

NOTICE AND CALL OF THE SPECIAL MEETING OF THE MADERA CITY COUNCIL

205 W. 4th Street, Madera, California 93637

NOTICE AND AGENDA

**Wednesday, October 22, 2025
6:00 p.m.**

**Council Chambers
City Hall**

The Madera City Council meetings are open to the public. This meeting will also be available for public viewing and participation through Zoom. Members of the public may also observe the live-streamed meeting on the City's website at www.madera.gov/live. Members of the public may comment on agenda items at the meeting or remotely through an electronic meeting via phone by dialing (669) 900-6833 enter ID: 863 0583 0094 #. Press *9 to raise your hand to comment and *6 to unmute yourself to speak. Comments will also be accepted via email at citycouncilpubliccomment@madera.gov or by regular mail at 205 W. 4th Street, Madera, CA 93637.



“Wordly” can translate into 25+ different languages. To access written translation during the meeting, please scan the QR Code or click this link: <https://attend.wordly.ai/join/FTZJ-3396>

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CALL TO ORDER:

ROLL CALL: Mayor Cece Gallegos
Mayor Pro Tem Jose Rodriguez, District 2
Councilmember Rohi Zacharia, District 1
Councilmember Steve Montes, District 3
Councilmember Anita Evans, District 4
Councilmember Elsa Mejia, District 5
Councilmember Artemio Villegas, District 6

INVOCATION:

PLEDGE OF ALLEGIANCE:

APPROVAL OF AGENDA:

PUBLIC COMMENT:

Members of the public shall have an opportunity to address the City Council regarding matters on this Agenda at the time the agenda item is called. Speakers should limit their comments to three (3) minutes.

A. CONSENT CALENDAR:

A-1 Granting an Easement Deed, offered by the City of Madera to Pacific Gas and Electric Company (PG&E) and Authorizing the City Clerk to Execute and Cause to Be Recorded the Granting of Said Easement (East of 1030 S. Gateway Drive)

Recommendation: Approve a Resolution:

1. Granting the Easement Deed to Pacific Gas and Electric Company (PG&E); and
2. Authorizing the City Clerk to Execute the Grant of Easement for Said Deed and Cause it to be Recorded (Report by Keith Helmuth)

B. PETITIONS, BIDS, RESOLUTIONS, ORDINANCES, AND AGREEMENTS:

B-1 Water Main Replacement Project, City Project No. W-43 Rebid

Recommendation: Adopt a Resolution approving the contract award for the Water Main Replacement Project City Project No. W-43 Rebid in the amount of \$4,970,222 to Rolfe Construction Inc., authorize the City Manager to amend the agreement as needed in an amount not to exceed a contingency of 20 percent, and adopt a Categorical Exemption per California Environmental Quality Act (CEQA) Guidelines Section 15302 (Replacement or Reconstruction) (Report by Keith Helmuth)

FUTURE MEETING DATES:

- Wednesday November 5, 2025
- Wednesday, November 19, 2025

ADJOURNMENT:

-
- The meeting room is accessible to the physically disabled. Requests for accommodations for persons with disabilities such as signing services, assistive listening devices, or alternative format agendas and reports needed to assist participation in this public meeting may be made by calling the City Clerk's Office at (559) 661-5405 or emailing cityclerkinfo@madera.gov . Those who are hearing impaired may call 711 or 1-800-735-2929 for TTY Relay Service. Requests should be made as soon as practicable as additional time may be required for the City to arrange or provide the requested accommodation.

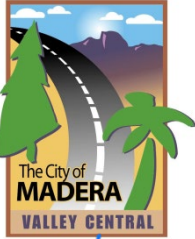
Requests may also be delivered/mailed to: City of Madera, Attn: City Clerk, 205 W. 4th Street, Madera, CA 93637. At least seventy-two (72) hours' notice prior to the meeting is requested but not required. When making a request, please provide sufficient details that the City may evaluate the nature of the request and available accommodations to support meeting participation. Please also provide appropriate contact information should the City need to engage in an interactive discussion regarding the requested accommodation.

- 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 1st and 3rd Wednesday of each month at 6:00 p.m. in the Council Chambers at City Hall.
- Any writings or documents provided to a majority of the City Council within 72 hours of the meeting regarding any item on this agenda will be made available for public inspection at the City Clerk's office located at 205 W. 4th Street, Madera, CA 93637 and on the City website at www.madera.gov
- 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.

I, Alicia Gonzales, City Clerk for the City of Madera, declare under penalty of perjury that I posted the above agenda for the Special Meeting of the Madera City Council for October 22, 2025, near the front entrances of City Hall and on the City's website www.madera.gov at 5:45 p.m. on October 20, 2025.



Alicia Gonzales, City Clerk



REPORT TO CITY COUNCIL

Approved by:

A blue ink signature of Keith Helmuth, City Engineer.

Keith Helmuth, City Engineer

A blue ink signature of Arnaldo Rodriguez, City Manager.

