reasonably request. Within ten (10) days of its

becoming publicly available during the term of this Sublease, the City will provide the Purchaser with a copy of its annual proposed and adopted budget documents.

## **ARTICLE X**

### **DISCLAIMER OF WARRANTIES; VENDOR'S WARRANTIES; USE OF THE FACILITIES**

**Section 10.01. Disclaimer of Warranties.** THE AUTHORITY MAKES NO AGREEMENT, WARRANTY OR REPRESENTATION, EITHER EXPRESS OR IMPLIED, AS TO THE VALUE, DESIGN, CONDITION, MERCHANTABILITY, FITNESS FOR PARTICULAR PURPOSE OR FITNESS FOR USE OF THE FACILITIES, OR WARRANTY WITH RESPECT THERETO. THE CITY ACKNOWLEDGES THAT THE AUTHORITY IS NOT A MANUFACTURER OF THE FACILITIES OR A DEALER THEREIN, THAT THE CITY LEASES THE FACILITIES AS-IS, IT BEING AGREED THAT ALL OF THE AFOREMENTIONED RISKS ARE TO BE BORNE BY THE CITY. In no event shall the Authority be liable for any incidental, indirect, special or consequential damage in connection with or arising out of this Sublease or the existence, furnishing, functioning or the City's use of any item or products or services provided for in this Sublease.

**Section 10.02. Vendor's Warranties.** The Authority hereby irrevocably appoints the City its agent and attorney-in-fact during the term of this Sublease, so long as the City shall not be in default hereunder, to assert from time to time whatever claims and rights, including warranties of the Facilities, which the Authority may have against the manufacturers, vendors and contractors of the Facilities. The City's sole remedy for the breach of such warranty, indemnification or representation shall be against the manufacturer or vendor or contractor of the Facilities, and not against the Authority, nor shall such matter have any effect whatsoever on the rights and obligations of the Authority with respect to this Sublease, including the right to receive full and timely payments hereunder. The City expressly acknowledges that the Authority makes, and has made, no representation or warranties whatsoever as to the existence or availability of such warranties of the manufacturer, vendor or contractor.

**Section 10.03. Use of the Facilities.** The City will not install, use, operate or maintain the Facilities improperly, carelessly, in violation of any applicable law or in a manner contrary to that contemplated by this Sublease. The City shall provide all permits and licenses, if any, necessary for the installation and operation of the Facilities. In addition, the City agrees to comply in all respects (including, without limitation, with respect to the use, maintenance and operation of the Facilities) with all laws of the jurisdictions in which its operations may extend and any legislative, executive, administrative or judicial body exercising any power or jurisdiction over the Facilities; provided, however, that the City may contest in good faith the validity or application of any such law or rule in any reasonable manner which does not, in the opinion of the Authority, adversely affect the estate of the Authority in and to the Facilities or its interest or rights under this Sublease.

**Section 10.04. Tax Covenants.** The City and the Authority shall at all times do and perform all acts and things permitted by law which are necessary or desirable in order to assure that the interest component of the Series A Tax-Exempt Base Rental Payments will not be

included in the gross income of the owner thereof for federal income tax purposes and shall take no action that would result in such interest being so included. To that end, the City shall comply with the provisions of the Tax Certificate, which is incorporated herein by reference as if set forth at this place.

## ARTICLE XI

### MISCELLANEOUS

**Section 11.01. Law Governing.** This Sublease shall be governed exclusively by the provisions hereof and by the laws of the State as the same from time to time exist.

**Section 11.02. Notices.** All notices, statements, demands, consents, approvals, authorizations, offers, designations, requests, agreements or promises or other communications hereunder by either party to the other shall be in writing and shall be sufficiently given and served upon the other party if delivered personally or if mailed by United States registered mail, return receipt requested, postage prepaid:

If to the City:                      City of Madera  
                                                 205 West Fourth Street  
                                                 Madera, CA 93637  
                                                 Attention: \_\_\_\_\_

If to the Authority:                Madera Public Financing Authority  
                                                 205 West Fourth Street  
                                                 Madera, CA 93637  
                                                 Attention: \_\_\_\_\_

If to the Purchaser:                ZB, N.A.  
                                                 1 South Main, 18<sup>th</sup> Floor  
                                                 Salt Lake City, UT 84133  
                                                 Attention: Todd Harris

With a copy to:  
ZB, N.A.  
1 South Main, 11<sup>th</sup> Floor  
Salt Lake City, UT 84133  
Attention: Corporate Legal

or to such other addresses as the respective parties may from time to time designate by notice in writing.

**Section 11.03. Validity and Severability.** If any one or more of the agreements, conditions, covenants or terms contained herein required to be observed or performed by or on the part of the City or Authority shall be contrary to law, then such agreement or agreements, such condition or conditions, such covenant or covenants or such term or terms shall be null and void and shall be deemed separable from the remaining agreements, conditions, covenants and

terms hereof and shall in no way affect the validity hereof. The City and Authority hereby declare that they would have executed and entered into this Sublease and each and every other article, section, paragraph, subdivision, sentence, clause and phrase hereof of the fact that any one or more of the articles, sections, paragraphs, subdivisions, sentences, clauses or phrases hereof or the application thereof to any person or circumstance may be held to be unconstitutional, unenforceable or invalid.

**Section 11.04. Net-Net-Net Lease.** This Sublease shall be deemed and construed to be a "net-net-net lease" and the City hereby agrees that the rentals provided for herein shall be an absolute net return to the Authority, free and clear of any expenses, charges or set-offs whatsoever.

