

REGULAR MEETING OF THE MADERA CITY COUNCIL

205 W. 4th Street, Madera, California 93637

NOTICE AND AGENDA

Wednesday, October 19, 2022
6:00 p.m.

Council Chambers
City Hall

The Council Chambers will be 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: 864 6198 5178#. Comments will also be accepted via email at citycouncilpubliccomment@madera.gov or by regular mail at 205 W. 4th Street, Madera, CA 93637.

CALL TO ORDER:

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

INVOCATION: Pastor Mike Souza, Harvest Community Church

PLEDGE OF ALLEGIANCE:

APPROVAL OF AGENDA:

PUBLIC COMMENT:

The first 15 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, but are not required, to identify themselves and state the subject of their comments. 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.

WRITTEN COMMUNICATIONS: None

PRESENTATIONS:

1. Proclamation Recognizing October as Domestic Violence Awareness Month

INTRODUCTIONS: None

A. WORKSHOP: None

B. CONSENT CALENDAR:

Matters listed under the Consent Calendar are considered routine and will be enacted by one motion and one vote. There will be no separate discussion of these items. If discussion is desired, a member of the public or a member of the Council may request an item be removed from the Consent Calendar and it will be considered separately.

B-1 Minutes – 6/15/22, 6/16/22

Recommendation: Approve the City Council Minutes of June 15, 2022 and June 16, 2022

B-2 Informational Report on Register of Audited Demands for September 24, 2022 to October 7, 2022

Recommendation: No Action Required (Report by Kingsley Okereke)

B-3 Informational Report on Personnel Activity

Recommendation: No Action Required (Report by Wendy Silva)

B-4 Informational Report on Contract City Attorney Services and Litigation Expenditures

Recommendation: No Action Required (Report by Arnaldo Rodriguez)

B-5 Remote City Council Meetings Under Brown Act Requirements (AB 361)

Recommendation: Council to decide to adopt a Resolution Reauthorizing Remote Teleconference Public Meetings by the City Council and All Boards, Commissions, and Standing Committees of the City in Accordance with Assembly Bill 361 for a Period of 30 Days (Report by Arnaldo Rodriguez)

B-6 Matching Grant for Airport Drainage Improvements

Recommendation: Adopt a Resolution Accepting the Grant Award for the California Aid to Airports Program Grant Agreement for Airport Improvement Program (AIP) with the Federal Aviation Administration in the amount of \$58,644 for drainage improvements (Report by Jamie Hickman)

B-7 Madera Municipal Code Ordinance Text Amendment (OTA) No. 2020-02 relating to Wireless Facilities on Private Property and a Small Wireless Facilities in the Public Rights-of-Way Policy

Recommendation:

- 1) Adopt an Ordinance of the City Council of the City of Madera adding Chapter 9 to Title X of the Madera Municipal Code Relating to Wireless Facilities on Private Property by Title Only, and Waive the Second Full Reading; and
- 2) Adopt a Resolution of the City Council of the City of Madera Adopting a Small Wireless Facilities in the Public Rights-of-Way Policy (Report by Will Tackett)

B-8 Pyrethroid Management Plan for the San Joaquin River Basin

Recommendation: Adopt a Resolution Approving a Pyrethroid Management Plan (PMP) in accordance with California Regional water Quality Control Board

(CRWQCB) Water Quality Basin Plan Amendment (BPA) for the San Joaquin River Basin (Report by Keith Helmuth)

C. PUBLIC HEARINGS:

C-1 Public Hearing for the Naming of future Park at Olive Avenue and Knox Street

Recommendation: Conduct a Public Hearing, Invite Public Input, and if Council determines to name the Park, Adopt a Resolution Approving the naming of the Olive Avenue/Knox Street Park Site (Report by Joseph Hebert)

C-2 Establishment of Appeal Hearing Fees for Cannabis Business Permit Appeal Hearings

Recommendation: Conduct a Public Hearing and Adopt a Resolution to Establish an Appeal Fee of \$6,110 for Cannabis Business Permit Appeals Held Before a City Appointed Cannabis Hearing Officer and an Appeal Fee of \$1,305 for Cannabis Business Permit Appeals Held Before the City Council (Report by Will Tackett)

C-3 Vacation of a Portion of Clark Street Right-of-Way Between Owens Street and Taylor Street (ABN 2022-01)

Recommendation: Item Withdrawn for Further Noticing (Report by Will Tackett)

C-4 Vacation of Portion of an Alley Adjacent to and Paralleling Noble Street (ABN 2020-01), Grove Street South of Maple Street (ABN 2020-02) and a Portion of the Northeast Corner of the Intersection of Noble and Maple Streets (ABN 2021-01)

Recommendation: Item Withdrawn for Further Noticing (Report by Will Tackett)

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

D-1 Agreements for Professional On-Call Engineering Services

Recommendation: Adopt a Resolution Approving Consultant Service Agreements for three years with AECOM, Yamabe & Horn Engineering, Blair, Church & Flynn Consulting Engineers, Provost & Pritchard Engineering Group, Peters Engineering Group, O'Dell Engineering, Quad-Knopf (QK), AM Consulting Engineers, AKEL Engineering Group and TJKM Consultants in the amount of \$900,000 for each agreement for Professional On-Call Engineering Services (Report by Keith Helmuth)

D-2 Consideration of an Appropriation of Funds from the General Fund for Purposes of the Planning Department Personnel Support Contracted Services Account

Recommendation: Adopt a Resolution appropriating funds from the General Fund for the Planning Department Contracted Services (1020-4100-6440) Account (Report by Will Tackett)

E. ADMINISTRATIVE REPORTS:

E-1 Lions Town and Country Park Trail Update

Recommendation: This report is submitted to provide the City Council an informational update on the Lions Town and Country Park trail system conditions and rehabilitation plans and there is no action requested (Report by Joseph Hebert)

E-2 Round 6 State of California Outdoor Recreation Legacy Partnership Program

Recommendation: This report is submitted as an informational report on the Round 6 State of California Outdoor Recreation Legacy Partnership Program funding opportunity. Staff intends to apply for funding for future park near Tozer Street, north of Sunrise Avenue (Report by Joseph Hebert)

F. COUNCILMEMBER REPORTS/ANNOUNCEMENTS/FUTURE AGENDA ITEMS:

This portion of the meeting is reserved for the Mayor and Councilmembers (i) to make brief reports on boards, committees, and other public agencies, and at public events, (ii) to request updates, (iii) to initiate future agenda items., and (iv) to take action on matters initiated under this section of the agenda. Under this section the Council may take action only on items specifically agendaized and which meet other requirements for action.

G. CLOSED SESSION:

G-1 Conference with Labor Negotiators - Pursuant to Government Code §54957.6

Agency Designated Representatives: Arnoldo Rodriguez, Wendy Silva, and Che Johnson

Employee Groups: General Bargaining Unit, Madera Police Officers' Association, Mid-Management Employee Group, Law Enforcement Mid Management Group

G-2 Conference with Labor Negotiators - Pursuant to Government Code §54957.6

Agency Designated Representatives: Arnoldo Rodriguez and Che Johnson

Unrepresented Employees: Police Chief, City Engineer, Director of Human Resources, Public Works Operations Director, Director of Parks & Community Services, Information Services Manager, Planning Manager, Chief Building Official, Director of Community Development, Director of Financial Services, and City Clerk

G-3 Public Employee Performance Evaluation – Pursuant to Government Code Section §54957(b)(1)

Title: City Clerk

ADJOURNMENT:

UPCOMING MEETING DATES:

- Wednesday, November 2, 2022
- Wednesday, November 16, 2022

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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 1st and 3rd Wednesday of each month at 6:00 p.m. in the Council Chambers at City Hall.
 - A complete agenda packet is available on the City's website and in the City Clerk's Office at least 72 hours prior to a Regular Meeting and 24 hours prior to a Special Meeting. A hard copy of any agenda report may be requested by contacting the City Clerk's Office at (559) 661-5405 or by email at cityclerkinfo@madera.gov.
 - 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-

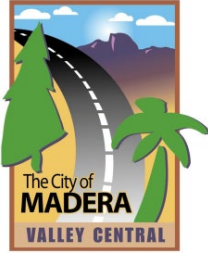
two (72) hours prior to the meeting. Please call the Human Resources Office at (559) 661-5401. Those who are hearing impaired may call 711 or 1-800-735-2929 for TTY Relay Service.

- 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, Alicia Gonzales, 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 October 19, 2022, near the front entrances of City Hall and on the City's website www.madera.gov at 10:30 p.m. on October 13, 2022.



Alicia Gonzales, City Clerk



Item:	B-1
Minutes for:	06/15/2022
Adopted:	10/19/2022

Minutes of a Regular Meeting of the Madera City Council

June 15, 2022
6:00 p.m.

Council Chambers
City Hall

The Council Chambers will be 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: 824 4914 8626#. Comments will also be accepted via email at citycouncilpubliccomment@madera.gov or by regular mail at 205 W. 4th Street, Madera, CA 93637.

CALL TO ORDER: Meeting was called to order at 6:00 p.m.

ROLL CALL:

Present:

- Mayor Santos Garcia
- Mayor Pro Tem Anita Evans, District 4
- Councilmember Cece Gallegos, District 1 (Zoom)
- Councilmember Jose Rodriguez, District 2
- Councilmember Steve Montes, District 3
- Councilmember Elsa Mejia, District 5
- Councilmember Artemio Villegas, District 6

Others present were City Manager Arnoldo Rodriguez, City Clerk Alicia Gonzales, City Attorney Hilda Cantu Montoy, City Engineer Keith Helmuth, Interim Director of Financial Services Kingsley Okereke, Fire Division Chief Matt Watson, Grants Administrator Marcela Zuniga, Director of Human Resources Wendy Silva, IS Manager Mark Souders, Interim Director of Parks and Community Services Joseph Hebert, Planning Manager Gary Conte, Chief of Police Dino Lawson, Public Works Administrative Analyst Adam Gonzales, Financial Services Manager Anthony Forestiere, and Communication Specialist Joseph Carrello.

INVOCATION: Pastor Fred Thurman, New Life Assembly

PLEDGE OF ALLEGIANCE: Mayor Pro Tem Evans

Mayor Garcia asked if there was Public Comment on approval of the agenda.

City Clerk, Alicia Gonzales stated there were no written public comment and then asked the audience if there was anyone who wanted to present Public Comment.

Mr. S, a Math teacher and Martial Arts instructor spoke on behalf of Cannabis.

Jason Turner of Chowchilla spoke on evictions.

APPROVAL OF AGENDA:

ON MOTION BY COUNCILMEMBER MONTES AND SECONDED BY COUNCILMEMBER VILLEGAS, THE APPROVAL OF AGENDA WAS APPROVED BY A 7/0 VOTE. NOES: NONE. ABSENT: NONE. ABSTAIN: NONE.

THE MOTION PASSED WITH THE FOLLOWING VOTE:

**YES: 7 – COUNCILMEMBER GALLEGOS
COUNCILMEMBER RODRIGUEZ
COUNCILMEMBER MONTES
MAYOR PRO TEM EVANS
COUNCILMEMBER MEJIA
COUNCILMEMBER VILLEGAS
MAYOR GARCIA**

PUBLIC COMMENT:

The first 15 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, but are not required, to identify themselves and state the subject of their comments. 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.

Baldwin Moy spoke on evictions. He asked that this issue be added to the next meeting agenda, so that the City can start to address the issues. Councilmember Montes stated that at the last meeting, it was determined that the City Attorney was going to respond by correspondence to Mr. Turner and Mr. Moy regarding this item.

Nazreen Johnson of Red Rock Environmental discussed the solid waste contract and stated that it is time for the City to open a new RFP (Request for Proposals) for this service. Mayor Garcia pointed out that Item E-1 on this agenda will discuss this item and asked that she hold any further comments until that item is called.

No further Public Comment was presented. Public Comment was closed.

WRITTEN COMMUNICATIONS: None

PRESENTATIONS:

1. Certificate of Recognition - Thomas Jefferson Middle School 8th Grade Baseball 2022 CVAL Champions
2. Certificate of Recognition - Thomas Jefferson Middle School 7th Grade Softball 2022 CVAL Champions
3. Proclamation Recognizing Juneteenth Day
4. Proclamation Recognizing June as Pride Month
5. Neighborhood Farmers Market at Madera Community Hospital

6. Comcast – Improving Broadband

INTRODUCTIONS: None

A. WORKSHOP: None

B. CONSENT CALENDAR:

Matters listed under the Consent Calendar are considered routine and will be enacted by one motion and one vote. There will be no separate discussion of these items. If discussion is desired, a member of the public or a member of the Council may request an item be removed from the Consent Calendar and it will be considered separately.

ON MOTION BY COUNCILMEMBER MONTES AND SECONDED BY MAYOR PRO TEM EVANS, THE CONSENT CALENDAR, WAS APPROVED BY A 7/0 VOTE. NOES: NONE. ABSENT: NONE. ABSTAIN: NONE.