Arnoldo Rodriguez, City Manager

Council Meeting of: October 22, 2025

Agenda Number: A-1

SUBJECT: Consideration of a Resolution Granting an Easement Deed, Offered by the City of Madera to Pacific Gas and Electric Company (PG&E) and Authorizing the City Clerk to Execute and Cause to Be Recorded the Granting of Said Easement (East of 1030 S. Gateway Drive)

RECOMMENDATION:

Staff recommends that the City Council (Council) approve a Resolution:

1. Granting the Easement Deed to Pacific Gas and Electric Company (PG&E)
2. Authorizing the City Clerk to execute the Grant of Easement for said deed and cause it to be recorded.

SUMMARY:

PG&E is requesting the City grant an easement for underground facilities at the Public Works Yard. The easement allows PG&E to provide additional electric service capacity to the adjacent property.

DISCUSSION:

Recorded on October 20th, 2006, the City of Madera (City) entered into a relocation agreement granting Pacific Gas and Electric Company (PG&E) right of way and easement along the eastern side of a portion of the Public Works yard at 1030 South Gateway Drive in the City of Madera. Most notably, the agreement did not include an underground electrical easement.

Currently, City requests granting PG&E is requesting the right of a 10 feet x 1 foot easement located at aforementioned property allowing PG&E to underground utilities and conduct related work.

This easement overlays another larger easement that allows for full above ground use (overhead wires). PG&E originally requested that the original easement be modified to allow underground use. Staff rejected this request as it had a potential to restrict Public Works use of the land in favor of PG&E. More specifically, this easement shall allow PG&E the right from time to time to excavate for, construct, reconstruct, install, replace (of initial or any other size), remove, maintain, inspect and use facilities of the type hereinafter specified the right to construct, reconstruct, install, inspect, maintain, replace, remove, and use facilities within the aforementioned area.

It is recommended that the City Council approve this easement accept this Street Easement Deed offer as a matter necessary for the distribution of electric energy and communication purposes as required by state or federal regulations.

FINANCIAL IMPACT:

Acceptance of the easement deed imposes no additional expense to the City or the General Fund.

ALTERNATIVES:

The Council may elect to not accept the easement deed resulting in the proponent's inability to provide services to the adjacent parcel.

ATTACHMENTS:

1. Resolution
2. Easement Deed
 - Exhibit A- Grant of Easement Disclosure Statement

Attachment 1

Resolution

RESOLUTION NO. 25 - ____

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MADERA,
CALIFORNIA GRANTING PACIFIC GAS AND ELECTRIC COMPANY
(PG&E) AN EASEMENT DEED (EAST SIDE OF 1030 SOUTH
GATEWAY DRIVE)**

WHEREAS, City of Madera (Owner), owns that property known at 1030 South Gateway Drive, Madera, California 93637 also described as Assessor's Parcel Number (APN) 011-143-011; and

WHEREAS, Owner has offered for dedication to Pacific Gas and Electric Company (PG&E) an easement deed consisting of a strip of land of the uniform width of 10 feet x 1 feet to include an undergrounding utility easement for public utility purposes more specially described within Exhibit A "Grant of Easement Disclosure Statement"; and

WHEREAS, PG&E shall possess the right from time to time to excavate for, construct, reconstruct, install, replace (of initial or any other size), remove, maintain, inspect and use facilities of the type hereinafter specified, together with a right of way therefor, within the easement area as hereinafter set forth, and also ingress thereto and egress therefrom, over and across the lands of aforementioned portion of parcel situated in the City of Madera, County of Madera, State of California.

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 grants an easement to allow for an utility connection to PG&E as set forth in Exhibit A.
3. The City Clerk is hereby authorized and directed to execute and cause to be recorded the Easement Deed.
4. This resolution is effective immediately upon adoption.

* * * * *

Attachment 2

Easement Deed

RECORDING REQUESTED BY AND RETURN TO:

PACIFIC GAS AND ELECTRIC COMPANY
300 Lakeside Drive, Suite 210
Oakland, CA 94612
Attn: Land Rights Library

Location: City of Madera, Madera Co.

Recording Fee \$ _____

Document Transfer Tax \$ _____

- ☐ This is a conveyance where the consideration and Value is less than \$100.00 (R&T 11911).
☐ Computed on Full Value of Property Conveyed, or
☐ Computed on Full Value Less Liens & Encumbrances Remaining at Time of Sale
☐ Exempt from the fee per GC 27388.1 (a) (2); This document is subject to Documentary Transfer Tax

(SPACE ABOVE FOR RECORDER'S USE ONLY)

Signature of declarant or agent determining tax

LD #2211-18-

EASEMENT DEED

CITY OF MADERA, a public body of the State of California,

hereinafter called Grantor, hereby grants to PACIFIC GAS AND ELECTRIC COMPANY, a California corporation, hereinafter called Grantee, the right from time to time to excavate for, construct, reconstruct, install, replace (of initial or any other size), remove, maintain, inspect and use facilities of the type hereinafter specified, together with a right of way therefor, within the easement area as hereinafter set forth, and also ingress thereto and egress therefrom, over and across the lands of Grantor situated in the City of Madera, County of Madera, State of California, described as follows:

(APN 011-143-011)

The parcel of land, situate in the northwest quarter of the northwest quarter of section 30, Township 11 South, Range 18 East, Mount Diablo Base and Meridian, conveyed by Lawrence Tesei and others to City of Madera, by deed dated September 25, 2000 and recorded as Document Number 2000025697, Madera County Official Records.