**Section 11.05. Taxes.** The City shall pay or cause to be paid all taxes and assessments of any type or nature charged to the Authority or affecting the Facilities or the respective interests or estates therein; provided that with respect to special assessments or other governmental charges that may lawfully be paid in installments over a period of years, the City shall be obligated to pay only such installments as are required to be paid during the term of this Sublease as and when the same become due.

The City shall also pay directly such amounts, if any, in each year as shall be required by the Authority for the payment of all license and registration fees and all taxes (including, without limitation, income, excise, license, franchise, capital stock, recording, sales, use, value-added, property, occupational, excess profits and stamp taxes), levies, imposts, duties, charges, withholdings, assessments and governmental charges of any nature whatsoever, together with any additions to tax, penalties, fines or interest thereon, including, without limitation, penalties, fines or interest arising out of any delay or failure by the City to pay any of the foregoing or failure to file or furnish to the Authority for filing in a timely manner any returns, hereinafter levied or imposed against the Authority or the Facilities, the rentals and other payments required hereunder or any parts thereof or interests of the City or the Authority therein by any governmental authority.

The City may, at the City's expense and in its name, in good faith contest any such taxes, assessments and other charges and, in the event of any such contest, may permit the taxes, assessments or other charges so contested to remain unpaid during the period of such contest and any appeal therefrom unless the Authority shall notify the City that, in the opinion of independent counsel, by nonpayment of any such items, the interest of the Authority in the Facilities will be materially endangered or the Facilities, or any part thereof, will be subject to loss or forfeiture. In the event of such notice, the City shall promptly pay such taxes, assessments or charges or provide the Authority with full security, in form satisfactory to the Authority and the Trustee, against any loss, which may result from nonpayment.

**Section 11.06. Section Headings.** All section headings contained herein are for convenience of reference only and are not intended to define or limit the scope of any provision of this Sublease.

**Section 11.07. Amendment or Termination.** Without the prior written consent of the Purchaser, (i) the City and the Authority will not alter, modify or cancel, or agree or

consent to alter, modify or cancel this Sublease, except in connection with a substitution, addition or release permitted by Section 2.04.

**Section 11.08. Execution.** This Sublease may be executed in any number of counterparts, each of which shall be deemed to be an original, but all together shall constitute but one and the same Sublease. It is also agreed that the Authority and City may each execute separate counterparts of this Sublease, all with the same force and effect as though both had executed the same counterpart.

IN WITNESS WHEREOF, the Authority and the City have caused this Sublease to be executed by their respective officers thereunto duly authorized, all as of the day and year first above written.

MADERA PUBLIC FINANCING  
AUTHORITY, as Lessor

By \_\_\_\_\_  
Authorized Officer

Attest:

\_\_\_\_\_  
Secretary

CITY OF MADERA, as Lessee

By \_\_\_\_\_  
Authorized Officer

Attest:

\_\_\_\_\_  
City Clerk

## **EXHIBIT A**

### **DESCRIPTION OF FACILITIES**

All of that certain real property and improvements thereon situated in the City of Madera, State of California, known as the Corporation Yard described as follows:

APN 011-143-002 – 2.2 acres – C2 (Heavy Commercial) Zoning

APN 011-143-003 – 3.8 acres – PF (Public Facility) Zoning

APN 011-143-011 – 1.1 acres – I (Industrial) Zoning

[attach legal description from Title Company]



**EXHIBIT B-1**

**SERIES A TAX-EXEMPT BASE RENTAL**

<b>Due Date</b>	<b>Principal Component</b>	<b>Interest Component</b>
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**EXHIBIT B-2**

**SERIES B TAXABLE BASE RENTAL**

<b><u>Due Date</u></b>	<b><u>Principal Component</u></b>	<b><u>Interest Component</u></b>
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**EXHIBIT B-3**

**BASE RENTAL PAYMENT SCHEDULE  
(AGGREGATE BASE RENTAL)**

<b><u>Due Date</u></b>	<b><u>Principal Component</u></b>	<b><u>Interest Component</u></b>	<b><u>Total Base Rental</u></b>	<b><u>Total Annual Base Rental</u></b>
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**EXHIBIT C**

**PROJECT**

[Description of Golf Course and Police Station to come]

WHEN RECORDED RETURN TO:

Orrick, Herrington & Sutcliffe LLP  
405 Howard Street  
San Francisco, California 94105  
Attn: \_\_\_\_\_

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This document is recorded for the benefit of the City of Madera and the recording is fee-exempt under Section 27383 of the California Government Code.

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**ASSIGNMENT AGREEMENT**

by and between the

MADERA PUBLIC FINANCING AUTHORITY

and

ZB, N.A.

Relating to the Assignment of Certain Rights  
Under a Lease and a Sublease,  
Each Dated the Date Hereof, Between

CITY OF MADERA  
AND  
MADERA PUBLIC FINANCING AUTHORITY

Executed and Entered into as of January 1, 2018

## **ASSIGNMENT AGREEMENT**

THIS ASSIGNMENT AGREEMENT (this "Assignment") is made as of January 1, 2018, by and between the Madera Public Financing Authority, a joint powers authority duly organized and existing under the laws of the State of California ("Authority"), whose principal address is 205 West Fourth Street, Madera, CA 93637 and ZB, N.A. ("Purchaser"), whose mailing address is 1 South Main, 18th Floor, Salt Lake City, UT 84133.