THE MOTION PASSED WITH THE FOLLOWING VOTE:

**YES: 7 - COUNCILMEMBER GALLEGOS
COUNCILMEMBER RODRIGUEZ
COUNCILMEMBER MONTES
MAYOR PRO TEM EVANS
COUNCILMEMBER MEJIA
COUNCILMEMBER VILLEGAS
MAYOR GARCIA**

B-1 Minutes – 11/03/21

Recommendation: Approve the City Council Minutes of November 3, 2021

B-2 Informational Report on Register of Audited Demands for May 21, 2022 to June 3, 2022

Recommendation: No Action Required (Report by Kingsley Okereke)

B-3 Informational Report on Personnel Activity

Recommendation: No Action Required (Report by Wendy Silva)

B-4 Olive Avenue Widening and Reconstruction Gateway Drive to Knox Street, Phase 2 Utility Undergrounding Project

Recommendation: Adopt a Resolution Increasing the Allowable Project Contingencies from 10 to 25 percent for the Olive Avenue Widening and Reconstruction - Gateway Drive to Knox Street Phase 2, Utility Undergrounding City Project No. R-000010 (Report by Keith Helmuth)

RES 22-78

A RESOLUTION OF THE COUNCIL OF THE CITY OF MADERA, CALIFORNIA AUTHORIZING AN INCREASE IN CONSTRUCTION CONTRACT CONTINGENCIES FOR THE CONTRACT WITH MID CAL PIPELINE AND UTILITIES, INC. FOR THE OLIVE AVENUE WIDENING AND RECONSTRUCTION – GATEWAY DRIVE TO KNOX STREET PHASE 2, UTILITY UNDERGROUNDING CITY PROJECT NO. R-000010

B-5 Applications for Transportation Development Act (TDA) – Local Transportation Funds (LTF) and State Transit Assistance (STA) Funds for Fiscal Year (FY) 2022/23

Recommendation: Adopt a Resolution Approving the Applications for TDA – LTF and STA Funds for FY 2022/23 and Authorizing the City Engineer to execute and submit the Applications to the Madera County Transportation Commission (MCTC) (Report by Keith Helmuth)

RES 22-79 A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MADERA, CALIFORNIA APPROVING APPLICATIONS FOR TRANSPORTATION DEVELOPMENT ACT (TOA)- LOCAL TRANSPORTATION FUNDS (LTF) AND STATE TRANSIT ASSISTANCE (STA) FUNDS FOR FISCAL YEAR (FY) 2022/23 AND AUTHORIZING THE CITY ENGINEER TO EXECUTE AND SUBMIT THE APPLICATIONS TO MADERA COUNTY TRANSPORTATION COMMISSION (MCTC)

B-6 Project List for Fiscal Year (FY) 2022/23 Funded by Senate Bill (SB 1) Road Maintenance and Rehabilitation Account (RMRA) – Local Streets and Roads Funding Program

Recommendation: Adopt a Resolution Approving the City Project List for FY 2022/23 Funded by the SB 1 RMRA Account of the Local Streets and Roads Funding Program (Report by Keith Helmuth)

RES 22-80 RESOLUTION ADOPTING THE CITY OF MADERA PROJECT LIST FOR FISCAL YEAR (FY) 2022/23 FUNDED BY SENATE BILL (SB 1) ROAD MAINTENANCE AND REHABILITATION ACCOUNT (RMRA) – LOCAL STREETS AND ROADS FUNDING PROGRAM

B-7 Adoption of the 2022-2025 City of Madera Title VI Program Update Regarding Policies and Procedures to Assure Nondiscrimination in Public Transit Services

Recommendation: Adopt a Resolution Adopting the 2022-2025 City of Madera Title VI Program Update (Report by Kingsley Okereke)

RES 22-81 RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MADERA, CALIFORNIA ADOPTING THE 2022-2025 CITY OF MADERA TITLE VI PROGRAM UPDATE

B-8 Revisions to Airport Advisory Commission (AAC) Rules of Procedure

Recommendation: Adopt a Resolution Approving Revised Airport Advisory Commission (AAC) Rules of Procedure (Report by Daniel Foss)

RES 22-82 A RESOLUTION OF THE CITY COUNCIL OF MADERA, CALIFORNIA APPROVING RULES OF PROCEDURE REVISIONS TO AIRPORT ADVISORY COMMISSION (AAC) RULES OF PROCEDURE

B-9 Adoption of an Ordinance Relating to the Police Department's Use of Military Equipment Per Assembly Bill 481 (AB 481)

Recommendation: Waive Full Reading and Adopt an Ordinance Adding Chapter 16 to Title III of the Madera Municipal Code (MMC) relating to the use of Military Equipment (Report by Dino Lawson)

ORD 994 C.S. AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MADERA ADDING CHAPTER 16 TO TITLE III OF THE MADERA CITY CODE RELATING TO ADOPTION OF A MILITARY EQUIPMENT USE POLICY

B-10 Approval of a New Schedule "A" Agreement with the California Department of Forestry and Fire Protection (CAL FIRE) from July 1, 2022, to June 30, 2023, for Fire Service Operations that was not included in the report to Council at the June 1, 2022 Council meeting

Recommendation: Adopt a Resolution Approving a New Schedule "A" Agreement with the California Department of Forestry and Fire Protection (CAL FIRE) for fire service operation from July 1, 2022, to June 30, 2023 (Report by Matthew Watson)

RES 22-83 A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MADERA, CALIFORNIA, APPROVING A NEW SCHEDULE "A" AGREEMENT WITH THE CALIFORNIA DEPARTMENT OF FORESTRY AND FIRE PROTECTION (CAL FIRE) FROM JULY 1, 2022, TO JUNE 30, 2023, FOR FIRE SERVICE OPERATIONS, AND AUTHORIZING THE MAYOR TO SIGN THE AGREEMENT ON BEHALF OF THE CITY OF MADERA

B-11 Remote City Council Meetings Under Brown Act Requirements (Assembly Bill 361)

Recommendation: Council to decide to adopt a Resolution Reauthorizing Remote Teleconference Public Meetings by the City Council and All Boards, Commissions, and Standing Committees of the City in Accordance with Assembly Bill 361 for a Period of 30 Days (Report by Arnolando Rodriguez)

RES 22-84 A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MADERA REAUTHORIZING REMOTE TELECONFERENCE MEETINGS BY THE CITY COUNCIL AND ALL BOARDS, COMMISSIONS, AND STANDING COMMITTEES OF THE CITY IN ACCORDANCE WITH ASSEMBLY BILL 361 FOR A PERIOD OF THIRTY DAYS

B-12 Initiating Proceedings for Annexation of Pecan Square Subdivision (Tract No. 20-S-02) into City of Madera Landscape Maintenance District Zone of Benefit 8

Recommendation: Adopt a Resolution Initiating Proceedings Pursuant to the Landscaping and Lighting Act of 1972 for the Annexation of Property into City of Madera Landscape Maintenance District Zone of Benefit 8, to Review the Improvements and Assessments for Fiscal year 2023/24, and Setting a Public Hearing (Report by Keith Helmuth)

RES 22-85

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MADERA, CALIFORNIA INITIATING PROCEEDINGS PURSUANT TO THE LANDSCAPING AND LIGHTING ACT OF 1972 FOR THE ANNEXATION OF PROPERTY INTO CITY OF MADERA LANDSCAPE MAINTENANCE DISTRICT ZONE OF BENEFIT 8, TO REVIEW THE IMPROVEMENTS AND ASSESSMENTS FOR FISCAL YEAR 2023-2024, AND SETTING A PUBLIC HEARING

C. PUBLIC HEARINGS:

C-1 Public Hearing on the Community Development Block Grant (CDBG) 2022-2023 Action Plan Funding Allocation

Recommendation: Conduct the Public Hearing to Approve Tentative Allocations for the use of CDBG 2022-2023 Action Plan Funds in the Amount of \$982,010 (Report by Kingsley Okereke)

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

D-1 Amendment No. 3 to Professional Services Agreement with Provost & Pritchard Consulting Group

Recommendation: Adopt a Resolution Approving Amendment No. 3 to Agreement for Professional Planning Services with Provost & Pritchard Consulting Group, Designating Source of Funds for Amendment No. 3, and Approving Amendment to the General Fund Budget for a Budget Line-Item Increase of \$100,000 (Report by Gary Conte)

ON MOTION BY COUNCILMEMBER RODRIGUEZ AND SECONDED BY MAYOR PRO TEM EVANS, ITEM D-1 WAS APPROVED BY A 7/0 VOTE. NOES: NONE. ABSENT: NONE. ABSTAIN: NONE.

THE MOTION PASSED WITH THE FOLLOWING VOTE:

YES: 7 -
COUNCILMEMBER GALLEGOS
COUNCILMEMBER RODRIGUEZ
COUNCILMEMBER MONTES
MAYOR PRO TEM EVANS
COUNCILMEMBER MEJIA
COUNCILMEMBER VILLEGAS
MAYOR GARCIA

RES 22-86

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MADERA APPROVING AMENDMENT NO. 3 TO AGREEMENT FOR PROFESSIONAL PLANNING SERVICES WITH PROVOST & PRITCHARD CONSULTING GROUP, DESIGNATING SOURCE OF FUNDS FOR AMENDMENT NO. 3, AND APPROVING AMENDMENT TO THE CITY OF MADERA GENERAL FUND BUDGET FOR A BUDGET LINE ITEM INCREASE OF \$100,000

D-2 Continuing Resolution In Lieu of timely FY 2022-2023 Budget Adoption and Authorization of 60 days Extension to Prepare and Present the Fiscal Year 2022-23 Budget

Recommendation: Adopt a Resolution to Continue Expenditures and Revenues in Accordance with the Fiscal Year 2021-22 City Budget in Lieu of Fiscal Year 2022-23 Budget Adoption (Continuing Resolution), and Authorization of 60 days extension to Prepare and Present the Fiscal Year 2022-23 Budget (Report by Kingsley Okereke)

ON MOTION BY COUNCILMEMBER MONTES AND SECONDED BY MAYOR PRO TEM EVANS, ITEM D-2 WAS APPROVED BY A 7/0 VOTE. NOES: NONE. ABSENT: NONE. ABSTAIN: NONE.

THE MOTION PASSED WITH THE FOLLOWING VOTE:

YES: 7 -
COUNCILMEMBER GALLEGOS
COUNCILMEMBER RODRIGUEZ
COUNCILMEMBER MONTES
MAYOR PRO TEM EVANS
COUNCILMEMBER MEJIA
COUNCILMEMBER VILLEGAS
MAYOR GARCIA

RES 22-87 A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MADERA CONTINUING EXPENDITURES AND REVENUES IN ACCORDANCE WITH THE FISCAL YEAR 2021-2022 CITY BUDGET IN LIEU OF FISCAL YEAR 2022-2023 BUDGET ADOPTION

E. ADMINISTRATIVE REPORTS:

E-1 Mid-Valley Disposal Contract Update

Recommendation: Informational Report (Report by Arnolando Rodriguez)

Keith Ester, General Manager for Caglia Environmental (Red Rock Environmental) spoke on their capabilities as a waste disposal company.

Joseph Kalpakoff owner of Mid Valley Disposal spoke on how they've complied with all goals for the last seven years under his leadership and they look forward to a new agreement with the city.

F. COUNCILMEMBER REPORTS/ANNOUNCEMENTS/FUTURE AGENDA ITEMS:

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Councilmember Gallegos had nothing to report.

Councilmember Rodriguez invited the public to two upcoming 4th of July events. The Fireworks Spectacular will be held at the Madera District Fairgrounds and a golf tournament fundraiser to

benefit the fireworks display at the Madera Municipal Golf Course. He thanked the many sponsors for their help in reaching the funding goal for the event.

Councilmember Montes clarified his comments on Item C-1 in that there are additional programs and funding that pertain to rental assistance for those who need of relief.

Mayor Pro Tem Evans highlighted the Juneteenth commemoration which was held at Courthouse Park on Friday, June 17th and invited her colleagues and the public to attend.

Councilmember Mejia mentioned the Farmers Market at Madera Community Hospital and acknowledged farm workers for their hard work in bringing fresh food from farm to table.

Councilmember Villegas mentioned the Madera Probation Department's graduation ceremony and those individuals who completed the Correction Community Transitional program.

Mayor Garcia had nothing to report.

G. CLOSED SESSION:

G-1 Liability Claim Pursuant to Section §54956.95 – Agency Claimed Against: City of Madera Claimants:

1. Randy Williams
2. Thomas Burns
3. Madera Police Officers' Association

G-2 Conference with Legal Counsel – Existing Litigation (Pursuant to Government Code Section 54956.9(d)(1))

Name of Case: Golden State Environmental Justice Alliance v. City of Madera (real party in interested Origo Cold Madera, LLC), Madera County Superior Court Case No. MCV087157

City Attorney Hilda Cantu Montoy made the closed session announcement at 9:43 p.m.

Council returned from Closed Session with all members of Council present.

Council discussed Item G-1 three (3) Tort Claims where former employees disputed the pay-out amounts and referenced their MOUs (Memorandum of Understanding). Council voted 7/0 to reject the claims.

ADJOURNMENT: Meeting was adjourned at 9:43 p.m.

UPCOMING MEETING DATES:

- June 16, 2022 – Special Meeting at 6:00 p.m. in the Council Chambers
- Wednesday, July 6, 2022
- Wednesday, July 20, 2022

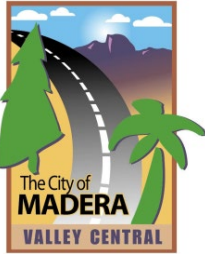
CONSISTENCY WITH THE VISION MADERA 2025 PLAN

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.

ALICIA GONZALES, City Clerk

SANTOS GARCIA, Mayor

MINUTES PREPARED BY
ZELDA LEON, Deputy City Clerk



Item:	B-1
Minutes for:	06/16/2022s
Adopted:	10/19/2022

Minutes of the Special Meeting of the Madera City Council

June 16, 2022
6:10 p.m.

Council Chambers
City Hall

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CALL TO ORDER: Meeting was called to order at 6:10 p.m.

ROLL CALL:

Present: Mayor Santos Garcia
Mayor Pro Tem Anita Evans, District 4
Councilmember Cece Gallegos, District 1
Councilmember Jose Rodriguez, District 2
Councilmember Steve Montes, District 3
Councilmember Elsa Mejia, District 5 (Zoom then arrived in-person at 6:47 pm)
Councilmember Artemio Villegas, District 6 (Zoom)

Others present were City Manager Arnoldo Rodriguez, City Clerk Alicia Gonzales, City Engineer Keith Helmuth, Interim Director of Financial Services Kingsley Okereke, Fire Division Chief Matt Watson, IS Manager Mark Souders, Interim Director of Parks and Community Services Joseph Hebert, Planning Manager Gary Conte, Public Works Administrative Analyst Adam Gonzales, Financial Services Manager Anthony Forestiere, Assistant Engineer Jonathan Gramajo, Senior Civil Engineer Steve Bettencourt, Deputy City Engineer Randy Bell, Engineering Administrative Analyst Nicole Say, Senior Civil Engineer Matt Bullis, Grants Program Manager David Huff and Assistant Engineer Raquel Rios.