The facilities and easement area are described as follows:

Such underground conduits, pipes, manholes, service boxes, wires, cables, and electrical conductors; aboveground marker posts, risers, and service pedestals; underground and aboveground switches, fuses, terminals, and transformers with associated concrete pads; and fixtures and appurtenances necessary to any and all thereof, as Grantee deems necessary for the distribution of electric energy and communication purposes located within the strip of land of the uniform width of 10 feet x 1 feet, as shown by the heavy dashed line shown upon the print of Grantee's Drawing No. 35521135 attached hereto and made a part hereof.

Grantor further grants to Grantee the right, from time to time, to trim or to cut down, without Grantee paying compensation, any and all trees and brush now or hereafter within said easement area, and shall have the further right, from time to time, to trim and cut down trees and brush along each side of said easement area which now or hereafter in the opinion of Grantee may interfere with or be a hazard to the facilities installed hereunder, or as Grantee deems necessary to comply with applicable state or federal regulations.

Grantor also grants to Grantee the right to use such portion of said lands contiguous to said easement area as may be reasonably necessary in connection with the excavation, construction, reconstruction, replacement, removal, maintenance and inspection of said facilities.

Grantor hereby covenants and agrees not to place or construct, nor allow a third party to place or construct, any building or other structure, or store flammable substances, or drill or operate any well, or construct any reservoir or other obstruction within said easement area, or diminish or substantially add to the ground level within said easement area, or construct any fences that will interfere with the maintenance and operation of said facilities.

Grantor further grants to Grantee the right to apportion to another public utility (as defined in Section 216 of the California Public Utilities Code) the right to construct, reconstruct, replace, remove, maintain, inspect, and use the communications facilities within said easement area including ingress thereto and egress therefrom.

Grantor acknowledges that they have read the "Grant of Easement Disclosure Statement", Exhibit "A", attached hereto and made a part hereof.

The legal description herein, or the map attached hereto, defining the location of this utility distribution easement, was prepared by Grantee pursuant to Section 8730 (c) of the Business and Professions Code.

This document may be executed in multiple counterparts, each of which shall be deemed an original, but all of which, together, shall constitute one and the same instrument.

The provisions hereof shall inure to the benefit of and bind the successors and assigns of the respective parties hereto, and all covenants shall apply to and run with the land.

Dated: _____, _____.

City of Madera,
a public body of the State of California

By: _____

Name: Alicia Gonzales

Title: City Clerk

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 _____, before me, _____ Notary Public,
personally appeared _____

Insert name

_____ ,
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 of Notary Public

(Seal)

CAPACITY CLAIMED BY SIGNER

- ☐ Individual(s) signing for oneself/themselves
- ☐ Corporate Officer(s) of the above named corporation(s)
- ☐ Trustee(s) of the above named Trust(s)
- ☐ Partner(s) of the above named Partnership(s)
- ☐ Attorney(s)-in-Fact of the above named Principal(s)
- ☐ Other _____