### **WITNESSETH:**

WHEREAS, Authority desires to assign, sell, transfer and convey to Purchaser, and Purchaser desires to purchase all of Authority's right, title and interest in and to the Lease and Sublease (as hereinafter defined), the Base Rental Payments and other amounts payable thereunder and certain other property and interests as herein provided upon the terms and conditions stated below;

WHEREAS, the Sublease provides for the leasing of the real property described in Exhibit A attached hereto;

NOW, THEREFORE, in consideration of the premises, the covenants contained herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto hereby agree as follows:

1. Assignment; Payment of Purchase Price.

(a) Authority hereby sells, transfers, delivers, assigns and conveys, without recourse, to Purchaser, its successors and assigns, forever, all of Authority's right, title, interest, estate, claims and demands in and to (i) all of its rights to receive the Base Rental Payments (as such term is defined in the Sublease) and all other rental payments scheduled to be paid by the City of Madera (the "City") under and pursuant to the Sublease (City of Madera), by and between the Authority, as lessor and the City, as lessee, dated as of January 1, 2018 (the "Sublease"), (ii) all rents, profits, products and offspring from the Facilities (as such term is defined in the Sublease) to which the Authority has any right or claim whatsoever, (iii) the right to take all actions and give all consents under the Sublease, (iv) the right of access more particularly described in the Sublease, and (v) all other right, title, and interest of Authority in, to and under the Sublease and the Lease (City of Madera), by and between the City, as lessor and the Authority, as lessee, dated as of January 1, 2018 (the "Lease"). Authority acknowledges that upon the execution and delivery of this Assignment Agreement, it shall have no right, title, or interest in or to the Base Rental Payments, the Sublease or the Lease; provided that nothing contained in this paragraph shall abrogate Authority's rights to be indemnified as provided in the Sublease and the Lease. All the foregoing rights, titles, interests, property, estate, claims and demands so sold, transferred, delivered and assigned, are herein collectively referred to as the "Assigned Property." This assignment is absolute and unconditional and is not intended to be merely the grant of a security

interest to Purchaser. This assignment is made without recourse to Authority, except as provided herein.

It is intended that the conveyance of Authority's right, title and interest in the Assigned Property pursuant to this Assignment shall constitute a purchase and sale and not a loan for federal and relevant state tax, bankruptcy and other purposes and hereafter Authority shall have no interest in the Assigned Property, and in the event of the bankruptcy of Authority the Assigned Property shall not be part of Authority's bankruptcy estate. Nonetheless, as a precaution in the event that, contrary to the intent of the parties hereto, it is contended that Authority has not sold or absolutely assigned the Assigned Property, but rather has received from Purchaser a loan or extension of credit secured by the Assigned Property, with Authority retaining an ownership interest therein, Authority hereby assigns, pledges and grants to Purchaser a first priority lien on and security interest in all right, title and interest Authority now or hereafter acquires in and to the Assigned Property sold, transferred, delivered, assigned and conveyed by Authority under this Assignment, as security for the repayment of such ostensible loan or extension of credit, as well as for the full and timely performance by Authority of each of its obligations hereunder.

(b) In consideration of the sale, transfer, conveyance and assignment provided for in subparagraph (a) of this Paragraph 1, Purchaser has paid or caused to be paid to or for the benefit of Authority, in immediately available funds, the purchase price of \$ \_\_\_\_\_.

2. Assigned Payments. Authority has given written notice of this Assignment to the City, and all Base Rental Payments that are or become payable pursuant to the Sublease from and after the date of this Assignment shall be made directly to Purchaser at \_\_\_\_\_ or as otherwise directed by Purchaser.

3. Warranties and Covenants. Authority hereby represents, warrants and covenants to and with Purchaser that, as of the date hereof:

(a) Authority is a joint powers authority duly organized and validly existing under the laws of the State of California, with powers and authority to own its properties and carry on its operations as now being conducted.

(b) Authority has full power, authority and legal right to enter into and perform its obligations under this Assignment and with respect to the Assigned Property. The execution, delivery and performance of this Assignment have been duly authorized by all necessary action on the part of Authority.

(c) The execution, delivery and performance of this Assignment do not contravene any law, governmental rule, regulation, order or ordinance of any governmental entity having jurisdiction over and binding on Authority or the organizational document or bylaws of Authority and do not and will not result in any breach of or constitute a default under any indenture, mortgage, contract, agreement or instrument to which Authority is a party or by which it or its property is bound.



(d) There are no pending or threatened actions or proceedings before any court or administrative agency that will materially adversely affect the condition, business or operation of Authority or the ability of Authority to perform its obligations under this Assignment.

(e) The Lease, the Sublease and this Assignment are legal, valid and binding obligations of Authority, which are enforceable in accordance with their respective terms, except as such enforceability may be limited by applicable laws relating to bankruptcy, moratorium, insolvency or creditors' rights or by the application of principles of equity.

(f) Immediately prior to the transfer and assignment provided for by this Assignment, Authority had good and marketable title to the Assigned Property, free and clear of all claims, liens, security interests and encumbrances. This Assignment vests in Purchaser full right, title and interest in and to the Assigned Property, in each instance free and clear of all claims, liens, security interests and encumbrances of any kind or character, and the same shall be and remain free of all claims, liens, security interests and encumbrances arising through any act or omission of Authority or any person claiming by, through or under it.