INVOCATION: Mayor Pro Tem Evans

PLEDGE OF ALLEGIANCE: Mayor Garcia

APPROVAL OF AGENDA:

ON MOTION BY COUNCILMEMBER GALLEGOS AND SECONDED BY COUNCILMEMBER MONTES, THE APPROVAL OF AGENDA WAS APPROVED BY A 7/0 VOTE. NOES: NONE. ABSENT: NONE. ABSTAIN: NONE.

THE MOTION PASSED WITH THE FOLLOWING VOTE:

YES: 7 – COUNCILMEMBER GALLEGOS

COUNCILMEMBER RODRIGUEZ
COUNCILMEMBER MONTES
MAYOR PRO TEM EVANS
COUNCILMEMBER MEJIA
COUNCILMEMBER VILLEGAS
MAYOR GARCIA

PUBLIC COMMENT:

Members of the public shall have an opportunity to address the City Council regarding the following agenda item when that item is called. Speakers should limit their comments to three (3) minutes.

No Public Commented was presented or submitted. Public Comment was closed.

A. ADMINISTRATIVE REPORTS:

A-1 Capital Improvement Program for Fiscal Year (FY) 2022/23 to FY 2026/27

Recommendation:

- 1) Adopt a Minute Order Accepting the Proposed Projects in the City's Draft Capital Improvement Program (CIP) for Fiscal Year (FY) 2022/23 to FY 2026/27; and
- 2) Authorize the City Engineer to Submit the Draft 5-year CIP for FY 2022/23 to FY 2026/27 to the Planning Commission for Determination of Conformity with the General Plan, after which the CIP will be returned to the City Council for Final Consideration and Approval (Report by Keith Helmuth)

ON MOTION BY COUNCILMEMBER GALLEGOS AND SECONDED BY MAYOR PRO TEM EVANS, ITEM A-1 WAS APPROVED BY A 7/0 VOTE. NOES: NONE. ABSENT: NONE. ABSTAIN: NONE.

THE MOTION PASSED WITH THE FOLLOWING VOTE:

YES: 7 –
COUNCILMEMBER GALLEGOS
COUNCILMEMBER RODRIGUEZ
COUNCILMEMBER MONTES
MAYOR PRO TEM EVANS
COUNCILMEMBER MEJIA
COUNCILMEMBER VILLEGAS
MAYOR GARCIA

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

- B-1** Request for approval of a 6-month Tax Sharing Agreement (Agreement) between the City of Madera and the County of Madera specifically for the Villages at Almond Grove Annexation

Recommendation: Approve a resolution approving a 6-month agreement for the Villages at Almond Grove Annexation (Report by Arnolando Rodriguez)

ON MOTION BY MAYOR PRO TEM EVANS AND SECONDED BY COUNCILMEMBER RODRIGUEZ, ITEM B-1 WAS APPROVED BY A 7/0 VOTE. NOES: NONE. ABSENT: NONE.

ABSTAIN: NONE.

THE MOTION PASSED WITH THE FOLLOWING VOTE:

YES: 7 –
COUNCILMEMBER GALLEGOS
COUNCILMEMBER RODRIGUEZ
COUNCILMEMBER MONTES
MAYOR PRO TEM EVANS
COUNCILMEMBER MEJIA
COUNCILMEMBER VILLEGAS
MAYOR GARCIA

RES 22-88 A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MADERA, CALIFORNIA, APPROVING A 6-MONTH TAX SHARING AGREEMENT BETWEEN THE CITY OF MADERA AND THE COUNTY OF MADERA FOR THE VILLAGES AT ALMOND GROVE ANNEXATION

ADJOURNMENT: Meeting was adjourned at 8:40 pm. The next regular meeting is on July 6, 2022.

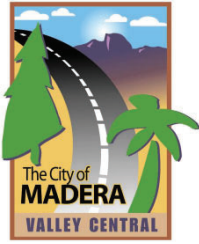
CONSISTENCY WITH THE VISION MADERA 2025 PLAN

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.

ALICIA GONZALES, City Clerk

SANTOS GARCIA, Mayor

MINUTES PREPARED BY
ZELDA LEON, Deputy City Clerk



REPORT TO CITY COUNCIL

Approved by:

Anthony R. Foretione

Department Director

Arulds Rodriguez

City Manager

Council Meeting of: October 19, 2022

Agenda Number: B-2

SUBJECT:

Informational Report on Register of Audited Demands

RECOMMENDATION:

Review Register of Audited Demands Report for September 24, 2022 to October 7, 2022.

SUMMARY:

The Register of Audited Demands for the City covering obligations paid during the period of September 24, 2022 to October 7, 2022 is summarized in the following tables. Attachment A contains Warrants while Table 2 is a summary of the wire transfers.

Table 1: Warrant Distribution Summary

Description	Check #'s	Amount
General Warrants	34190 – 34313	\$2,041,382.79

Table 2: Wire Transfer Summary

Description	Vendor	Amount
Payroll and Taxes	Union Bank	\$600,801.53
SDI	EDD	\$2,314.76
CalPERS Payment	CalPERS	\$120,763.34

DISCUSSION:

Warrant requests are processed weekly based on the adopted Fiscal Year 2022/2023 budget and released for payment every Monday. Each demand has been audited and the Finance Director hereby certifies as to their accuracy and that there were sufficient funds for their payment. Per the request of City Council, we have included the departments from which each of the respective warrants were requested as well as the fund/division description from which they were paid.

FINANCIAL IMPACT:

Demands for payments are made within the constraints of the approved 2022/2023 budget.

CONSISTENCY WITH THE VISION MADERA 2025 PLAN:

These expenditures were spent considering Strategy 115: Economic Resource Provision: Ensure sufficient economic resources to provide adequate City services and prepare for future growth.

ALTERNATIVES:

Informational only.

ATTACHMENTS:

Register of Audited Demands

CITY OF MADERA
REGISTER OF AUDITED DEMANDS FOR BANK #1 - UNION BANK GENERAL ACCOUNT
October 19, 2022

CHECK	PAY DATE	DEPARTMENT	PAID FROM ORG	ISSUED TO	DESCRIPTION	AMOUNT
34190	09/27/2022	PD OPS	PD OPS	KER'S GAS & LUBE, INC.	08/22 PD CAR WASHES	\$ 430.00
34191	09/27/2022	ENGINEERING	ENGINEERING	ACRO SERVICE CORPORATION	CONSULTING SVS-ENGINEERING W/E 09/11/22 K NEMAT	\$ 600.00
34191	09/27/2022	PLANNING	PLANNING	ACRO SERVICE CORPORATION	CONSULTING SVS - PLANNING W/E 07/03/22 R SMITH	\$ 2,972.80
34191	09/27/2022	PLANNING	PLANNING	ACRO SERVICE CORPORATION	CONSULTING SVS - PLANNING W/E 07/10/22 R SMITH	\$ 2,378.24
34191	09/27/2022	PLANNING	PLANNING	ACRO SERVICE CORPORATION	CONSULTING SVS - PLANNING SICK PAY, R SMITH	\$ 523.12
34191	09/27/2022	PLANNING	PLANNING	ACRO SERVICE CORPORATION	CONSULTING SVS - PLANNING W/E 07/17/22 R SMITH	\$ 2,972.80
34191	09/27/2022	PLANNING	PLANNING	ACRO SERVICE CORPORATION	CONSULTING SVS - PLANNING W/E 07/24/22 R SMITH	\$ 2,972.80
34191	09/27/2022	PLANNING	PLANNING	ACRO SERVICE CORPORATION	CONSULTING SVS - PLANNING W/E 07/31/22 R SMITH	\$ 2,972.80
34191	09/27/2022	PLANNING	PLANNING	ACRO SERVICE CORPORATION	CONSULTING SVS - PLANNING W/E 07/17/22 W SHAH	\$ 75.00
34192	09/27/2022	PW ADMIN	COMM & REC	SERVICEMASTER BY J&C BROWN	09/22 JANITORIA SERVICES AT PAN AM CENTER	\$ 1,631.83
34193	09/27/2022	PARKS ADMIN	PARKS	DAVID J. BOYLE	MEMORIAL MONUMENTS	\$ 7,520.00
34194	09/27/2022	FINANCE	PAYROLL TRUST	COURT ORDERED DEBT COLLECTIONS	COURT ORDERED DEBT COLLECTION	\$ 36.22
34195	09/27/2022	FINANCE	PAYROLL TRUST	CA DEPARTMENT OF CHILD SUPPORT	CHILD SUPPORT DEDUCTIONS	\$ 996.43
34196	09/27/2022	FINANCE	PAYROLL TRUST	MID-MGMT EMPLOYEE GROUP	SEPTEMBER 2022 MONTHLY DUES	\$ 580.00
34197	09/27/2022	FLEET	FLEET MAINT	HERITAGE-CRYSTAL CLEAN, INC.	PARTS WASHER SERVICE	\$ 1,073.22
34198	09/27/2022	ENGINEERING	WATER CAPITAL	CAROLLO ENGINEERS, INC	PROFESSIONAL SVS - WATER STORAGE 07/22	\$ 1,841.10
34198	09/27/2022	ENGINEERING	WATER CAPITAL	CAROLLO ENGINEERS, INC	PROFESSIONAL SVS WATER STORAGE 08/22	\$ 2,218.50
34199	09/27/2022	HR	HR/RISK MGT	J & D MANUFACTURING	RECOGNITION AWARDS - ADA ADVISORY	\$ 125.57
34200	09/27/2022	PD OPS	PD OPS	DIEBERTS CREATIVE COPY INC	BUSINESS CARDS - PD	\$ 303.10
34200	09/27/2022	PD OPS	PD OPS	DIEBERTS CREATIVE COPY INC	BUSINESS CARDS MASTERS FOIL & EMBOSS	\$ 1,450.00
34201	09/27/2022	PD OPS	PD OPS	CRISCOM PUBLIC RELATIONS, INC.	GRANT RESEARCH & WRITING SERVICES 10/22	\$ 4,000.00
34201	09/27/2022	PD OPS	PD OPS	CRISCOM PUBLIC RELATIONS, INC.	GRANT RESEARCH & WRITING SERVICES 07/22	\$ 4,000.00
34202	09/27/2022	ENGINEERING	MEAS T - ENVIRO	JOHN PAPE CONSULTING, LLC	WASHINGTON TREE INSPECTION	\$ 1,200.00
34203	09/27/2022	PD OPS	PD OPS	TRILOGY MEDWASTE WEST LLC	08/22 STOP FEE - NO WASTE	\$ 62.50
34204	09/27/2022	ENGINEERING	WATER OPS	DAVIDS ENGINEERING, INC.	PROFESSIONAL SERVICES JULY - AUGUST 2022	\$ 528.50
34205	09/27/2022	FINANCE	MEAS K - FIRE	HINDERLITER, DE LLAMAS AND ASSOCIATES	1ST QTR FY 22/23 TRANSACTION TAX	\$ 300.00
34205	09/27/2022	FINANCE	MEAS K - PD	HINDERLITER, DE LLAMAS AND ASSOCIATES	1ST QTR FY 22/23 TRANSACTION TAX	\$ 300.00
34206	09/27/2022	PLANNING	PLANNING	TELECOM LAW FIRM, P.C.	CONSULTING SERVICES	\$ 1,786.40
34207	09/27/2022	PD OPS	PD OPS	VAN DE POL ENTERPRISES, INC.	PROPANE FOR PD	\$ 21.44
34208	09/27/2022	GRANTS	LTF - TRANSIT	WSP USA INC.	CONSULTING - MADERA TRANSIT PLAN-PHASE II	\$ 10,900.04
34209	09/27/2022	PD OPS	PARKS	O&E TRANSPORTATION LLC	FRESNO RIVER CLEAN UP 09/06/22-09/09/22	\$ 5,150.00
34209	09/27/2022	PD OPS	PARKS	O&E TRANSPORTATION LLC	FRESNO RIVER CLEAN UP 09/12/22 - 09/16/22	\$ 8,600.00
34210	09/27/2022	PD OPS	PD OPS	KAYLA CLARK	PER DIEM - GAS & PARKING REIMBURSEMENT	\$ 136.50
34211	09/27/2022	PLANNING	PLANNING	GARY CONTE	PER DIEM - APA ANAHEIM 2022 CONFERENCE	\$ 554.39