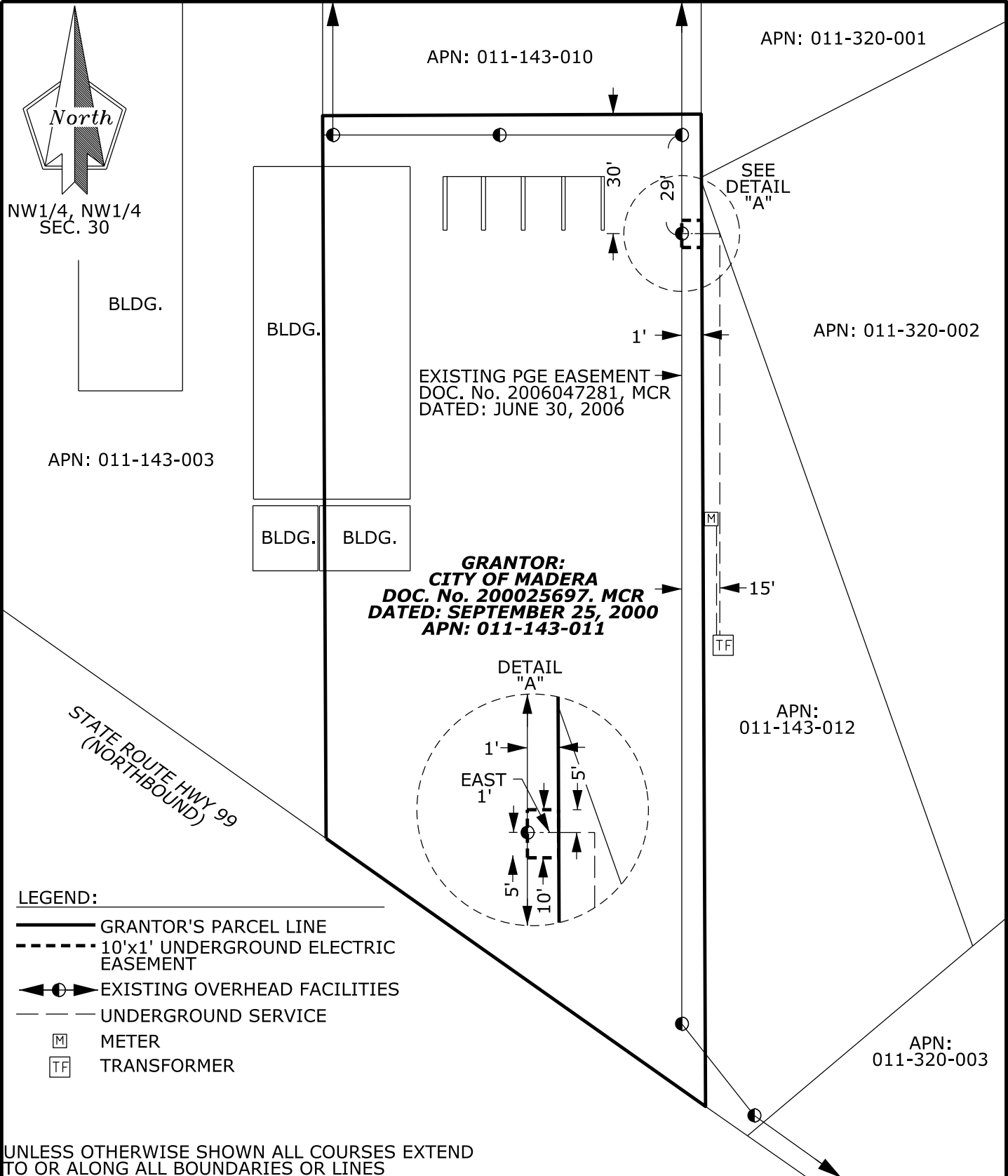
EXHIBIT "A"

GRANT OF EASEMENT DISCLOSURE STATEMENT

This Disclosure Statement will assist you in evaluating the request for granting an easement to Pacific Gas and Electric Company (PG&E) to accommodate a utility service extension to PG&E's applicant. **Please read this disclosure carefully before signing the Grant of Easement.**

- You are under no obligation or threat of condemnation by PG&E to grant this easement.
- The granting of this easement is an accommodation to PG&E's applicant requesting the extension of PG&E utility facilities to the applicant's property or project. Because this easement is an accommodation for a service extension to a single customer or group of customers, PG&E is not authorized to purchase any such easement.
- By granting this easement to PG&E, the easement area may be used to serve additional customers in the area. Installation of any proposed facilities outside of this easement area will require an additional easement.
- Removal and/or pruning of trees or other vegetation on your property may be necessary for the installation of PG&E facilities. You have the option of having PG&E's contractors perform this work on your property, if available, or granting permission to PG&E's applicant or the applicant's contractor to perform this work. Additionally, in order to comply with California fire laws and safety orders, PG&E or its contractors will periodically perform vegetation maintenance activities on your property as provided for in this grant of easement in order to maintain proper clearances from energized electric lines or other facilities.
- The description of the easement location where PG&E utility facilities are to be installed across your property must be satisfactory to you.
- The California Public Utilities Commission has authorized PG&E's applicant to perform the installation of certain utility facilities for utility service. In addition to granting this easement to PG&E, your consent may be requested by the applicant, or applicant's contractor, to work on your property. Upon completion of the applicant's installation, the utility facilities will be inspected by PG&E. When the facility installation is determined to be acceptable the facilities will be conveyed to PG&E by its applicant.

By signing the Grant of Easement, you are acknowledging that you have read this disclosure and understand that you are voluntarily granting the easement to PG&E. Please return the signed and notarized Grant of Easement with this Disclosure Statement attached to PG&E. The duplicate copy of the Grant of Easement and this Disclosure Statement is for your records.



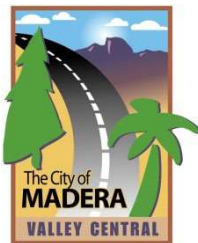
UNLESS OTHERWISE SHOWN ALL COURSES EXTEND TO OR ALONG ALL BOUNDARIES OR LINES

Applicant: CLEAN ENERGY
1200 S GATEWAY DR.
MADERA CA. MADERA COUNTY

SCALE
NTS

DATE
9-4-25

SECTION 30	TOWNSHIP 11S	RANGE 18E	MERIDIAN MDB&M	COUNTY OF: MADERA		CITY OF: MADERA	
				F.B.: M5CF		DR.BY: M5CF	
PLAT MAP: 1118302 (ELECTRIC) REFERENCES: 24 MAPS 150. MCR				PG&E	YOSEMITE DIVISION	127305368 AUTHORIZ	35521135 DRAWING NO.