(g) Authority has not assigned, sold, transferred, pledged or otherwise granted an interest, and hereby covenants that it will not assign, sell, transfer, pledge or otherwise grant an interest in or to the whole or any part of the Assigned Property sold, transferred, delivered, conveyed and assigned pursuant to this Assignment to anyone other than Purchaser. Authority will make appropriate notations on its books and records with entries regarding the Assigned Property indicating the entering into of this Assignment.

(h) No event of default has occurred and is continuing under the Lease or Sublease, and, to the best knowledge of Authority, no event has occurred that, with the lapse of time or the giving of notice or both, would constitute an event of default under the Lease or Sublease.

(i) Authority has given notice to the City of this Assignment and obtained the written acknowledgment of the City to this Assignment.

(j) Authority has no right or obligation to repurchase the Assigned Property from Purchaser. Authority retains no interest whatsoever in the Assigned Property, except for rights of indemnification.

(k) Authority will make no amendment or modification to the Assigned Property without the prior written consent of Purchaser.

(l) No arrangement exists whereby Authority is to protect Purchaser against (i) the risk of fluctuations in the market value of the Assigned Property or (ii) the risk of nonpayment by the City.

(m) The principal place of business and chief executive office of Authority is located at City Hall, 205 West Fourth Street, Madera, CA 93637.

4. Purchaser Representations, Warranties and Acknowledgements. Purchaser represents, warrants and acknowledges as follows:

(a) The Purchaser acknowledges that any transfer of the Sublease or the Lease Certificates shall be restricted as provided in clause (b) below and that any transfer shall only be effective unless and until a notice of assignment is given to the Authority and the City. When presented with notice of the assignment, the Authority and City will acknowledge the assignment for the benefit of the Purchaser or any assignee;

(b) The Sublease is being acquired by the Purchaser for investment and not with a view to resell the Sublease, and the Purchaser acknowledges that the Sublease shall only be transferred or resold to any affiliate of Purchaser or to a "qualified institutional buyer" as defined in Rule 144A of the Securities Act of 1933; that the Sublease shall only be transferred in whole and that the Purchaser shall not transfer any fractional interest in the Sublease;

(c) The Purchaser is a "qualified institutional buyer," as defined in Rule 144A of the Securities Act of 1933 and has such knowledge and experience in financial and business matters in general and in particular with respect to this type of investment that it is capable of evaluating the merits and risks of an investment in the Assigned Property, has evaluated and understands the risks and terms of investing in the Assigned Property and is able to bear the economic risk of an entire loss in this investment;

(d) All documents, records and books pertaining to this investment requested by Purchaser have been made available to the Purchaser and its attorneys, accountants or investor representatives, and the Purchaser has been afforded the opportunity to ask questions concerning the purchase of the Assigned Property; and

(e) The Purchaser acknowledges that the Assigned Property is exempt from the requirements of Rule 15c2-12 of the Securities and Exchange Commission and that neither the Authority nor the City has undertaken to provide any continuing disclosure with respect to the Assigned Property.

5. Further Assurances. Authority, from time to time, at the request and cost and expense of Purchaser, shall execute and deliver such further acknowledgments, agreements and instruments of assignment, transfer and assurance and do all such further acts and things as may be reasonably necessary or appropriate in the opinion of Purchaser to give effect to the provisions hereof and to further confirm the rights, titles and interests hereby sold, assigned and transferred to Purchaser.

6. Severability; Rights Cumulative. If any part of this Assignment shall be contrary to any law that Purchaser might seek to apply or enforce or should otherwise be defective, the other provisions hereof shall not be affected thereby but shall continue in full force and effect, to which end they are hereby declared severable. All rights, remedies and powers of Purchaser hereunder are irrevocable and cumulative, and not alternative or exclusive, and shall be in addition to all rights, remedies and powers given hereunder, or in or by any other instrument or any other law now existing or hereafter enacted.

7. Notices. Any notice required or permitted to be given by Authority or Purchaser to the other shall be deemed to have been given upon the actual receipt thereof or on the third day after it is deposited in the United States mail, certified mail, return receipt requested, with proper postage prepaid, whichever is the earlier, and addressed to the party at such address as shown at the beginning of this Assignment or at such other address as one party shall hereafter furnish to the other in writing.

8. Headings. The headings of the paragraphs of this Assignment are for convenience only and shall not be used to interpret or construe this Assignment.

9. Defined Terms. Capitalized terms used, but not defined, herein shall have the same meanings when such terms are used in the Sublease.

10. Entirety; Amendments. This Assignment contains the entire agreement between Authority and Purchaser with respect to the subject matter hereof and supersedes all prior agreements and understandings relating thereto. No other agreements will be effective to change, modify or terminate this Assignment in whole or in part unless such agreement is in writing and duly executed by Authority and Purchaser. No representations, inducements, promises or agreements, oral or otherwise, that are not embodied herein (or any other written instrument or document delivered pursuant hereto or in connection herewith) will be of any force or effect.

11. Parties Bound. This Assignment shall be binding on Authority and its successors and assigns, and shall inure to the benefit of Purchaser and its successors and assigns.

12. Governing Law. The substantive laws of the State of California shall govern the validity, construction, enforcement and interpretation of this Assignment and the rights of the parties hereunder.

13. Counterparts. The Assignment may be executed in any number of separate counterparts by the parties hereto and each counterpart when so executed shall be deemed to be our original and all such counterparts when taken together shall constitute one and the same agreement.

IN WITNESS WHEREOF, Authority and Purchaser have duly executed this Assignment by one of their respective officers thereunto duly authorized, as of the date first above written.

MADERA PUBLIC FINANCING  
AUTHORITY

By: \_\_\_\_\_  
Authorized Officer

Attest:

\_\_\_\_\_  
Secretary

ZB, N.A.