CHECK	PAY DATE	DEPARTMENT	PAID FROM ORG	ISSUED TO	DESCRIPTION	AMOUNT
34212	09/27/2022	ENGINEERING	TRANS IMP FEE	CORNERSTONE STRUCTURAL ENGINEERING GROUP	B-02 DESIGN SERVICES FOR WESTBERRY BRIDGE	\$ 14,830.65
34213	09/27/2022	WATER	WATER QUALITY	DELLAVALLE LABORATORY,INC.	WEEKLY SAMPLING	\$ 1,710.00
34214	09/27/2022	FINANCE	AIRPORT OPS	AT&T	08/22 SERVICE 831-000-6408 576	\$ 369.62
34214	09/27/2022	FINANCE	BUILDING	AT&T	08/22 SERVICE 831-000-6408 576	\$ 75.21
34214	09/27/2022	FINANCE	CITY ATTORNEY	AT&T	08/22 SERVICE 831-000-6408 576	\$ 24.50
34214	09/27/2022	FINANCE	CITY CLERK	AT&T	08/22 SERVICE 831-000-6408 576	\$ 20.63
34214	09/27/2022	FINANCE	CODE ENF	AT&T	08/22 SERVICE 831-000-6408 576	\$ 412.17
34214	09/27/2022	FINANCE	COMM & REC	AT&T	08/22 SERVICE 831-000-6408 576	\$ 1,151.40
34214	09/27/2022	FINANCE	COMPUTER MAINT	AT&T	08/22 SERVICE 831-000-6408 576	\$ 77.79
34214	09/27/2022	FINANCE	ENGINEERING	AT&T	08/22 SERVICE 831-000-6408 576	\$ 172.77
34214	09/27/2022	FINANCE	FINANCE	AT&T	08/22 SERVICE 831-000-6408 576	\$ 58.88
34214	09/27/2022	FINANCE	FIRE	AT&T	08/22 SERVICE 831-000-6408 576	\$ 739.66
34214	09/27/2022	FINANCE	GRANT OVERSIGHT	AT&T	08/22 SERVICE 831-000-6408 576	\$ 72.20
34214	09/27/2022	FINANCE	HR/RISK MGT	AT&T	08/22 SERVICE 831-000-6408 576	\$ 49.00
34214	09/27/2022	FINANCE	PLANNING	AT&T	08/22 SERVICE 831-000-6408 576	\$ 63.18
34214	09/27/2022	FINANCE	UB - GARBAGE	AT&T	08/22 SERVICE 831-000-6408 576	\$ 143.54
34214	09/27/2022	FINANCE	UB - SEWER	AT&T	08/22 SERVICE 831-000-6408 576	\$ 143.55
34214	09/27/2022	FINANCE	UB - WATER	AT&T	08/22 SERVICE 831-000-6408 576	\$ 287.10
34214	09/27/2022	FINANCE	CITY MANAGER	AT&T	08/22 SERVICE 831-000-6408 576	\$ 24.50
34214	09/27/2022	FINANCE	PD OPS	AT&T	08/22 SERVICE 831-000-6408 576	\$ 412.17
34215	09/27/2022	FINANCE	COMM & REC	AT&T	08/22 CALNET 3 SVS 9391026396	\$ 260.20
34215	09/27/2022	FINANCE	MEAS K - FIRE	AT&T	09/22 CALNET 3 SVS 9391068734	\$ 50.39
34215	09/27/2022	FINANCE	SR CITIZEN COMM	AT&T	08/22 CALNET 3 SVS 9391026403	\$ 27.82
34215	09/27/2022	FINANCE	SR CITIZEN COMM	AT&T	08/22 CALNET 3 SVS 9391026398	\$ 24.88
34215	09/27/2022	FINANCE	PD OPS	AT&T	08/22 CALNET 3 SVS 9391026401	\$ 24.87
34215	09/27/2022	FINANCE	PD OPS	AT&T	08/22 CALNET 3 SVS 9391059143	\$ 1,085.52
34216	09/27/2022	FINANCE	BUILDING	AT&T	08/22 FIRSTNET SVS 287302656036	\$ 98.50
34216	09/27/2022	FINANCE	CITY CLERK	AT&T	08/22 FIRSTNET SVS 287302656036	\$ 88.44
34216	09/27/2022	FINANCE	CITY COUNCIL	AT&T	08/22 FIRSTNET SVS 287302656036	\$ 281.67
34216	09/27/2022	FINANCE	CODE ENF	AT&T	08/22 FIRSTNET SVS 287302656036	\$ 49.25
34216	09/27/2022	FINANCE	COMPUTER MAINT	AT&T	08/22 FIRSTNET SVS 287302656036	\$ 379.97
34216	09/27/2022	FINANCE	ENGINEERING	AT&T	08/22 FIRSTNET SVS 287302656036	\$ 197.00
34216	09/27/2022	FINANCE	FACILITIES MAINT	AT&T	08/22 FIRSTNET SVS 287302656036	\$ 693.48
34216	09/27/2022	FINANCE	FINANCE	AT&T	08/22 FIRSTNET SVS 287302656036	\$ 138.74
34216	09/27/2022	FINANCE	FLEET MAINT	AT&T	08/22 FIRSTNET SVS 287302656036	\$ 44.22
34216	09/27/2022	FINANCE	GRANT OVERSIGHT	AT&T	08/22 FIRSTNET SVS 287302656036	\$ 49.25
34216	09/27/2022	FINANCE	HR/RISK MGT	AT&T	08/22 FIRSTNET SVS 287302656036	\$ 49.25

CHECK	PAY DATE	DEPARTMENT	PAID FROM ORG	ISSUED TO	DESCRIPTION	AMOUNT
34216	09/27/2022	FINANCE	PARKS	AT&T	08/22 FIRSTNET SVS 287302656036	\$ 49.25
34216	09/27/2022	FINANCE	STREETS	AT&T	08/22 FIRSTNET SVS 287302656036	\$ 49.25
34216	09/27/2022	FINANCE	UB - GARBAGE	AT&T	08/22 FIRSTNET SVS 287302656036	\$ 11.06
34216	09/27/2022	FINANCE	UB - SEWER	AT&T	08/22 FIRSTNET SVS 287302656036	\$ 11.06
34216	09/27/2022	FINANCE	UB - WATER	AT&T	08/22 FIRSTNET SVS 287302656036	\$ 22.11
34216	09/27/2022	FINANCE	WWTP	AT&T	08/22 FIRSTNET SVS 287302656036	\$ 49.25
34216	09/27/2022	FINANCE	MEAS K - PD	AT&T	08/22 FIRSTNET SVS 287302656036	\$ 89.49
34216	09/27/2022	FINANCE	CITY MANAGER	AT&T	08/22 FIRSTNET SVS 287302656036	\$ 49.25
34217	09/27/2022	PD OPS	PD OPS	ANAYA, CHRIS	TUITION REIMBURSEMENT	\$ 459.00
34218	09/27/2022	ENGINEERING	CDBG PUB IMPR	BSK ASSOCIATES	TESTING PROJ. R-84, BSK LABS	\$ 215.00
34218	09/27/2022	ENGINEERING	MEAS T -LTP ADA	BSK ASSOCIATES	TESTING PROJ. R-84, BSK LABS	\$ -
34219	09/27/2022	SEWER OPS	SEWER OPS	D&R DOOR SERVICE INC.	SEWER REAR SHOP ROLL UP DOOR	\$ 12,704.00
34220	09/27/2022	PARKS	SPORTS PROGRAMS	BSN SPORTS	T-BALL EQUIPMENT	\$ 1,086.02
34221	09/27/2022	ENGINEERING	AFFORD HOUSING	BUSH ENGINEERING, INC.	R-94 -SAFETY IMPROVEMENT- WASHINGTON	\$ 108,483.78
34222	09/27/2022	PURCHASING	AIRPORT OPS	CANON FINANCIAL SERVICES	COPIER LEASE SEPTEMBER 2022	\$ 36.80
34222	09/27/2022	PURCHASING	BUILDING	CANON FINANCIAL SERVICES	COPIER LEASE SEPTEMBER 2022	\$ 90.74
34222	09/27/2022	PURCHASING	CITY CLERK	CANON FINANCIAL SERVICES	COPIER LEASE SEPTEMBER 2022	\$ 41.95
34222	09/27/2022	PURCHASING	CODE ENF	CANON FINANCIAL SERVICES	COPIER LEASE SEPTEMBER 2022	\$ 270.62
34222	09/27/2022	PURCHASING	ENGINEERING	CANON FINANCIAL SERVICES	COPIER LEASE SEPTEMBER 2022	\$ 81.19
34222	09/27/2022	PURCHASING	FINANCE	CANON FINANCIAL SERVICES	COPIER LEASE SEPTEMBER 2022	\$ 414.59
34222	09/27/2022	PURCHASING	HR/RISK MGT	CANON FINANCIAL SERVICES	COPIER LEASE SEPTEMBER 2022	\$ 78.75
34222	09/27/2022	PURCHASING	PARKS ADMIN	CANON FINANCIAL SERVICES	COPIER LEASE SEPTEMBER 2022	\$ 293.36
34222	09/27/2022	PURCHASING	PLANNING	CANON FINANCIAL SERVICES	COPIER LEASE SEPTEMBER 2022	\$ 113.66
34222	09/27/2022	PURCHASING	SEWER OPS	CANON FINANCIAL SERVICES	COPIER LEASE SEPTEMBER 2022	\$ 41.14
34222	09/27/2022	PURCHASING	SOLID WASTE	CANON FINANCIAL SERVICES	COPIER LEASE SEPTEMBER 2022	\$ 41.14
34222	09/27/2022	PURCHASING	TRANS - FIXED	CANON FINANCIAL SERVICES	COPIER LEASE SEPTEMBER 2022	\$ 41.95
34222	09/27/2022	PURCHASING	TRANS - DAR	CANON FINANCIAL SERVICES	COPIER LEASE SEPTEMBER 2022	\$ 41.95
34222	09/27/2022	PURCHASING	WATER OPS	CANON FINANCIAL SERVICES	COPIER LEASE SEPTEMBER 2022	\$ 41.14
34222	09/27/2022	PURCHASING	WATER QUALITY	CANON FINANCIAL SERVICES	COPIER LEASE SEPTEMBER 2022	\$ 32.48
34222	09/27/2022	PURCHASING	WWTP	CANON FINANCIAL SERVICES	COPIER LEASE SEPTEMBER 2022	\$ 36.80
34222	09/27/2022	PURCHASING	PD OPS	CANON FINANCIAL SERVICES	COPIER LEASE SEPTEMBER 2022	\$ 262.79
34222	09/27/2022	PD OPS	PD OPS	CANON FINANCIAL SERVICES	COPIER LEASE & QTRLY OVERAGES - PD	\$ 403.84
34223	09/27/2022	FINANCE	PAYROLL TRUST	COLONIAL LIFE & ACCIDENT INSURANCE CO	EE LIFE INSURANCE PREMIUM	\$ 777.80
34224	09/27/2022	FINANCE	PAYROLL TRUST	COLONIAL LIFE & ACCIDENT INSURANCE CO	EE LIFE INSURANCE PREMIUM	\$ 928.70
34225	09/27/2022	FINANCE	BUILDING	COMCAST	CITY INTERNET CONNECTION 08/22	\$ 63.70
34225	09/27/2022	FINANCE	CITY ATTORNEY	COMCAST	CITY INTERNET CONNECTION 08/22	\$ 18.85
34225	09/27/2022	FINANCE	CITY CLERK	COMCAST	CITY INTERNET CONNECTION 08/22	\$ 18.85

CHECK	PAY DATE	DEPARTMENT	PAID FROM ORG	ISSUED TO	DESCRIPTION	AMOUNT
34225	09/27/2022	FINANCE	CODE ENF	COMCAST	CITY INTERNET CONNECTION 08/22	\$ 135.46
34225	09/27/2022	FINANCE	COMM & REC	COMCAST	CITY INTERNET CONNECTION 08/22	\$ 90.61
34225	09/27/2022	FINANCE	COMPUTER MAINT	COMCAST	CITY INTERNET CONNECTION 08/22	\$ 36.92
34225	09/27/2022	FINANCE	ENGINEERING	COMCAST	CITY INTERNET CONNECTION 08/22	\$ 126.49
34225	09/27/2022	FINANCE	FACILITIES MAINT	COMCAST	CITY INTERNET CONNECTION 08/22	\$ 27.82
34225	09/27/2022	FINANCE	FINANCE	COMCAST	CITY INTERNET CONNECTION 08/22	\$ 99.58
34225	09/27/2022	FINANCE	FLEET MAINT	COMCAST	CITY INTERNET CONNECTION 08/22	\$ 18.98
34225	09/27/2022	FINANCE	GRANT OVERSIGHT	COMCAST	CITY INTERNET CONNECTION 08/22	\$ 36.92
34225	09/27/2022	FINANCE	HR/RISK MGT	COMCAST	CITY INTERNET CONNECTION 08/22	\$ 36.92
34225	09/27/2022	FINANCE	PARKS	COMCAST	CITY INTERNET CONNECTION 08/22	\$ 45.76
34225	09/27/2022	FINANCE	PARKS ADMIN	COMCAST	CITY INTERNET CONNECTION 08/22	\$ 36.79
34225	09/27/2022	FINANCE	PLANNING	COMCAST	CITY INTERNET CONNECTION 08/22	\$ 45.50
34225	09/27/2022	FINANCE	STREETS	COMCAST	CITY INTERNET CONNECTION 08/22	\$ 45.76
34225	09/27/2022	FINANCE	RECREATION	COMCAST	CITY INTERNET CONNECTION 08/22	\$ 54.73
34225	09/27/2022	FINANCE	SEWER OPS	COMCAST	CITY INTERNET CONNECTION 08/22	\$ 32.37
34225	09/27/2022	FINANCE	SOLID WASTE	COMCAST	CITY INTERNET CONNECTION 08/22	\$ 36.79
34225	09/27/2022	FINANCE	SR CITIZEN COMM	COMCAST	CITY INTERNET CONNECTION 08/22	\$ 36.79
34225	09/27/2022	FINANCE	UB - GARBAGE	COMCAST	CITY INTERNET CONNECTION 08/22	\$ 30.16
34225	09/27/2022	FINANCE	UB - SEWER	COMCAST	CITY INTERNET CONNECTION 08/22	\$ 30.16
34225	09/27/2022	FINANCE	UB - WATER	COMCAST	CITY INTERNET CONNECTION 08/22	\$ 59.28
34225	09/27/2022	FINANCE	WATER OPS	COMCAST	CITY INTERNET CONNECTION 08/22	\$ 41.34
34225	09/27/2022	FINANCE	WATER QUALITY	COMCAST	CITY INTERNET CONNECTION 08/22	\$ 18.98
34225	09/27/2022	FINANCE	WWTP	COMCAST	CITY INTERNET CONNECTION 08/22	\$ 27.82
34225	09/27/2022	FINANCE	CITY MANAGER	COMCAST	CITY INTERNET CONNECTION 08/22	\$ 18.85
34225	09/27/2022	FINANCE	PURCHASING	COMCAST	CITY INTERNET CONNECTION 08/22	\$ 27.82
34226	09/27/2022	GRANTS	CDBG PUBLIC SVC	COMMUNITY ACTION PRTNRSHP OF MADERA	CDBG 21-22 DECEMBER 2021	\$ 542.38
34227	09/27/2022	GRANTS	CDBG PUBLIC SVC	COMMUNITY ACTION PRTNRSHP OF MADERA	CDBG CARES HOUSING STABILIZATION PROGRAM	\$ 5,235.33
34228	09/27/2022	GRANTS	CDBG PUBLIC SVC	COMMUNITY ACTION PRTNRSHP OF MADERA	1ST QTR FY 21/22 REIMBURSEMENT	\$ 2,221.21
34229	09/27/2022	CODE ENF	CODE ENF	CORELOGIC INFORMATION SOLUTIONS INC	REALQUEST SERVICES JULY 2022	\$ 87.50
34229	09/27/2022	CODE ENF	UB - GARBAGE	CORELOGIC INFORMATION SOLUTIONS INC	REALQUEST SERVICES JULY 2022	\$ 21.88
34229	09/27/2022	CODE ENF	UB - SEWER	CORELOGIC INFORMATION SOLUTIONS INC	REALQUEST SERVICES JULY 2022	\$ 21.88
34229	09/27/2022	CODE ENF	UB - WATER	CORELOGIC INFORMATION SOLUTIONS INC	REALQUEST SERVICES JULY 2022	\$ 43.74
34230	09/27/2022	PARKS	COMM & REC	DIAMOND COMMUNICATIONS	NEW SECURITY CODE FEE - PAC	\$ 30.00
34231	09/27/2022	BUILDING	BUILDING	FIRE SAFETY SOLUTIONS, LLC	FIRE PROTECTION SVS 09/01/22 - 09/15/2022	\$ 15,840.00
34232	09/27/2022	PARKS	AQUATICS PROGRM	CHARLES LUECKER, AUTHORIZED SIGNER	CHLORINE FOR POOL	\$ 1,678.53
34233	09/27/2022	FINANCE	PAYROLL TRUST	M A C E A	SEPTEMBER 2022 MONTHLY DUES	\$ 1,712.50
34234	09/27/2022	UB - WATER	WATER CONSERV	CITY OF MADERA	CLOTHES WASHER REBATE - 4614004	\$ 200.00