REPORT TO CITY COUNCIL

Approved by:


Keith Helmuth, City Engineer


Arnaldo Rodriguez, City Manager

Council Meeting of: October 22, 2025

Agenda Number: B-1

SUBJECT:

Water Main Replacement Project, City Project No. W-43 Rebid

RECOMMENDATION:

Adopt a Resolution approving the contract award for the Water Main Replacement Project City Project No. W-43 Rebid in the amount of \$4,970,222 to Rolfe Construction Inc., authorize the City Manager to amend the agreement as needed in an amount not to exceed a contingency of 20 percent, and adopt a Categorical Exemption per California Environmental Quality Act (CEQA) Guidelines Section 15302 (Replacement or Reconstruction)

SUMMARY:

On October 14, 2025 the City received seven bids for the Water Main Replacement Project City Project W-43 Rebid (Project). The Project is funded with Water Utility Funds. Rolfe Construction Inc. (Rolfe Construction) submitted the lowest, responsive bid. The Fiscal Year (FY) 2025/26 Capital Projects Budget includes funding for the project.

BACKGROUND:

On August 6, 2025 the City received five bids for the Water Main Replacement Project W-43. However the bids were rejected to revise the Plans and Specifications to further clarify the scope of the project and requirements. As part of these efforts the following has changed from the original project plans and specifications:

- Removal of water main replacement on Lake Street from Yosemite Avenue to Riverside Drive which includes replacement of water main under the Lake Street Bridge
- Replacement of all hydrants on State Route 145 from Storey Road to Madera Avenue

- Addition of a Bidders Qualification Statement as a required submittal during the bidding process
- Other miscellaneous specification edits/corrections to further provide clarity.

DISCUSSION:

This project's intent is to:

- Replace all water utilities within State Route 145 in the downtown area in advance of the Caltrans Capital Preventive Maintenance (CAPM) Road Diet project that is slated for construction in January 2026.
- Replacement of the water main within State Route 145, south of El Dorado Drive.

Adhering to the City's intent, the City can ensure the roadway improvements will not be disturbed by City water improvement projects in the near future.

The general scope of work consists of water main replacement in State Route 145 from Storey Road to 9th Street. Components of the water main replacement range from 6" PVC to 12" PVC lines and including gate valves, valve boxes, lateral connections, and fire hydrant connections. The pipeline installation requires two jack and bore installations under the Union Pacific Railroad Road near E Street and Madera Irrigation District pipeline, respectively. The waterlines proposed for replacement are approximately 75 years old, necessitating their replacement. As part of this project, new gate valves will be installed at appropriate locations to allow the City to isolate segments of the line should repairs be required in the future. This improvement is important, as the City recently experienced a prolonged water leak along this same line due to inoperable gate valves. In that instance, shutting down the line would have required turning off water service to a relatively large geographic area.

During construction, temporary inconveniences to drivers and pedestrians are anticipated due to construction equipment, noise, dust, etc. Temporary steel plates may be required, and pedestrian routes may need to be rerouted for safety. Additionally, once the waterline is replaced, the pavement trench will be backfilled and restored per City Standards and Specifications. Since Caltrans is scheduled to begin the Road Diet project in early 2026, any unsightliness of the trench will be replaced with a new roadway at that time.

City staff will be mindful of the potential impacts to visitors and local businesses; however, these repairs are necessary to address aging infrastructure that has reached the end of its useful life. While some disruptions are unavoidable, staff will work closely with the contractor to minimize impacts and maintain access routes whenever possible.

Competitive Bidding Process

On September 19, 2025 the City released the project for public bidding on the PlanetBids web portal. Also, an “Advertisement for Bids” was duly published in the Madera Tribune Newspaper on September 20 and September 27, 2025.

On October 14, 2025 seven bids were received. The bids were checked for accuracy against bidding requirements, validity of licenses, and bid security. The bids received are summarized in Table 1.

<i>Table 1: Bid Overview</i>	
<i>Bidder</i>	<i>Total Base Bid</i>
1. Rolfe Construction, Inc.	\$4,970,222.00
2. Cal Valley Construction, Inc.	\$5,519,439.00
3. Katch Environmental, Inc.	\$5,785,682.96
4. DG Construction, Inc.	\$6,025,777.10
5. Mountain Cascade, Inc.	\$6,234,373.50
6. Floyd Johnston Construction, Inc.	\$6,688,444.00
7. Walsh Montgomery Construction, Inc.	\$6,955,361.00
<i>Engineer’s Opinion of Cost</i>	<i>\$6,066,378.00</i>

Rolfe Construction submitted the lowest, responsive, and responsible bid that meets the contract requirements. While there are a few minor items (which were promptly addressed), these are inconsequential and the bid conforms to the material terms of the bid package. The experience and qualifications statements were promised “to be provided if low bidder” and were received the same day as bid opening. Rolfe Construction has extensive background in underground utility construction in the Central Valley. The omission of Equal Opportunity Clause for the named subcontractors is a common oversight by bidders and provided same day as well as the letter stating they will perform over 96 percent of the work (only 30 percent was required).