By: \_\_\_\_\_  
Authorized Officer

APPROVED:  
CITY OF MADERA

\_\_\_\_\_  
Authorized Officer

## **EXHIBIT A**

### **FACILITIES**

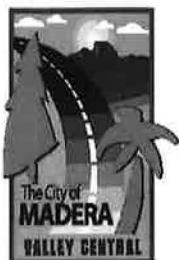
All of that certain real property and improvements thereon situated in the City of Madera, State of California, known as the Corporation Yard described as follows:

APN 011-143-002 – 2.2 acres – C2 (Heavy Commercial) Zoning

APN 011-143-003 – 3.8 acres – PF (Public Facility) Zoning

APN 011-143-011 – 1.1 acres – I (Industrial) Zoning

[attach legal description from Title Company]



# REPORT TO THE CITY COUNCIL

COUNCIL MEETING OF December 20, 2017

AGENDA ITEM NUMBER D-1

APPROVED BY

GRANTS ADMINISTRATOR

CITY ADMINISTRATOR

**SUBJECT: REQUEST FOR LETTER IN SUPPORT OF THE SAN JOAQUIN JOINT POWERS AUTHORITY (SJJPA) AND THE SAN JOAQUIN REGIONAL RAIL COMMISSION'S (SJRRRC) TRANSIT AND INTERCITY RAIL CAPITAL PROGRAM (TIRCP) GRANT APPLICATION**

**RECOMMENDATION:** Staff recommends that the Council adopt a resolution authorizing the Mayor to sign the attached letter on behalf of the City supporting the San Joaquin Joint Powers Authority (SJJPA) and the San Joaquin Regional Rail Commission's (SJRRRC) Transit and Intercity Rail Capital Program (TIRCP) grant application.

## **SUMMARY/DISCUSSION:**

The SJJPA and JRRC have requested that the City offer support for their joint application for a grant to the California State Transportation Agency's Intercity Rail Capital Program. The proposed project intends to use rail infrastructure to connect travelers to and from the Sacramento region with the San Joaquin Valley. It would enable two more daily round trips for the Amtrak San Joaquins service from Fresno to Sacramento, which would offer added travel solutions for residents in Madera. In addition it would improve connectivity for the San Joaquin Valley by expanding the Altamont Corridor Express (ACE) service between Natomas and San Jose and between Merced and Natomas – offering a new direct connection between the Northern San Joaquin Valley, Sacramento and the Bay Area.

Another key element of this project is that it would assist with the relocation of the Amtrak station in Madera. A High Speed Rail (HSR) station was added in Madera in the California High Speed Rail Authority 2016 Business Plan. Relocating the Amtrak station to use both the future HSR and the San Joaquin would create a cross-platform connection between the two systems in order to maximize mobility in the region. City of Madera representatives have been involved in identifying an ideal location for the station relocation as well as evaluating the impacts that the new Amtrak Station could yield locally, regionally and state-wide.

The proposed location has greater potential to capture more riders for Amtrak as well as HSR, by being situated between Madera County's two largest and fastest growing communities. The location is bound by two State Highway Routes, along a route in Madera County that currently serves as the main East-West corridor for those travelling between Madera and Fresno Counties. The proposed new station would also be an attractive choice for potential riders from North and

West Fresno/Clovis metro areas, rural communities in northern eastern Fresno County and the Yosemite National Park gateway communities in Eastern Madera County, thereby capturing a much larger ridership potential.

Very importantly, implementation of these projects would also bring significant environmental benefits by reducing car travel and congestion through the Central and Northern San Joaquin Valleys, which would reduce greenhouse gas emissions (GHG). These GHG benefits of rail would continue to grow over time as frequency increases and ridership population grows.

**FINANCIAL IMPACT:** There is no financial impact associated with this action.

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

Supporting these regional entities in their pursuit of grant funding for transportation enhancement projects in the region addresses components within the following:

Strategy 101.6 *Ensure infrastructure can sustain population growth in the development of the General Plan.*

Strategy 121. *Develop a city-wide multi-modal transportation plan to ensure safe, affordable and convenient transportation modes for residents and businesses within Madera*



**RESOLUTION NO. 17 - \_\_\_\_\_**

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MADERA,  
CALIFORNIA, AUTHORIZING THE MAYOR TO SIGN A LETTER  
SUPPORTING A TRANSIT AND INTERCITY RAIL CAPITAL  
PROGRAM (TIRCP) GRANT APPLICATION**

**WHEREAS,** City of Madera is in support of having better access to the Sacramento regional transportation network; and

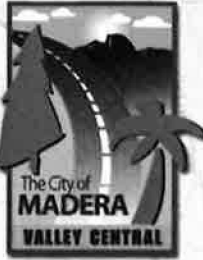
**WHEREAS,** City of Madera representatives have collaborated with several regional and local partners to analyze the effects of these transportation enhancements; and

**WHEREAS,** the benefits that these transportation enhancements would bring are aligned with the City of Madera Regional Transportation Plan.

**NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF MADERA  
HEREBY FINDS RESOLVES AND ORDERS AS FOLLOWS:**

1. The above recitals are true and correct.
2. City of Madera does support the grant application as addressed in the letter of support, a copy of which is on file with the City Clerk.
3. The Mayor of the City of Madera is hereby authorized to sign said letter on behalf of the City.
4. This Resolution is effective immediately upon adoption.