CHECK	PAY DATE	DEPARTMENT	PAID FROM ORG	ISSUED TO	DESCRIPTION	AMOUNT
34234	09/27/2022	UB - WATER	WATER CONSERV	CITY OF MADERA	CLOTHES WASHER REBATE - 9918130	\$ 200.00
34235	09/27/2022	BUILDING	BUILDING	CITY OF MADERA	REIMBURSE CANCELLED PERMIT #20221319	\$ 153.50
34235	09/27/2022	BUILDING	GENERAL FUND	CITY OF MADERA	REIMBURSE CANCELLED PERMIT #20221319	\$ 1.50
34236	09/27/2022	FINANCE	PAYROLL TRUST	M.C.E.A.	SEPTEMBER 2022 MONTHLY DUES	\$ 290.00
34237	09/27/2022	FINANCE	PAYROLL TRUST	M P O A	SEPTEMBER 2022 MONTHLY DUES	\$ 6,538.92
34238	09/27/2022	WATER OPS	WATER OPS	MADERA PUMPS, INC.	REPAIR BOX ASSEMBLY	\$ 2,079.74
34239	09/27/2022	GRANTS	CDBG ADMIN	MADERA TRIBUNE	CAPER 2021-2022 AD	\$ 435.50
34239	09/27/2022	HR	HR/RISK MGT	MADERA TRIBUNE	JOB ADVERSTISEMENT - PART TIME FACILITY AIDE	\$ 87.40
34239	09/27/2022	HR	HR/RISK MGT	MADERA TRIBUNE	JOB ADVERTISEMENT - OFFICE ASSISTANT I	\$ 60.80
34239	09/27/2022	HR	HR/RISK MGT	MADERA TRIBUNE	JOB ADVERTISEMNT - PUBLIC SAFETY DISPATCHER	\$ 83.60
34239	09/27/2022	PLANNING	PLANNING	MADERA TRIBUNE	TELECOM CC NOTICE	\$ 416.00
34240	09/27/2022	FINANCE	CFD DEBT - 2006	WILLDAN FINANCIAL SERVICES	CFD 2005-1 & 2006-1 ADMIN FEE 1ST QTR 22/23	\$ 2,771.20
34241	09/27/2022	FINANCE	PAYROLL TRUST	N.P.C.-ORCHARD TRUST COMPANY	EE DEFERRED COMP CONTRIBUTIONS	\$ 9,417.68
34242	09/27/2022	FINANCE	PAYROLL TRUST	N.P.C.-ORCHARD TRUST COMPANY	EE DEFERRED COMP CONTRIBUTIONS	\$ 1,109.38
34243	09/27/2022	PD OPS	PD OPS	OCCU-MED, LTD.	EXAM SVS FOR POLICE OFFICER	\$ 764.10
34244	09/27/2022	ENGINEERING	AFFORD HOUSING	O'DELL ENGINEERING, INC.	DESIGN SVS - SIDEWALK IMP PROJECT 07/22	\$ 3,965.75
34245	09/27/2022	FINANCE	FACILITIES MAINT	PACIFIC GAS & ELECTRIC	08/22 SERVICE 9787342989-4	\$ 121.19
34245	09/27/2022	FINANCE	FACILITIES MAINT	PACIFIC GAS & ELECTRIC	08/22 SERVICE 5207933925-6	\$ 63.86
34245	09/27/2022	FINANCE	PARKS	PACIFIC GAS & ELECTRIC	08/22 SERVICE 8675479583-8	\$ 45.14
34245	09/27/2022	FINANCE	PARKS	PACIFIC GAS & ELECTRIC	08/22 SERVICE 8788837242-9	\$ 136.92
34245	09/27/2022	FINANCE	ZONE 43A	PACIFIC GAS & ELECTRIC	08/22 SERVICE 6948316261-1	\$ 13.66
34246	09/27/2022	FINANCE	CFD DEBT - 2006	PITNEY BOWES, INC.	POSTAGE MACHINE LEASE 06/30/22-09/29/22	\$ 108.49
34246	09/27/2022	FINANCE	WATER OPS	PITNEY BOWES, INC.	POSTAGE MACHINE LEASE 06/30/22-09/29/22	\$ 108.49
34246	09/27/2022	FINANCE	WATER QUALITY	PITNEY BOWES, INC.	POSTAGE MACHINE LEASE 06/30/22-09/29/22	\$ 108.49
34246	09/27/2022	FINANCE	WWTP	PITNEY BOWES, INC.	POSTAGE MACHINE LEASE 06/30/22-09/29/22	\$ 108.49
34247	09/27/2022	PLANNING	PLANNING	QUAD-KNOPF ENGINEERING	PROFESSIONAL PLANNING SVS 08/07/22-09/03/22	\$ 589.00
34248	09/27/2022	FINANCE	PAYROLL TRUST	STATE OF CALIFORNIA	FRANCHISE TAX DEDUCTION	\$ 200.00
34249	09/27/2022	SEWER OPS	SEWER OPS	STRATEGIC INSIGHTS, INC.	CIP SOFTWARE RENEWAL TO OCTOBER 2023 - PW	\$ 387.50
34250	09/27/2022	PD OPS	PD OPS	THE RADAR SHOP	RECERTIFIED RADAR UNITS/LIDAR/TUNING FORKS	\$ 1,030.00
34251	09/27/2022	PARKS	PARKS	VILLA GARDENING SERVICE INC	08/22 LAWN SERVICES - ACCORNERO	\$ 330.00
34252	09/27/2022	FINANCE	PAYROLL TRUST	VANTAGEPOINT TRANSFER AGENTS-457	EE DEFERRED COMP CONTRIBUTIONS	\$ 26,250.01
34253	09/27/2022	FINANCE	AIRPORT OPS	VERIZON WIRELESS	CITY CELL PHONE CHARGES 08/11/22 - 09/10/22	\$ 65.47
34253	09/27/2022	FINANCE	BUILDING	VERIZON WIRELESS	CITY CELL PHONE CHARGES 08/11/22 - 09/10/22	\$ 101.96
34253	09/27/2022	FINANCE	CITY COUNCIL	VERIZON WIRELESS	CITY CELL PHONE CHARGES 08/11/22 - 09/10/22	\$ 76.02
34253	09/27/2022	FINANCE	ENGINEERING	VERIZON WIRELESS	CITY CELL PHONE CHARGES 08/11/22 - 09/10/22	\$ 50.98
34253	09/27/2022	FINANCE	FACILITIES MAINT	VERIZON WIRELESS	CITY CELL PHONE CHARGES 08/11/22 - 09/10/22	\$ 50.98
34253	09/27/2022	FINANCE	FIRE	VERIZON WIRELESS	CITY CELL PHONE CHARGES 08/11/22 - 09/10/22	\$ 152.04

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34253	09/27/2022	FINANCE	FLEET MAINT	VERIZON WIRELESS	CITY CELL PHONE CHARGES 08/11/22 - 09/10/22	\$ 0.40
34253	09/27/2022	FINANCE	HR/RISK MGT	VERIZON WIRELESS	CITY CELL PHONE CHARGES 08/11/22 - 09/10/22	\$ 38.01
34253	09/27/2022	FINANCE	PARKS	VERIZON WIRELESS	CITY CELL PHONE CHARGES 08/11/22 - 09/10/22	\$ 1.31
34253	09/27/2022	FINANCE	PLANNING	VERIZON WIRELESS	CITY CELL PHONE CHARGES 08/11/22 - 09/10/22	\$ 101.96
34253	09/27/2022	FINANCE	STREETS	VERIZON WIRELESS	CITY CELL PHONE CHARGES 08/11/22 - 09/10/22	\$ 12.55
34253	09/27/2022	FINANCE	SEWER OPS	VERIZON WIRELESS	CITY CELL PHONE CHARGES 08/11/22 - 09/10/22	\$ 5.23
34253	09/27/2022	FINANCE	STREET CLEANING	VERIZON WIRELESS	CITY CELL PHONE CHARGES 08/11/22 - 09/10/22	\$ 0.40
34253	09/27/2022	FINANCE	UB - WATER	VERIZON WIRELESS	CITY CELL PHONE CHARGES 08/11/22 - 09/10/22	\$ 5.31
34253	09/27/2022	FINANCE	WATER OPS	VERIZON WIRELESS	CITY CELL PHONE CHARGES 08/11/22 - 09/10/22	\$ 143.79
34253	09/27/2022	FINANCE	WATER QUALITY	VERIZON WIRELESS	CITY CELL PHONE CHARGES 08/11/22 - 09/10/22	\$ 38.01
34253	09/27/2022	FINANCE	WWTP	VERIZON WIRELESS	CITY CELL PHONE CHARGES 08/11/22 - 09/10/22	\$ 110.77
34253	09/27/2022	FINANCE	MEAS K - PD	VERIZON WIRELESS	CITY CELL PHONE CHARGES 08/11/22 - 09/10/22	\$ 40.80
34253	09/27/2022	FINANCE	CITY MANAGER	VERIZON WIRELESS	CITY CELL PHONE CHARGES 08/11/22 - 09/10/22	\$ 45.80
34253	09/27/2022	FINANCE	PD OPS	VERIZON WIRELESS	CITY CELL PHONE CHARGES 08/11/22 - 09/10/22	\$ 533.80
34254	09/27/2022	PARKS ADMIN	AQUATICS PROGRM	WECO WELDING, PAINT, SUPPLIES & EQUIP	CO2 FOR POOL	\$ 343.69
34255	09/27/2022	PARKS ADMIN	PARKS	WEST COAST ARBORISTS, INC.	STREET TREE MAINTENANCE 08/16/22-08/31/22	\$ 24,300.00
34256	09/27/2022	PARKS	GENERAL TRUST	OTP- PARKS REFUNDS	REIMBURSE PARK RESERVATION #1007794.002	\$ 50.00
34256	09/27/2022	PARKS	PARKS	OTP- PARKS REFUNDS	REIMBURSE PARK RESERVATION #1007794.002	\$ 115.00
34257	09/27/2022	UB - WATER	WATER FUND	OTP- UB REFUNDS	UB TERM REFUND 9917953 2857 CHIANTI	\$ 59.41
34258	09/27/2022	UB - WATER	SOLID WASTE	OTP- UB REFUNDS	UB TERM REFUND 9477094-502858	\$ 4.99
34258	09/27/2022	UB - WATER	WATER UTILITY	OTP- UB REFUNDS	UB TERM REFUND 9477094-502858	\$ 14.89
34258	09/27/2022	UB - WATER	SEWER FUND	OTP- UB REFUNDS	UB TERM REFUND 9477094-502858	\$ 27.08
34259	09/27/2022	UB - WATER	WATER UTILITY	OTP- UB REFUNDS	UB TERM REFUND 10000485-552337	\$ 8.62
34259	09/27/2022	UB - WATER	SEWER FUND	OTP- UB REFUNDS	UB TERM REFUND 10000485-552337	\$ 10.73
34260	09/30/2022	PLANNING	CENTRAL ADMIN	ACRO SERVICE CORPORATION	TEMP/CONSULTING SERVICES - PLANNING	\$ 15,468.75
34261	10/03/2022	PW ADMIN	SEWER OPS	TURF STAR, INC.	GUTTER SWEEP BROOM	\$ 4,112.43
34262	10/03/2022	PW ADMIN	WATER QUALITY	MENDOZA, MARTIN	PER DIEM - AWE WATER TREATMENT O & M	\$ 180.00
34263	10/03/2022	PARKS	PARKS	RMA GEOSCIENCE, INC.	LTC REHAB - CONCRETE REPAIR	\$ 1,200.00
34264	10/03/2022	FACILITIES	CENTRAL ADMIN	PRESTIGE CUSTOM GLASS	REPLACE BROKEN WINDOW	\$ 6,214.50
34265	10/03/2022	FINANCE	AIRPORT OPS	VAN DE POL ENTERPRISES, INC.	FUEL FOR CITY VEHICLES 09/01/22-09/15/22	\$ 87.17
34265	10/03/2022	FINANCE	ANIMAL CONTROL	VAN DE POL ENTERPRISES, INC.	FUEL FOR CITY VEHICLES 09/01/22-09/15/22	\$ 380.04
34265	10/03/2022	FINANCE	BUILDING	VAN DE POL ENTERPRISES, INC.	FUEL FOR CITY VEHICLES 09/01/22-09/15/22	\$ 139.41
34265	10/03/2022	FINANCE	CODE ENF	VAN DE POL ENTERPRISES, INC.	FUEL FOR CITY VEHICLES 09/01/22-09/15/22	\$ 300.90
34265	10/03/2022	FINANCE	DRAINAGE	VAN DE POL ENTERPRISES, INC.	FUEL FOR CITY VEHICLES 09/01/22-09/15/22	\$ 562.68
34265	10/03/2022	FINANCE	ENGINEERING	VAN DE POL ENTERPRISES, INC.	FUEL FOR CITY VEHICLES 09/01/22-09/15/22	\$ 201.55
34265	10/03/2022	FINANCE	FACILITIES MAINT	VAN DE POL ENTERPRISES, INC.	FUEL FOR CITY VEHICLES 09/01/22-09/15/22	\$ 222.33
34265	10/03/2022	FINANCE	FLEET MAINT	VAN DE POL ENTERPRISES, INC.	FUEL FOR CITY VEHICLES 09/01/22-09/15/22	\$ 161.22