Staff recommends awarding the project to Rolfe Construction in the amount of \$4,970,222.00 plus an additional \$994,044.4 or 20 percent of the base bid as a contingency fund. While construction projects are typically budgeted with a 10 percent contingency, staff is recommending a higher than typical contingency due to the complexity of the work, the age of nearby infrastructure, and the *possibility* (italics added for emphasis) that existing as-built plans may not fully reflect actual conditions. The increased contingency is intended to minimize the risk of work stoppages and ensure the project can proceed without unnecessary delays should unforeseen conditions arise.

CALIFORNIA ENVIRONMENTAL QUALITY ACT:

The City has performed a preliminary environmental assessment of this project, and this project falls within the Categorical Exemption set forth in California Environmental Quality Act (CEQA) Guidelines Section 15302 which exempts replacement or reconstruction of public utilities, which

is applicable as the proposed work consists of replacing aging waterlines within the existing public right-of-way involving negligible or no expansion of capacity. Furthermore, none of the exceptions in CEQA Guidelines section 15300.2 are applicable to this project. As such, staff recommends the City Council adopt a categorical exemption under Guidelines Section 15302 for this project. In accordance with CEQA, a Notice of Exemption (NOE) is anticipated to be filed with the Madera County Clerk's office upon approval.

FINANCIAL IMPACT:

There is no fiscal impact on the City's General Fund. The recommended project construction budget (see Table 2) is \$714,266.4 higher than the amount in the final CIP; however, there are adequate funds programmed in the FY 2025/26 Budget in Water Funds under Capital Outlay (object code 7050) for this proposed project construction budget.

Table 2: Project Construction Budget	
<i>Item</i>	<i>Cost</i>
Contract Amount (Pending Approval)	\$4,970,222.00
Construction Contingencies (recommended)	\$994,044.4
Construction Management, Inspection and Testing	\$450,000
Total	\$6,414,266.4

ALTERNATIVES:

The alternative to awarding the project is to reject all bids. Rebidding the project could result in higher bids and would result in delays in the watermain replacement project causing the project to be put on hold until Caltrans completes their work and incur significant and likely extraordinary cost increases for pavement restoration per Caltrans requirements

ATTACHMENTS:

1. Resolution approving Contract
 - a. Exhibit A - Agreement
2. Project Map

Attachment 1

Resolution

RESOLUTION NO. 25-_____

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MADERA,
CALIFORNIA APPROVING THE CONTRACT AWARD FOR WATER MAIN
REPLACEMENT PROJECT, CITY PROJECT W-43 IN THE AMOUNT OF
\$4,970,222 TO ROLFE CONSTRUCTION, INC. AND AUTHORIZING
CONSTRUCTION CONTINGENCIES RELATING TO THE CONTRACT**

WHEREAS, on September 19, 2025 the City of Madera (City) Engineering Department advertised a solicitation for construction bids for the Water Main Replacement Project, City Project No. W-43 Rebid hereinafter referred to as “the Project”; and

WHEREAS, seven sealed bids were received on October 14, 2025 and opened by the City Engineer; and

WHEREAS, the City Engineer has reviewed the seven bids, and examined Rolfe Construction, Inc. and its bid response, found it to be both the lowest qualified responsive and responsible bidder, and has recommended it for award of this project; and

WHEREAS, a bid that “substantially conforms” to a call for bids may, even if it is not strictly responsive, be accepted if the variance or defect in the bid proposal is minor or inconsequential; and

WHEREAS, a bid may be responsive even if there is a discrepancy in the bid, as long as the discrepancy is inconsequential, that is, the discrepancy must not (1) affect the amount of the bid; (2) give a bidder an advantage over others (e.g., give a bidder an opportunity to avoid its obligation to perform by withdrawing its bid without forfeiting its bid security, i.e., for mistake); (3) be a potential vehicle for favoritism; (4) influence potential bidders to refrain from bidding; or (5) affect the ability to make bid comparisons. Hence, technical or minor defects in a bid can be waived. The question of whether in any given case a bid varies substantially or only inconsequentially from the call for bids is a question of fact. These considerations must be evaluated from a practical, rather than hypothetical, standpoint with reference to the factual circumstances of the case; and

WHEREAS, Rolfe Construction, Inc.’s bid packet included an Equal Opportunity Certification that initially omitted a listed subcontractor. However, the subcontractor was also disclosed and identified in the bid response as part of the Subcontractors Listing, and this was promptly clarified by the bidder within 24 hours; and

WHEREAS, Rolfe Construction, Inc.’s Bidders Qualification Statement included a commitment to provide references upon being determined the lowest bidder (which is not uncommon in the industry), and although references were not initially submitted with the bid packet they were promptly provided within 24 hours; and

WHEREAS, Rolfe Construction, Inc.'s the bid did not include a letter affirming that it would self-perform no less than 30% of the total net bid amount. However, this was promptly provided within 24 hours, along with an affirmation the bidder would be self-performing approximately 96% of the total net bid amount, which is well in excess of the bid minimums; and

WHEREAS, based upon all of the evidence in the record, the City Council believes bid is in substantial compliance with the bid requirements, that it may exercise its discretion to find these inadvertent clerical errors to be a minor mistake which can be waived, and desires to award the contract for the project to Rolfe Construction, Inc. as the lowest qualified responsive and responsible bidder.