\* \* \* \* \*



December 20, 2017

Brian P. Kelly, Secretary  
California State Transportation Agency  
915 Capitol Mall, Suite 350B  
Sacramento, CA 95814  
[tircpcomments@dot.ca.gov](mailto:tircpcomments@dot.ca.gov)

RE: SJJPA/SJRRC TIRCP 2018 Grant Application – Support for Improved Passenger Rail Service to Sacramento

Dear Secretary Kelly:

City of Madera would like to express our strong support for the grant application submitted by the San Joaquin Joint Powers Authority (SJJPA) and the San Joaquin Regional Rail Commission (SJRRC) that seeks funding under the Transit and Intercity Rail Capital Program (TIRCP). The proposed project will use rail infrastructure to better connect travelers to and from the Sacramento region with the San Joaquin Valley. Because the tracks are already in place, the planned improvements to passenger rail service are cost effective and achievable in a fast timeframe. This is an incredibly unique and important opportunity to dramatically improve the regional transportation network and transform how Californians move through the Central Valley.

The requested grant funding will enable in the near term two more daily round trips for the Amtrak San Joaquins service from Fresno to Sacramento using the BNSF Stockton Subdivision and the UPRR Sacramento Subdivision – with new stations located in Lodi, Elk Grove, Sacramento City College, Midtown Sacramento, Old North Sacramento, and Natomas. These new station locations will serve the region well, and a shuttle connection between the Natomas station and the Sacramento International Airport offers a travel solution for residents throughout the Valley. In addition to improved connectivity for the San Joaquin Valley, we are hopeful the San Joaquin Regional Rail Commission also pursues expanded Altamont Corridor Express (ACE) service between Natomas and San Jose and between Merced and Natomas – offering a new direct connection between Sacramento and the Bay Area and more service between the Northern San Joaquin Valley and Sacramento.

The SJJPA/SJRRC proposed rail project would bring major benefits for the entire Central Valley region:

- Better frequency. In order for the service to become a more useful and reliable piece of the Sacramento regional transportation network, it is essential to increase frequency of service.

- Better access in Sacramento. By building new platforms along the Sacramento Subdivision tracks, riders would now have access to multiple stations that serve the region in convenient locations and connect to the Sacramento Regional Transit network.
- Better mobility options. Improving frequency of service to the Sacramento market would provide an attractive way to connect travelers to the state capital– an important opportunity to serve business travelers and respond to economic development patterns.

The project would also bring significant environmental benefits by reducing car travel and congestion and therefore reducing greenhouse gas emissions (GHG). The GHG benefits of rail would continue to grow over time as frequency increases and ridership population grows.

Improved passenger rail is an essential component of the Sacramento region's future transportation network. Increased frequency will make the service a viable and attractive option for business travelers, leisure travelers, and those living in transit-dependent households. It will facilitate economic growth, encourage transit-oriented development, and increase bicycle and pedestrian activity for connections to the stations.

In the Madera Region, a key area of interest related to this TIRCP 2018 Grant Application is the relocation of the Madera Amtrak Station. In the California High Speed Rail Authority 2016 Business Plan, a High Speed Rail (HSR) station was added in Madera with the intent to have the future state system be the initial connection to the national Amtrak system. The track alignments for both future HSR service and the San Joaquin's service meet in Madera County, creating the potential for a cross-platform connection between the two services. Currently, there are no other stations in the San Joaquin Valley envisioned to provide such a high-quality connection.

City of Madera has collaborated with several of our regional and local partners to analyze an ideal location for station relocation as well as considering the positive effects and impacts a well-planned new Amtrak Station location could yield locally, regionally and state-wide.

The new location has greater potential to capture more riders for Amtrak, as well as HSR, by being situated between Madera County's two largest and fastest growing communities. The proposed new station would also be an attractive choice for potential riders from the northern Fresno/Clovis metro area, rural communities in northeastern Fresno County and the Yosemite National Park gateway communities in Eastern Madera County. The location is bound by two State Highway Routes with modern interchange access from each either in place or currently programmed in the near future and is along a route in Madera County that currently serves as the main east-west corridor for those travelling between Madera and Fresno Counties. The new location is in close proximity to the Madera Center College and is currently served by hourly public transit connections from the Cities of Madera and Fresno.

Relocating the Amtrak Station is needed to ensure higher degree of safety and health. The potential to capture more riders on commuter rail being realized via way of a better located Amtrak Station will be a benefit for safety on our increasingly congested roadways and to emissions levels that are output from our automobiles caught in that congestion. Riders who choose to access the new station for their trip

have potential to improve conditions and provide congestion and emissions relief not just in Madera, but in all areas of the state where their modal choice for a trip on rail displaces their vehicle.

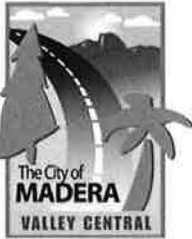
These numerous benefits correlate with the visions outlined in City of Madera adopted Regional Transportation Plan (RTP). Relocating the current Amtrak Station would provide the Madera Region an important opportunity to see the visions and goals identified in our RTP become a reality.

City of Madera strongly supports this plan for improved passenger rail. Overall, we see this project as an important strategy to reduce congestion, improve quality of life, and pursue a comprehensive and more sustainable transportation network for our future.

Thank you for considering the SJJPA/SJRRC grant application.