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34265	10/03/2022	FINANCE	FLEET MOTOR POOL	VAN DE POL ENTERPRISES, INC.	FUEL FOR CITY VEHICLES 09/01/22-09/15/22	\$ 39.60
34265	10/03/2022	FINANCE	GRAFFITI ABATE	VAN DE POL ENTERPRISES, INC.	FUEL FOR CITY VEHICLES 09/01/22-09/15/22	\$ 395.84
34265	10/03/2022	FINANCE	LMD SERVICES	VAN DE POL ENTERPRISES, INC.	FUEL FOR CITY VEHICLES 09/01/22-09/15/22	\$ 26.85
34265	10/03/2022	FINANCE	PARKS	VAN DE POL ENTERPRISES, INC.	FUEL FOR CITY VEHICLES 09/01/22-09/15/22	\$ 3,348.99
34265	10/03/2022	FINANCE	STREETS	VAN DE POL ENTERPRISES, INC.	FUEL FOR CITY VEHICLES 09/01/22-09/15/22	\$ 2,480.69
34265	10/03/2022	FINANCE	SEWER OPS	VAN DE POL ENTERPRISES, INC.	FUEL FOR CITY VEHICLES 09/01/22-09/15/22	\$ 931.21
34265	10/03/2022	FINANCE	STREET CLEANING	VAN DE POL ENTERPRISES, INC.	FUEL FOR CITY VEHICLES 09/01/22-09/15/22	\$ 2,399.46
34265	10/03/2022	FINANCE	TRANS - FIXED	VAN DE POL ENTERPRISES, INC.	FUEL FOR CITY VEHICLES 09/01/22-09/15/22	\$ 2,793.46
34265	10/03/2022	FINANCE	TRANS - DAR	VAN DE POL ENTERPRISES, INC.	FUEL FOR CITY VEHICLES 09/01/22-09/15/22	\$ 2,541.65
34265	10/03/2022	FINANCE	WATER OPS	VAN DE POL ENTERPRISES, INC.	FUEL FOR CITY VEHICLES 09/01/22-09/15/22	\$ 2,280.91
34265	10/03/2022	FINANCE	WATER QUALITY	VAN DE POL ENTERPRISES, INC.	FUEL FOR CITY VEHICLES 09/01/22-09/15/22	\$ 696.90
34265	10/03/2022	FINANCE	PD OPS	VAN DE POL ENTERPRISES, INC.	FUEL FOR CITY VEHICLES 09/01/22-09/15/22	\$ 9,351.96
34265	10/03/2022	WWTP	WWTP	VAN DE POL ENTERPRISES, INC.	FUEL WWTP - BULK DIESEL	\$ 4,694.25
34266	10/03/2022	WWTP	WWTP	CENTRAL VALLEY SALINITY COALITION, INC.	CENTRAL VALLEY SALINITY STUDY	\$ 3,558.75
34267	10/03/2022	IS	COMPUTER MAINT	US CAD HOLDINGS LLC	BLUEBEAM LICENSES	\$ 3,855.38
34268	10/03/2022	IS	COMPUTER MAINT	PDQ INTERMEDIATE INC	PDQ NETWORK TOOLS RENEWAL	\$ 3,150.00
34269	10/03/2022	BUILDING	BUILDING	JESUS VAZQUEZ	REIMBURSEMENT - CALBO EDUCATION WEEK HOTEL	\$ 282.60
34270	10/03/2022	PD OPS	PD OPS	BLAKE SHORT	PER DIEM - FIELD TRAINING OFFICER SCHOOL	\$ 425.50
34271	10/03/2022	WATER	WATER QUALITY	DELLAVALLE LABORATORY, INC.	WEEKLY SAMPLING	\$ 570.00
34271	10/03/2022	WATER	WATER QUALITY	DELLAVALLE LABORATORY, INC.	LEAD & COPPER SAMPLING	\$ 1,794.00
34272	10/03/2022	FINANCE	SEWER OPS	AT&T	09/22 CALNET 3 SVS 9391031570	\$ 211.65
34272	10/03/2022	FINANCE	PD OPS	AT&T	09/22 CALNET 3 SVS 9391020514	\$ 167.08
34273	10/03/2022	ENGINEERING	FAU CMAQ	BLAIR CHURCH & FLYNN	PROFESSIONAL ENGINEERING SERVICES	\$ 81,968.82
34273	10/03/2022	ENGINEERING	LTF - STREETS	BLAIR CHURCH & FLYNN	PROFESSIONAL ENGINEERING SERVICES	\$ 34,775.69
34273	10/03/2022	ENGINEERING	MEAS T - ENVIRO	BLAIR CHURCH & FLYNN	PROFESSIONAL ENGINEERING SERVICES	\$ 27,655.49
34274	10/03/2022	FINANCE	GENERAL FUND	DIVISION OF THE STATE ARCHITECT	SB DSA 796 QTR 1 FY 22/23	\$ 919.20
34275	10/03/2022	FINANCE	BUILDING	DEPARTMENT OF CONSERVATION	1ST QTR 22/23 SMIP FEE REPORTING	\$ (181.15)
34275	10/03/2022	FINANCE	GENERAL FUND	DEPARTMENT OF CONSERVATION	1ST QTR 22/23 SMIP FEE REPORTING	\$ 3,623.02
34276	10/03/2022	HR	AIRPORT OPS	CSJVRMA	1ST QTR LIABILITY & WORKERS COMP DEPOSIT	\$ 17,597.96
34276	10/03/2022	HR	CENTRAL ADMIN	CSJVRMA	1ST QTR LIABILITY & WORKERS COMP DEPOSIT	\$ 76,418.56
34276	10/03/2022	HR	FIRE	CSJVRMA	1ST QTR LIABILITY & WORKERS COMP DEPOSIT	\$ 5,062.43
34276	10/03/2022	HR	FLEET MAINT	CSJVRMA	1ST QTR LIABILITY & WORKERS COMP DEPOSIT	\$ 6,508.84
34276	10/03/2022	HR	INTERMODAL BLDG	CSJVRMA	1ST QTR LIABILITY & WORKERS COMP DEPOSIT	\$ 482.14
34276	10/03/2022	HR	PARKS	CSJVRMA	1ST QTR LIABILITY & WORKERS COMP DEPOSIT	\$ 241.07
34276	10/03/2022	HR	PAYROLL TRUST	CSJVRMA	1ST QTR LIABILITY & WORKERS COMP DEPOSIT	\$ 352,892.00
34276	10/03/2022	HR	STREETS	CSJVRMA	1ST QTR LIABILITY & WORKERS COMP DEPOSIT	\$ 1,446.41
34276	10/03/2022	HR	SEWER OPS	CSJVRMA	1ST QTR LIABILITY & WORKERS COMP DEPOSIT	\$ 6,508.84

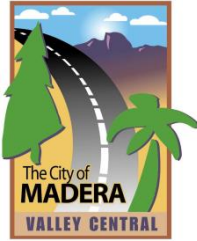
CHECK	PAY DATE	DEPARTMENT	PAID FROM ORG	ISSUED TO	DESCRIPTION	AMOUNT
34276	10/03/2022	HR	SOLID WASTE	CSJVRMA	1ST QTR LIABILITY & WORKERS COMP DEPOSIT	\$ 4,339.21
34276	10/03/2022	HR	STREET CLEANING	CSJVRMA	1ST QTR LIABILITY & WORKERS COMP DEPOSIT	\$ 1,205.34
34276	10/03/2022	HR	WATER OPS	CSJVRMA	1ST QTR LIABILITY & WORKERS COMP DEPOSIT	\$ 35,678.06
34276	10/03/2022	HR	WWTP	CSJVRMA	1ST QTR LIABILITY & WORKERS COMP DEPOSIT	\$ 71,356.13
34276	10/03/2022	HR	PD OPS	CSJVRMA	1ST QTR LIABILITY & WORKERS COMP DEPOSIT	\$ 14,223.01
34277	10/03/2022	FINANCE	COMPUTER MAINT	COMCAST	09/22 SVS 8155500320322006	\$ 92.88
34278	10/03/2022	HR	HR/RISK MGT	CONCENTRA MEDICAL CENTERS	PRE-EMPLOYMENT PHYSICAL	\$ 236.00
34278	10/03/2022	PW ADMIN	STREETS	CONCENTRA MEDICAL CENTERS	DOT PHYSICAL RECERTIFICATION	\$ 69.00
34279	10/03/2022	FLEET	FLEET ACQUISITION	COOK'S COMMUNICATIONS	PD UP-FIT PARTS UNITS #6030 - #6031	\$ 11,833.38
34280	10/03/2022	WWTP	WWTP	HACH COMPANY	DO CLASS	\$ 180.00
34281	10/03/2022	FACILITIES	FACILITIES MAINT	JAM SERVICES INC	TRAFFIC SIGNAL PARTS	\$ 285.78
34282	10/03/2022	BUILDING	BUILDING	LIPPINCOTT, JOHN	REIMBURSEMENT - CALBO EDUCATION WEEK	\$ 410.04
34283	10/03/2022	FINANCE	PD OPS	MADERA COUNTY TREASURER	08/22 COUNTY'S PORTION OF PARKING PENALTIES	\$ 472.00
34284	10/03/2022	FINANCE	MADERA DOWNTWN	MADERA DOWNTOWN ASSOC.	FY 22/23 QTR # 1 ASSESSMENTS	\$ 4,751.19
34285	10/03/2022	PLANNING	PLANNING	MADERA TRIBUNE	PUBLIC HEARING NOTICE	\$ 656.50
34286	10/03/2022	PARKS ADMIN	PARKS	O'DELL ENGINEERING, INC.	PARKS DESIGN SERVICES - OLIVE PARK	\$ 927.32
34287	10/03/2022	FINANCE	AQUATICS PROGRM	PACIFIC GAS & ELECTRIC	07/22 SERVICE 9920095153-3	\$ 3,278.29
34287	10/03/2022	FINANCE	FACILITIES MAINT	PACIFIC GAS & ELECTRIC	09/22 SERVICE 6690755760-8	\$ 96.22
34287	10/03/2022	FINANCE	FACILITIES MAINT	PACIFIC GAS & ELECTRIC	09/22 SERVICE 1619119913-8	\$ 96.13
34287	10/03/2022	FINANCE	WWTP	PACIFIC GAS & ELECTRIC	09/22 SERVICE 1902328695-8	\$ 24.64
34288	10/03/2022	FINANCE	FINANCE	PHOENIX GROUP INFO SYS	08/22 CITATIONS	\$ 307.73
34289	10/03/2022	WWTP	WWTP	SPARKLETTS	LAB & DRINKING WATER	\$ 260.14
34290	10/03/2022	IS	COMPUTER MAINT	TYLER TECHNOLOGIES INC.	TYLER PACE MAINTENANCE	\$ 10,425.00
34290	10/03/2022	IS	COMPUTER MAINT	TYLER TECHNOLOGIES INC.	TYLER DR MAINTENANCE	\$ 14,207.36
34290	10/03/2022	IS	COMPUTER MAINT	TYLER TECHNOLOGIES INC.	TYLER MAINTENANCE	\$ 91,165.64
34291	10/03/2022	UB - WATER	WATER FUND	AR REFUNDS	UB TERM REFUND 9915918	\$ 27.77
34292	10/03/2022	UB - WATER	WATER FUND	AR REFUNDS	UB TERM REFUND 9909036	\$ 372.25
34293	10/03/2022	UB - WATER	WATER FUND	AR REFUNDS	UB TERM REFUND 9919547	\$ 168.24
34294	10/03/2022	UB - WATER	WATER FUND	AR REFUNDS	UB 5671031 TERM REFUND	\$ 110.00
34295	10/03/2022	UB - WATER	WATER FUND	AR REFUNDS	UB TERM REFUND 2004005	\$ 162.49
34296	10/03/2022	UB - WATER	WATER FUND	AR REFUNDS	UB TERM REFUND 9918712	\$ 148.21
34297	10/03/2022	UB - WATER	WATER FUND	AR REFUNDS	UB TERM REFUND 10000428	\$ 31.26
34298	10/03/2022	UB - WATER	WATER FUND	AR REFUNDS	UB TERM REFUND 995007	\$ 54.48
34299	10/03/2022	UB - WATER	WATER FUND	AR REFUNDS	UB TERM REFUND 6654001	\$ 136.43
34300	10/03/2022	UB - WATER	WATER FUND	AR REFUNDS	UB REFUND 10000491	\$ 13,827.50
34301	10/03/2022	UB - WATER	WATER FUND	AR REFUNDS	UB TERM REFUND 10000185	\$ 54.42
34302	10/03/2022	PLANNING	PLANNING	BLDING/PLAN REFND5	JOB CANCELLED, REIMBURSE FEES	\$ 2,250.00