WHEREAS, funding for the Project is programmed in the Capital Improvement Projects Budget for Fiscal Year 2025/26 under CIP Project W-43;

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 and are incorporated herein.
2. The City has performed a preliminary environmental assessment of this project, and The City Council finds this project falls within the Categorical Exemption set forth in California Environmental Quality Act (CEQA) Guidelines Section 15302 exempting replacement or reconstruction of public utilities, which is applicable as the proposed work consists of replacing aging waterlines within the existing public right-of-way involving negligible or no expansion of capacity. Furthermore, none of the exceptions in CEQA Guidelines section 15300.2 are applicable to this project. As such, the City Council adopts a categorical exemption under Guidelines Section 15302 for this project.
3. The City Council (Council) has reviewed and considered all of the information presented including the report to Council from the Engineering Department.
4. The City finds that Rolfe Construction, Inc. is the lowest responsible and responsive bidder.
5. The contract for the Project in the Amount of \$4,970,222 to Rolfe Construction, Inc. a copy of which is attached hereto as Exhibit A and referred to for particulars, is approved.
6. Council authorizes construction contingencies of up to 20 percent as approved by the City Engineer. The City Engineer is authorized to execute any change order, and the City Manager may otherwise amend the agreement as needed, in an amount not to exceed the authorized contingency.

7. This Resolution is effective immediately upon adoption.

Exhibit A

Agreement

AGREEMENT

THIS AGREEMENT, made this ____ day of _____, 2025, between the City of Madera, hereinafter called "**OWNER**", and **Rolfe Construction, Inc.**, doing business as (an individual), or (a partnership), or (a corporation), hereinafter called "**CONTRACTOR**".

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

1. The **CONTRACTOR** shall commence and complete all **WORK** required for the "**Water Main Replacement Project, City Project No. W-43 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 **\$4,970,222.00**, 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) Section 1, General Conditions
 - (J) Section 2, Special Conditions
 - (K) Section 3, City of Madera Standard Specifications and Drawings
 - (L) Section 4, Bid Items
 - (M) Section 5, Technical Specifications
 - (N) State Standard Plans and Specifications

Addendum No. 1, dated October 3, 2025

Addendum No. 2, dated October 8, 2025

Addendum No. 3, dated October 8, 2025

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 **Six Thousand Eight Hundred (\$6,800.00)** 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**. In no event shall total compensation exceed **\$4,970,222.00** except as may otherwise be authorized in writing per Section 16. 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.

8A. CLAIMS RESOLUTION PROCESS FOR DISPUTES.

It is the intent of this Contract that disputes regarding the Contract be resolved promptly and fairly between the Contractor and the Owner. However, it is recognized that some disputes will require detailed investigation and review by one or both parties before a determination and resolution can be reached. For the protection of the rights of both the Contractor and the Owner, the following provisions are provided for the resolution of disputes which cannot be resolved by the Owner and the Contractor within three business days after either party gives verbal notice of dispute or potential dispute to the other's attention and prior to the commencement of such work.

The following provisions are intended by Contractor and Owner to comply with Public Contract Code Sections 9204 and 20104 et. seq.

A. Claims:

The term "claim" refers to a separate demand by Contractor sent by registered mail or certified mail with return receipt requested, for one or more of the following:

1. A time extension, including, without limitation, for relief from damages or penalties for delay assessed by Owner under this Contract.
2. Payment by the Owner of money or damages arising from work done by, or on behalf of, the Contractor pursuant to the Contract and payment for which is not otherwise expressly provided or to which the Contractor is not otherwise entitled.

3. Payment of an amount that is disputed by the Owner.

B. The Claim Must Be Timely and in Writing:

For all claims the claim must be in writing and include the documents necessary to substantiate the claim. A notice of potential claim must be filed within five (5) business days of Contractor's completion of work that is a potential claim. Notice of an actual claim must be filed on or before the date of final payment.

C. Receipt of Claim by Owner:

Upon receipt of a claim pursuant to this section, the Owner will conduct a reasonable review of the claim and, within a period not to exceed 45 days from the date of receipt, will provide the Contractor with a written statement identifying what portion of the claim is disputed and what portion is undisputed. Upon receipt of a claim, Owner and Contractor may, by mutual agreement, extend the time period provided in this section.

The Contractor shall furnish reasonable documentation to support the claim. If additional information is thereafter required, it shall be requested and provided upon mutual agreement by the Owner and the Contractor. The District's written response to the claim, as further documented, shall be submitted to the claimant within 30 days after receipt of the further documentation, or within a period of time no greater than that taken by the Contractor in producing the additional information or requested documentation.

D. City Council Approval:

If the Owner needs approval from the City Council to provide the Contractor a written statement identifying the disputed portion and the undisputed portion of the claim, and the City Council does not meet within the 45 days or within the mutually agreed to extension of time following receipt of a claim sent by registered mail or certified mail, return receipt requested, the Owner shall have up to three days following the next duly publicly noticed regular meeting of the City Council after the 45-day period or extension expires to provide the Contractor a written statement identifying the disputed portion and the undisputed portion.