Sincerely,

Andrew J. Medellin  
Mayor



## REPORT TO CITY COUNCIL

Approved by:

Donia Alvarez

Department Director

[Signature]

For City Administrator

Council Meeting of: December 20, 2017

Agenda Number: E-1

**SUBJECT:** Consideration of a Resolution Approving a Cooperative Agreement with the County of Madera and the City of Chowchilla to Facilitate Intergovernmental Collaboration to Benefit the Greater Madera County Area

**RECOMMENDATION:** Staff recommends that the Council adopt the resolution approving the Intergovernmental Agency Cooperative Agreement.

**SUMMARY:** The Board of Supervisors and the City Councils of Madera and Chowchilla held a joint meeting on September 30, 2017 to discuss their shared vision for the future of the greater Madera County area. During that meeting, the Supervisors and the Council Members discussed the strengths and challenges their jurisdictions are facing and received input from the public regarding issues confronting residents across the County. The meeting resulted in an agreement by the respective agencies to coordinate their resources and address common concerns by entering into a collaborative agreement.

**DISCUSSION:** A steering committee meeting was held on December 4<sup>th</sup> to review and finalize the attached cooperative agreement. The agreement is now being presented to the respective boards for consideration of adoption.

The agreement outlines the membership, subcommittees and associated responsibilities of the Intergovernmental Agency. It also provides a listing of the initial issues to be addressed which include but are not limited to as follows:

- Challenges in Emergency Medical Services Countywide
- Addressing/Reducing Homelessness
- Coordinating Economic Development Efforts Countywide
- Collaborating on Water Resources Projects

**FINANCIAL IMPACT:** There is no financial impact at this time. Future actions by the Intergovernmental Agency may involve requests for voluntary funding from the various member agencies including the City of Madera.

**CONSISTENCY WITH THE VISION MADERA 2025 PLAN:** The requested action further strengthens the Vision 2025 core area of A Well Planned City by anticipating the future with coordinated planning and interagency cooperation guided by a shared vision.

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

A RESOLUTION OF THE COUNCIL OF THE CITY OF MADERA, CALIFORNIA  
APPROVING A COOPERATIVE AGREEMENT WITH THE COUNTY OF MADERA AND  
THE CITY OF CHOWCHILLA TO FACILITATE INTERGOVERNMENTAL COOPERATION  
TO BENEFIT THE GREATER MADERA COUNTY AREA

**WHEREAS**, the Board of Supervisors of the County of Madera, the City Council of the City of Madera and the City Council of the City of Chowchilla have long desired to coordinate their resources to address common concerns; and

**WHEREAS**, at a joint meeting of the Madera County Board of Supervisors, the City of Madera, and the City of Chowchilla held on September 30, 2017, the three governing bodies discussed their shared vision for the future for the greater Madera County area; and

**WHEREAS**, at the joint meeting, the Supervisors and Councilmembers received input from members of the public regarding issues confronting residents across the County; and

**WHEREAS**, the Supervisors and Councilmembers agreed to consider entering into a collaborative agreement to achieve goals of mutual benefit.

**NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF MADERA DOES HEREBY FIND, ORDER AND RESOLVE AS FOLLOWS:**

1. The above recitals are true and correct.
2. The Cooperative Agreement with the County of Madera and the City of Chowchilla, a copy of which is on file in the office of the City Clerk and referred to for particulars, is hereby approved.
3. The City Administrator, or his or her designee, is authorized to execute the agreement and any and all documents necessary and appropriate to carry out the intent of this Resolution on behalf of the City.
4. This resolution is effective immediately upon adoption.

\* \* \* \* \*



**COOPERATIVE AGREEMENT AMONG THE  
COUNTY OF MADERA, THE CITY OF MADERA AND  
THE CITY OF CHOWCHILLA**

This Cooperative Agreement ("Agreement") is entered into this \_\_\_\_\_ day of \_\_\_\_\_, 2017, by and among the County of Madera ("County"), the City of Madera ("Madera") and the City of Chowchilla ("Chowchilla"), each being a political subdivision of the State of California.

**RECITALS**

- A. The County of Madera has a 2010 census population of approximately 151,000. There are two incorporated cities within the County, whose populations constitute over half of the total population of the County: the City of Madera and the City of Chowchilla.
- B. The County, Madera and Chowchilla face many serious and overlapping issues of mutual concern.
- C. The County, Madera and Chowchilla expend substantial resources addressing challenges that occur within their jurisdictions, but which are not limited to jurisdictional boundaries.
- D. Staff members of the County, Madera and Chowchilla have considerable experience independently addressing these areas of concern, which experience could be combined to more effectively generate solutions benefitting the greater Madera County population.
- E. The County Board of Supervisors and the Councilmembers of the City of Madera and the City of Chowchilla desire to form an Intergovernmental Agency Committee ("Committee") to work together to find solutions to their shared problems and opportunities.

NOW THEREFORE, the parties agree as follows:

- 1. The Recitals stated above are true and correct and made a substantive part of this Agreement.
- 2. The goals of this Agreement are to:
  - Increase communication among the elected officials of the County, Madera and Chowchilla;
  - Facilitate communication among staff of the County, Madera and Chowchilla;

- Coordinate allocation of resources to more efficiently address mutual problems;
- Provide a forum for the public to share concerns affecting the greater Madera County community.

It is intended that this Agreement be a flexible framework for accomplishing the stated goals and be construed liberally to effect these purposes.

### 3. Membership.

#### A. The Regular Members of the Committee are:

- 1) All members of the County Board of Supervisors;
- 2) All members of the Madera City Council; and
- 3) All members of the Chowchilla City Council.