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34303	10/03/2022	PLANNING	PLANNING	BLDING/PLAN REFND	JOB CANCELLED, REIMBURSE FEES	\$ 3,263.00
34304	10/03/2022	PARKS	GENERAL TRUST	OTP- PARKS REFUNDS	PARK DEPOSIT REFUND - LTC PAVILION	\$ 50.00
34305	10/03/2022	PARKS	GENERAL TRUST	OTP- PARKS REFUNDS	PARK DEPOSIT REFUND - LTC REDWOOD AREA	\$ 50.00
34306	10/03/2022	PARKS	GENERAL TRUST	OTP- PARKS REFUNDS	PARK DEPOSIT REFUND - SUNRISE PAVILION	\$ 50.00
34307	10/03/2022	PARKS	GENERAL TRUST	OTP- PARKS REFUNDS	PARK DEPOSIT REFUND - ROTARY PAVILION	\$ 50.00
34308	10/03/2022	PARKS	GENERAL TRUST	OTP- PARKS REFUNDS	PARK DEPOSIT REFUND - ROTARY PAVILION	\$ 50.00
34309	10/03/2022	PARKS	GENERAL TRUST	OTP- PARKS REFUNDS	PARK DEPOSIT REFUND - ROTARY PAVILION	\$ 50.00
34310	10/03/2022	PARKS	GENERAL TRUST	OTP- PARKS REFUNDS	PARK DEPOSIT REFUND - LTC REDWOOD AREA	\$ 50.00
34311	10/03/2022	PARKS	GENERAL TRUST	OTP- PARKS REFUNDS	PARK DEPOSIT REFUND - LTC PAVILION	\$ 50.00
34312	10/03/2022	PARKS	GENERAL TRUST	OTP- PARKS REFUNDS	PARK DEPOSIT REFUND - LTC PAVILION	\$ 50.00
34313	10/03/2022	PARKS	GENERAL TRUST	OTP- PARKS REFUNDS	PARK DEPOSIT REFUND - ROTARY PAVILION	\$ 50.00
136	10/04/2022	FINANCE	PAYROLL TRUST	NAVIA BENEFIT SOLUTIONS INC	FSA SECTION 125 DISBURSEMENT 09/20/2022	\$ 217.48
137	10/04/2022	FINANCE	PAYROLL TRUST	NAVIA BENEFIT SOLUTIONS INC	FSA SECTION 125 DISBURSEMENT 09/27/2022	\$ 494.78
138	10/04/2022	FINANCE	PAYROLL TRUST	NAVIA BENEFIT SOLUTIONS INC	FSA SECTION 125 DISBURSEMENT 09/28/2022	\$ 1,177.00
139	10/04/2022	HR	CITY CLERK	EMPLOYEE BENEFIT SPECIALISTS, INC.	OCTOBER BENEFIT PREMIUMS	\$ 848.00
139	10/04/2022	HR	PAYROLL TRUST	EMPLOYEE BENEFIT SPECIALISTS, INC.	OCTOBER BENEFIT PREMIUMS	\$ 333,142.53
139	10/04/2022	HR	PD OPS	EMPLOYEE BENEFIT SPECIALISTS, INC.	OCTOBER BENEFIT PREMIUMS	\$ 848.00
140	10/04/2022	FINANCE	AIRPORT OPS	US BANK CORPORATE PAYMENT SYSTEMS	08/22 CALCARD CHARGES	\$ 3,470.02
140	10/04/2022	FINANCE	AQUATICS PROGRM	US BANK CORPORATE PAYMENT SYSTEMS	08/22 CALCARD CHARGES	\$ 1,086.43
140	10/04/2022	FINANCE	BUILDING	US BANK CORPORATE PAYMENT SYSTEMS	08/22 CALCARD CHARGES	\$ 60.40
140	10/04/2022	FINANCE	CDBG ADMIN	US BANK CORPORATE PAYMENT SYSTEMS	08/22 CALCARD CHARGES	\$ 230.55
140	10/04/2022	FINANCE	CENTRAL ADMIN	US BANK CORPORATE PAYMENT SYSTEMS	08/22 CALCARD CHARGES	\$ 44.96
140	10/04/2022	FINANCE	CITY CLERK	US BANK CORPORATE PAYMENT SYSTEMS	08/22 CALCARD CHARGES	\$ 141.83
140	10/04/2022	FINANCE	CITY COUNCIL	US BANK CORPORATE PAYMENT SYSTEMS	08/22 CALCARD CHARGES	\$ 1,771.42
140	10/04/2022	FINANCE	CODE ENF	US BANK CORPORATE PAYMENT SYSTEMS	08/22 CALCARD CHARGES	\$ 1,304.55
140	10/04/2022	FINANCE	COMM & REC	US BANK CORPORATE PAYMENT SYSTEMS	08/22 CALCARD CHARGES	\$ 1,484.86
140	10/04/2022	FINANCE	COMMUNITY PROMO	US BANK CORPORATE PAYMENT SYSTEMS	08/22 CALCARD CHARGES	\$ 2,159.59
140	10/04/2022	FINANCE	COMPUTER MAINT	US BANK CORPORATE PAYMENT SYSTEMS	08/22 CALCARD CHARGES	\$ 7,487.67
140	10/04/2022	FINANCE	DRAINAGE	US BANK CORPORATE PAYMENT SYSTEMS	08/22 CALCARD CHARGES	\$ 123.43
140	10/04/2022	FINANCE	ENGINEERING	US BANK CORPORATE PAYMENT SYSTEMS	08/22 CALCARD CHARGES	\$ 2,168.51
140	10/04/2022	FINANCE	FACILITIES MAINT	US BANK CORPORATE PAYMENT SYSTEMS	08/22 CALCARD CHARGES	\$ 4,770.56
140	10/04/2022	FINANCE	FINANCE	US BANK CORPORATE PAYMENT SYSTEMS	08/22 CALCARD CHARGES	\$ 959.22
140	10/04/2022	FINANCE	FIRE	US BANK CORPORATE PAYMENT SYSTEMS	08/22 CALCARD CHARGES	\$ 9,142.58
140	10/04/2022	FINANCE	FLEET MAINT	US BANK CORPORATE PAYMENT SYSTEMS	08/22 CALCARD CHARGES	\$ 14,565.10
140	10/04/2022	FINANCE	GENERAL FUND	US BANK CORPORATE PAYMENT SYSTEMS	08/22 CALCARD CHARGES	\$ 7,384.39
140	10/04/2022	FINANCE	GENERAL TRUST	US BANK CORPORATE PAYMENT SYSTEMS	08/22 CALCARD CHARGES	\$ 573.76
140	10/04/2022	FINANCE	GRAFFITI ABATE	US BANK CORPORATE PAYMENT SYSTEMS	08/22 CALCARD CHARGES	\$ 1,392.79

CHECK	PAY DATE	DEPARTMENT	PAID FROM ORG	ISSUED TO	DESCRIPTION	AMOUNT
140	10/04/2022	FINANCE	HR/RISK MGT	US BANK CORPORATE PAYMENT SYSTEMS	08/22 CALCARD CHARGES	\$ 7,729.27
140	10/04/2022	FINANCE	INS/RISK MGT	US BANK CORPORATE PAYMENT SYSTEMS	08/22 CALCARD CHARGES	\$ 220.00
140	10/04/2022	FINANCE	INTERMODAL BLDG	US BANK CORPORATE PAYMENT SYSTEMS	08/22 CALCARD CHARGES	\$ 580.85
140	10/04/2022	FINANCE	LMD SERVICES	US BANK CORPORATE PAYMENT SYSTEMS	08/22 CALCARD CHARGES	\$ 1,585.06
140	10/04/2022	FINANCE	MEAS K - FIRE	US BANK CORPORATE PAYMENT SYSTEMS	08/22 CALCARD CHARGES	\$ 3,120.35
140	10/04/2022	FINANCE	PARKS	US BANK CORPORATE PAYMENT SYSTEMS	08/22 CALCARD CHARGES	\$ 13,421.73
140	10/04/2022	FINANCE	PARKS ADMIN	US BANK CORPORATE PAYMENT SYSTEMS	08/22 CALCARD CHARGES	\$ 1,957.56
140	10/04/2022	FINANCE	PLANNING	US BANK CORPORATE PAYMENT SYSTEMS	08/22 CALCARD CHARGES	\$ 912.71
140	10/04/2022	FINANCE	STREETS	US BANK CORPORATE PAYMENT SYSTEMS	08/22 CALCARD CHARGES	\$ 10,785.46
140	10/04/2022	FINANCE	RECREATION	US BANK CORPORATE PAYMENT SYSTEMS	08/22 CALCARD CHARGES	\$ 174.69
140	10/04/2022	FINANCE	SEWER OPS	US BANK CORPORATE PAYMENT SYSTEMS	08/22 CALCARD CHARGES	\$ 2,836.01
140	10/04/2022	FINANCE	SPORTS PROGRAMS	US BANK CORPORATE PAYMENT SYSTEMS	08/22 CALCARD CHARGES	\$ 446.01
140	10/04/2022	FINANCE	SR CITIZEN COMM	US BANK CORPORATE PAYMENT SYSTEMS	08/22 CALCARD CHARGES	\$ 653.04
140	10/04/2022	FINANCE	SUPP LAW ENF	US BANK CORPORATE PAYMENT SYSTEMS	08/22 CALCARD CHARGES	\$ 170.14
140	10/04/2022	FINANCE	TRANS - FIXED	US BANK CORPORATE PAYMENT SYSTEMS	08/22 CALCARD CHARGES	\$ 6,552.99
140	10/04/2022	FINANCE	TRANS - DAR	US BANK CORPORATE PAYMENT SYSTEMS	08/22 CALCARD CHARGES	\$ 4,747.80
140	10/04/2022	FINANCE	UB - GARBAGE	US BANK CORPORATE PAYMENT SYSTEMS	08/22 CALCARD CHARGES	\$ 23.43
140	10/04/2022	FINANCE	UB - SEWER	US BANK CORPORATE PAYMENT SYSTEMS	08/22 CALCARD CHARGES	\$ 23.43
140	10/04/2022	FINANCE	UB - WATER	US BANK CORPORATE PAYMENT SYSTEMS	08/22 CALCARD CHARGES	\$ 46.80
140	10/04/2022	FINANCE	WATER OPS	US BANK CORPORATE PAYMENT SYSTEMS	08/22 CALCARD CHARGES	\$ 14,052.78
140	10/04/2022	FINANCE	WATER QUALITY	US BANK CORPORATE PAYMENT SYSTEMS	08/22 CALCARD CHARGES	\$ 7,020.38
140	10/04/2022	FINANCE	WWTP	US BANK CORPORATE PAYMENT SYSTEMS	08/22 CALCARD CHARGES	\$ 8,359.12
140	10/04/2022	FINANCE	MEAS K - PD	US BANK CORPORATE PAYMENT SYSTEMS	08/22 CALCARD CHARGES	\$ (346.97)
140	10/04/2022	FINANCE	FLEET ACQUISITION	US BANK CORPORATE PAYMENT SYSTEMS	08/22 CALCARD CHARGES	\$ 137.48
140	10/04/2022	FINANCE	SPECIAL EVENTS	US BANK CORPORATE PAYMENT SYSTEMS	08/22 CALCARD CHARGES	\$ 5,280.77
140	10/04/2022	FINANCE	PD OPS	US BANK CORPORATE PAYMENT SYSTEMS	08/22 CALCARD CHARGES	\$ 4,019.66
141	10/04/2022	FINANCE	WWTP BOND ADMIN	BANK OF NEW YORK MELLON	2015 WASTEWATER REV REF BOND PMT	\$ 234,434.18
142	10/05/2022	FINANCE	PAYROLL TRUST	NAVIA BENEFIT SOLUTIONS INC	FSA SECTION 125 DISBURSEMENT 10/04/2022	\$ 191.14

BANK #1 - UNION BANK GENERAL ACCOUNT TOTAL

\$ 2,041,382.79



REPORT TO CITY COUNCIL

Approved by:

Wendy Silva
Wendy Silva, Director of Human Resources

Arnoldo Rodriguez
Arnoldo Rodriguez, City Manager

Council Meeting of: October 19, 2022

Agenda Number: B-3

SUBJECT:

Informational Report on Personnel Activity

RECOMMENDATION:

This report is submitted for informational purposes only and there is no action requested from the City Council (Council).

SUMMARY:

The purpose of this report is to provide the Council a monthly informational update on employment matters, including new hires, transfers, and terminations.

DISCUSSION:

The Civil Service Commission met October 4, 2022, and approved eligibility lists for the following classifications:

- Parks Worker I
- Police Auxiliary Services Supervisor
- Police Officer II
- Police Officer Trainee

The following employees began employment with the City since our last report.