E. Payment of Claim:

Any payment due on an undisputed portion of the claim shall be processed and made within 60 days after the Owner issues its written statement. If the Owner fails to issue a written statement, paragraph F below shall apply.

F. Meet and Confer:

If the Contractor disputes the Owner's written response, or if the Owner fails to respond to a claim issued pursuant to this section within the time prescribed, the Contractor may demand in writing an informal conference to meet and confer for settlement of the issues in dispute. Upon receipt of a demand in writing sent by registered mail or certified mail, return receipt requested, the Owner shall schedule a meet and confer conference within 30 days for settlement of the dispute.

Within 10 business days following the conclusion of the meet and confer conference, if the claim or any portion of the claim remains in dispute, the Owner shall provide the Contractor a

written statement identifying the portion of the claim that remains in dispute and the portion that is undisputed. Any payment due on an undisputed portion of the claim shall be processed and made within 60 days after the Owner issues its written statement. Any disputed portion of the claim, as identified by the contractor in writing, shall be submitted to nonbinding mediation, with the Owner and the Contractor sharing the associated costs equally. The Owner and Contractor shall mutually agree to a mediator within 10 business days after the disputed portion of the claim has been identified in writing. If the parties cannot agree upon a mediator, each party shall select a mediator and those mediators shall select a qualified neutral third party to mediate with regard to the disputed portion of the claim. Each party shall bear the fees and costs charged by its respective mediator in connection with the selection of the neutral mediator. If mediation is unsuccessful, the parts of the claim remaining in dispute shall be subject to applicable procedures outside this section.

Under this Contract, mediation includes any nonbinding process, including, but not limited to, neutral evaluation or a dispute review board, in which an independent third party or board assists the parties in dispute resolution through negotiation or by issuance of an evaluation. Any mediation utilized shall conform to the timeframes in this section.

Unless otherwise agreed to by the Owner and the Contractor in writing, the mediation conducted pursuant to this section shall excuse any further obligation under Public Contract Code Section 20104.4 to mediate after litigation has been commenced.

If mediation as set forth above does not resolve the parties' dispute, the parties will proceed to arbitration of disputes under private arbitration or the Public Works Contract Arbitration Program.

G. Filing a Government Code Written Claim Notice:

Following the meet and confer conference, if the claim or any portion remains in dispute, the Contractor may file a claim under the Torts Claims Act as provided in Chapter 1 (commencing with Section 900) and Chapter 2 commencing with Section 910) of Part 3 of Division 3.6 of Title 1 of the Government Code Section 900.

H. Owner's Failure to Respond to Claim:

Failure by the Owner to respond to a claim from Contractor within the time periods described above or to otherwise meet the time requirements set forth above shall result in the claim being deemed rejected in its entirety. A claim that is denied by reason of the Owner's failure to have responded to a claim, or its failure to otherwise meet the time requirements of this section, shall not constitute an adverse finding with regard to the merits of the claim or the responsibility or qualifications of the Contractor.

I. Reserved.

J. Subcontractor Claims:

If a subcontractor or a lower tier subcontractor lacks legal standing to assert a claim against Owner because privity of contract does not exist, the Contractor may present to the Owner a claim on behalf of a subcontractor or lower tier subcontractor. For purposes of this paragraph, the term "subcontractor" means any type of subcontractor within the meaning of Chapter 9 (commencing with Section 7000) of Division 3 of the Business and Professions Code who either is in direct contract with the Contractor or is a lower tier subcontractor. A subcontractor may request in

writing, either on his or her own behalf or on behalf of a lower tier subcontractor, that the Contractor present a claim for work which was performed by the subcontractor or by a lower tier subcontractor on behalf of the subcontractor. The subcontractor requesting that the claim be presented to the Owner shall furnish reasonable documentation to support the claim. Within 45 days of receipt of this written request, the Contractor shall notify the subcontractor in writing as to whether the contractor presented the claim to the Owner and, if the original contractor did not present the claim, provide the subcontractor with a statement of the reasons for not having done so.

K. Filing of Action on Unresolved Claims:

The parties shall follow the procedures set forth in Public Contracts Code Section 20104.4 if an action is filed to resolve claims under the foregoing provisions. Any action shall be filed in Madera County.

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 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 39-40 of the Contract Documents.

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

20. Termination.

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

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

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

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

Notice of termination shall be mailed to the City:

City of Madera
Engineering Department
428 E. Yosemite Avenue
Madera, Ca 93638

To the Contractor **Rolfe Construction, Inc.**

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

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

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

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

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

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

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

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

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

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

30. 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 on the date first above written.

City of Madera
Herein Called OWNER

By: _____
Cecelia K. Gallegos, Mayor

APPROVE AS TO FORM:

Shannon L. Chaffin, City Attorney

ATTEST:

Alicia Gonzales, 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.

California Notary acknowledgement required to be attached.

State of California

County of _____

} ss.

On _____ before me, _____
Date Here Insert Name and Title of the Officer

Personally appeared _____
Name(s) of Signer(s)

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 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.

Place Notary Seal/Stamp Above

Signature of Notary Public

Attachment 2

Project Map

Project Map