#### B. The Ex Officio Members of the Committee are:

- 1) County Administrative Officer;
- 2) City Administrator of Madera;
- 3) City Administrator of Chowchilla;
- 4) Clerk of the Board of Supervisors;
- 5) City Clerk of Madera; and
- 6) City Clerk of Chowchilla.

#### C. The Steering Committee Members are:

- 1) Chairman of the Board of Supervisors;
- 2) Chairman Pro Tem of the Board of Supervisors;
- 3) Mayor of Madera;
- 4) Mayor Pro Tem of Madera;
- 5) Mayor of Chowchilla; and
- 6) Mayor Pro Tem of Chowchilla.

D. The Ad Hoc Committee Members are as appointed by the Steering Committee.

### 4. Meetings.

#### A. Frequency

1) A joint meeting of the entire membership of the Committee ("Joint Committee") will be held annually and at other times as determined by the Steering Committee.

2) The Steering Committee will meet quarterly and at other times as it determines necessary.

3) Ad Hoc Committees will meet as directed by the Steering Committee and as they determine necessary.

B. Location. Meetings of the Joint Committee or any subcommittee will be held in each jurisdiction on a rotating basis.

C. Quorum. A quorum of any committee is required for the committee to conduct business. A quorum consists of the majority of the named positions for that committee.

5. Responsibilities of Committees.

A. Joint Committee. The Joint Committee shall provide general input to and share information with each jurisdiction to collaborate in setting goals for the Committee.

B. Steering Committee. Based on input from the Joint Committee, the Steering Committee shall prioritize the issues to be addressed by any Ad Hoc Committee, appoint members of the Ad Hoc Committee, and provide guidance as to the Ad Hoc Committee regarding its objectives and time lines.

C. Ad Hoc Committee. Based on the directions from the Steering Committee, the Ad Hoc Committee shall meet as required to accomplish its stated objective.

6. Issues to be addressed.

A. It is anticipated that the issues to be addressed by the Joint Committee will correlate to conditions existing in the greater County of Madera area as they occur. The intent of this Agreement is to create a means for each party to improve their responsiveness by increasing communication in order to better identify and accomplish goals cooperatively.

B. The issues to be addressed include, but are not limited to, those set forth in Exhibit "A" and subsequent Exhibits, as approved by the Joint Committee.

7. Funding. Each party shall fund its own staff time related to this Agreement without reimbursement from any other party. Any future project costs may be subject to

a separate funding agreement among the parties, as mutually determined by the parties.

8. Term, termination, amendment. This Agreement shall be effective upon the approval of all parties and may be amended, in writing, by mutual written agreement of the parties. The Agreement shall remain in effect until terminated by any party.

9. No partnership, joint venture, or third party beneficiary. This Agreement does not evidence a partnership or joint venture among the County, Madera, Chowchilla or any other person. Nothing in this Agreement shall be construed to confer any rights upon any party not a signatory to this Agreement.

\*\*\*\*\*

**IN WITNESS WHEREOF**, the foregoing Agreement is executed on the day and year first above written.

COUNTY OF MADERA:

---

Eric Fleming, Chief Administrative Officer

CITY OF MADERA:

---

David Tooley, City Administrator

CITY OF CHOWCHILLA:

---

Brian Haddix, City Administrator

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\*\*\*\*\*

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COUNTY OF MADERA:

  
\_\_\_\_\_  
Eric Fleming, Chief Administrative Officer

CITY OF MADERA:

\_\_\_\_\_  
David Tooley, City Administrator

CITY OF CHOWCHILLA:

\_\_\_\_\_  
Brian Haddix, City Administrator

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COUNTY OF MADERA:

\_\_\_\_\_  
Eric Fleming, Chief Administrative Officer

CITY OF MADERA:

\_\_\_\_\_  
David Tooley, City Administrator

CITY OF CHOWCHILLA:

  
\_\_\_\_\_  
Brian Haddix, City Administrator

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## **EXHIBIT "A"**

The initial issues to be addressed pursuant to this Cooperative Agreement may include, but are not limited to:

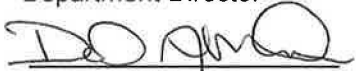
- Challenges in Emergency Medical Services countywide
- Addressing/Reducing Homelessness
- Coordinating Economic Development efforts countywide
- Collaborating on Water Resources projects

## REPORT TO CITY COUNCIL

Approved By:



Department Director



For City Administrator

Council Meeting of December 20, 2017  
Agenda Item Number E- 2

**SUBJECT:** Discussion and Appointment of Interim City Administrator and Appointment of Ad Hoc Committee to Negotiate Terms and Conditions of Appointment

**RECOMMENDATION:** That Council discuss the appointment of an Interim City Administrator and select one if appropriate. Additionally the Council should appoint an ad hoc committee to negotiate terms and conditions of such appointment with the appointee.

**DISCUSSION:** With the recent retirement of the City Administrator, it is necessary to name an Interim City Administrator until the position can be permanently filled. This item provides the opportunity for the City Council to discuss whom they wish to appoint as Interim City Administrator and if appropriate, to formally vote on such appointment. It is also recommended that should the Council appoint an Interim City Administrator, it should thereafter appoint an ad hoc committee to negotiate the terms and conditions of such appointment with the appointee.

**FISCAL IMPACT:**

Unknown at this time.

**CONSISTENCY WITH THE VISION MADERA 2025 PLAN**

The activity described in this report is not specifically incorporated in the strategies contained in the action plans of the Vision Madera 2025 and is not in conflict with any of the action or goals contained in the plan.