Table 1: New Hires and Re-hires				
Name	Position	Department	Status*	Effective Date
Sandra Higareda Ascencio	Police Officer Trainee	Police Department	FT	9/24/22
Gabriel Johnson	Police Officer Trainee	Police Department	FT	9/24/22
Armand Molina	Police Officer Trainee	Police Department	FT	9/24/22

Table 1: New Hires and Re-Hires, continued				
<i>Name</i>	<i>Position</i>	<i>Department</i>	<i>Status*</i>	<i>Effective Date</i>
Cody Luginbill	Police Officer Trainee	Police Department	FT	9/24/22
Adrianna Rubio	Public Safety Dispatcher	Police Department	FT	10/8/22
Michelle Cornejo	Program Leader II	Parks & Community Services	PT	10/11/22
Ernest Arballo	Park Aide	Parks & Community Services	PT	10/11/22
Derrick Sanchez	Recreation/Community Programs Coordinator	Parks & Community Services	FT	10/11/22
Imanol Coria	Public Works Maintenance Worker I	Public Works – Safe & Clean Team	PT	10/11/22

*Status: PT = Part Time, FT = Full Time

The following promotions, transfers, or assignment changes occurred since our last report.

Table 2: Promotions, Transfers, or Assignment Changes			
<i>Name</i>	<i>Old Position</i>	<i>New Position</i>	<i>Effective Date</i>
Maribel Hernandez	Neighborhood Preservation Specialist II	Neighborhood Preservation Specialist III	9/5/22
Miguel Ramirez	Public Works Equipment Operator	Maintenance Technician, Public Works - Streets	9/26/22

The following employees separated from employment since our last report.

Table 3: Separations				
<i>Name</i>	<i>Position</i>	<i>Department</i>	<i>Status*</i>	<i>Effective Date</i>
James Oliveri	Public Works Maintenance Worker I	Public Works – Airport	PT	5/24/22
Edward Vallejo	Water System Worker II	Public Works – Water	FT	9/23/22
Melba Rangel	Records Clerk	Police Department	FT	10/7/22

*Status: PT = Part Time, FT = Full Time

FINANCIAL IMPACT:

Funding for positions and employees to fill those positions is contemplated annually by the Council in the budget process. During the course of any given fiscal year, individual employees filling specific positions may change due to a number of various circumstances. All hiring and termination decisions are subject to the approval of the City Manager.

CONSISTENCY WITH THE VISION MADERA 2025 PLAN:

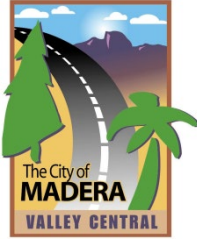
The information contained herein is not addressed by the Vision Madera 2025 plan, nor is the information in conflict with that plan.

ALTERNATIVES:

This report is for informational purposes only.

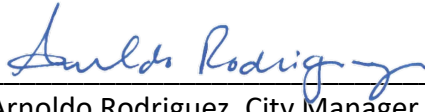
ATTACHMENTS:

None



REPORT TO CITY COUNCIL

Approved by:


Arnaldo Rodriguez, City Manager

Council Meeting of: October 19, 2022

Agenda Number: B-4

SUBJECT:

Informational Report on Contract City Attorney Services and Litigation Expenditures

RECOMMENDATION:

This report is submitted for informational purposes only and there is no action requested from the City Council (Council)

SUMMARY:

The purpose of this report is to provide the Council an informational monthly update on expenditures for contract City Attorney services, as well as specialized legal representation in various matters of litigation.

DISCUSSION:

The following information summarizes billings paid for services formerly performed by the City's in-house City Attorney. This report captures August 2022 invoices received, as well as the Fiscal Year (FY) 2022/23 tracking of invoices received, through a FY 2022/23 Year-to-Date (YTD) column.

If Council desires additional information in future iterations of this report, please advise and staff will make the requested changes.

Firm: Montoy Law Corporation (City Attorney Services and Litigation)

Billing Period: August 2022

Matter	Charges	
	August 2022	FY 2022/2023 (YTD)
City Attorney Services		
General Legal Review/Advice	\$141.00	\$376.00
City Clerk	\$916.50	\$1,057.50

Attendance at Council Meetings & Requests for Information/Research	\$2,044.50	\$3,689.50
City Manager	\$0	\$117.50
Review and Advice on Agreements	\$3,031.50	\$5,898.50
Planning	\$2,209.00	\$8,460.00
Planning Commission	\$164.50	\$1,833.00
Finance	\$329.00	\$2,162.00
Successor Agency	\$0	\$0
Public Works/Engineering	\$540.50	\$2,514.50
Police Department - General	\$752.00	\$752.00
Economic Development	\$0	\$0
Personnel/Payroll	\$23.50	\$23.50
Municipal Code Enforcement/Updates	\$0	\$94.00
Ordinances	\$0	\$844.00
Cannabis	\$47.00	\$47.00
Total Advisory Services	\$10,199.00	\$27,869.00
Litigation Services		
Total Litigation Services	\$6,821.00	\$15,656.00
Discounted Hours	-\$ (171.00)	-\$ (194.50)
Shipping	\$43.75	\$43.75
Total City Attorney and Litigation Services	\$16,892.75	\$43,374.25

FINANCIAL IMPACT:

For FY 2022/23, expenditures for invoices related to legal fees total \$43,374.25. This represents expenditures for specific City Attorney services. A summary of invoices received to date are summarized per the following table.

<i>Legal Invoices FY 2020/21 YTD</i>	
City Attorney Advisory Services	
Montoy Law Corporation	\$27,869.00
Litigation Services (Including discounted hours & shipping)	
Montoy Law Corporation	\$15,505.25
Total City Attorney and Litigation Services YTD	\$43,374.25

CONSISTENCY WITH THE VISION MADERA 2025 PLAN:

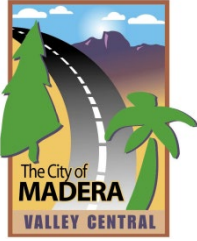
The information contained herein is not addressed by the Vision Madera 2025 plan, nor is the information in conflict with that plan.

ALTERNATIVES:

This report is for informational purposes only.

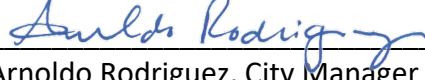
ATTACHMENTS:

None



REPORT TO CITY COUNCIL

Approved by:


Arnaldo Rodriguez, City Manager

Council Meeting of: October 19, 2022

Agenda Number: B-5

SUBJECT:

Remote City Council Meetings Under Brown Act Requirements (Assembly Bill 361)

RECOMMENDATION:

Council to decide to adopt a Resolution Reauthorizing Remote Teleconference Public Meetings by the City Council and All Boards, Commissions, and Standing Committees of the City in Accordance with Assembly Bill 361 for a Period of 30 Days

SUMMARY:

On January 19, 2022, the Council elected to return to remote meetings as permitted under AB 361. Approval of the resolution allows for the remote meeting procedures that the City had been using throughout the COVID-19 pandemic, subject to certain requirements that must be considered as part of the determination (by resolution) to adopt remote meeting protocols.

DISCUSSION:

The City may meet via remote teleconferencing if it adopts a resolution, that makes specific findings in support of conducting remote meetings. The City may extend the authorization in additional 30 day increments for the duration of the declared emergency, or until the Council decides to return to in-person meetings, or otherwise continues to comply with the regular remote meeting requirements of the Brown Act.

Table 1 identifies the differences between standard Brown Act remote teleconferencing and AB 361 teleconferencing. It is noted the City must still provide advance notice of public meetings and must continue to post meeting agendas consistent with the provisions of the Brown Act.

Table 1: Comparison of Public Meeting requirements (Brown Act vs. AB 361)

<i>Brown Act Requirement</i>	<i>Requirement Under AB 361</i>
If the legislative body of a local agency elects to use teleconferencing, it shall post agendas at all teleconference locations and conduct teleconference meetings in a manner that protects the statutory and constitutional rights of the parties or the public appearing before the legislative body of a local agency.	▪ Agendas not required to be posted at all teleconference locations. ▪ Meeting must still be conducted in a manner that protects the statutory and constitutional rights of the parties or the public appearing before the legislative body of a local agency.
If the legislative body of a local agency elects to use teleconferencing, each teleconference location shall be identified in the notice and agenda of the meeting or proceeding, and each teleconference location shall be accessible to the public.	▪ Agendas are not required to identify each teleconference location in the meeting notice/agenda. ▪ Local agencies are not required to make each teleconference location accessible to the public.
If the legislative body of a local agency elects to use teleconferencing during the teleconferenced meeting, at least a quorum of the members of the legislative body shall participate from locations within the boundaries of the territory over which the local agency exercises jurisdiction.	▪ No requirement to have a quorum of board members participate from within the territorial bounds of the local agency's jurisdiction.
If the legislative body of a local agency elects to use teleconferencing, the agenda shall provide an opportunity for members of the public to address the legislative body directly at each teleconference location.	▪ In each instance in which notice of the time of the teleconferenced meeting is given or the agenda for the meeting is posted, the legislative body shall also give notice of the manner by which members of the public may access the meeting and offer public comment. ▪ The agenda shall identify and include an opportunity for all persons to attend via a call-in option or an internet-based service option. ▪ The legislative body shall allow members of the public to access the meeting, and the agenda shall include an opportunity for members of the public to address the legislative body directly. ▪ In the event of a disruption which prevents the local agency from broadcasting the meeting to members of the public using the call-in option or internet-based service option, or in the

Table 1: Comparison of Public Meeting requirements (Brown Act vs. AB 361)

<i>Brown Act Requirement</i>	<i>Requirement Under AB 361</i>
	event of a disruption within the local agency's control which prevents members of the public from offering public comments using the call-in option or internet-based service option, the legislative body shall take no further action on items appearing on the meeting agenda until public access to the meeting via the call-in option or internet-based service option is restored. ▪ Written/remote public comment must be accepted until the point at which the public comment period is formally closed; registration/sign-up to provide/be recognized to provide public comment can only be closed when the public comment period is formally closed.

ATTACHMENTS:

1. Resolution Regarding Remote Teleconference Meetings

RESOLUTION NO. _____

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MADERA
REAUTHORIZING REMOTE TELECONFERENCE MEETINGS BY THE CITY
COUNCIL AND ALL BOARDS, COMMISSIONS, AND STANDING
COMMITTEES OF THE CITY IN ACCORDANCE WITH ASSEMBLY BILL 361
FOR A PERIOD OF THIRTY DAYS**

WHEREAS, COVID-19 (also known as the “Coronavirus Disease”) is a respiratory disease that has spread across the globe, with thousands of confirmed cases in California, including the City of Madera; and

WHEREAS, on January 31, 2020, the United States Secretary of Health and Human Services declared a public health emergency based on the threat caused by COVID-19, and the President of the United States issued a Proclamation Declaring a National Emergency Concerning COVID-19 beginning March 1, 2020; and

WHEREAS, in response to COVID-19, the Governor of the State of California issued a Proclamation of a State of Emergency in response to COVID-19 on March 4, 2020; and

WHEREAS, the City Council of the City of Madera adopted a proclamation of a local emergency related to the COVID-19 virus on March 16, 2020; and

WHEREAS, the City of Madera (“City”) is committed to preserving and fostering public access, transparency, observation, and participation in meetings of the City Council and Boards, Commissions, and Standing Committees (hereafter collectively referred to as “legislative bodies;” and

WHEREAS, all meetings of the City Council and legislative bodies are open and public as required by the Ralph M. Brown Act, Government Code sections 54950 – 54963, so that any member of the public may attend, observe, and participate in a meaningful way; and

WHEREAS, Government Section 54953 (b) (3) of the Brown Act allows a local legislative body to hold public meetings by teleconference and to make public meetings accessible telephonically or otherwise electronically to all members of the public seeking to attend and to address the local legislative body, as long as the following requirements are met:

1. Each teleconference location from which a member is participating is noticed on the agenda;
2. Each teleconference location is accessible to the public;
3. Members of the public must be able to address the body at each teleconference location;

4. At least one member of the legislative body must be physically present at the location specified in the meeting agenda; and
5. During teleconference meetings, at least a quorum of the members of the local body must participate from locations within the local body's territorial jurisdiction; and 54953(e) *et seq.*, allows for remote observation and participation in meetings by members of a legislative body and members of the public without compliance with the requirements of Government Code section 54953(b)(3), subject to certain conditions; and

WHEREAS, the initial required condition is a declaration of a state of emergency by the Governor pursuant to the California Emergency Services Act at Government Code section 8625, proclaiming the existence of conditions of disaster or of extreme peril to the safety of persons and property within the state and within the boundaries of the City, caused by conditions as described in Government Code section 8558; and

WHEREAS, the Governor's Proclamation of a State of Emergency includes area within the jurisdictional boundaries of the City; and

WHEREAS, Government Code Section 54953(e)(3)(A-B) added by AB 361 provides an alternative to having public meetings in accordance with Government Code Section 54953(b)(3) when City Council has reconsidered the circumstances of the COVID-19 state of emergency and that the following circumstances exist:

1. The state of emergency as a result of COVID-19 continues to directly impact the ability of the members of City Council and the members of the City's Boards, Commissions, and Standing Committees to meet safely in person; and
2. The State of California and the County of Madera continue to recommend measures to promote social distancing.

WHEREAS, Government Code Section 54953(e) *et seq.* further requires that state or local officials have imposed or recommended measures to promote social distancing or the legislative body finds that meeting in person would present an imminent risk to the health or safety of attendees; and

WHEREAS, such conditions now exist in the City in that (i) State and Local officials recommend social distancing measures and (ii) emergency conditions evidenced by COVID-19 and its variants create ongoing COVID-19 cases, hospitalizations, and deaths and meeting in person would present imminent risk to health or safety of attendees; and

WHEREAS, the City Council affirms that it will allow for observation and participation by Council Members as well as Board, Commission, and Standing Committee Members and the

public via Zoom in an effort to protect the constitutional and statutory rights of all attendees;
and

WHEREAS, Government Code Section 54953 (e)(3) requires that the City Council review the need and make findings for continuing the teleconferencing as authorized by AB 361 at least once every thirty days until the Governor terminates the state of emergency.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF MADERA HEREBY RESOLVES AS FOLLOWS:

Section 1. The above recitals are true and correct and are incorporated herein by this reference.

Section 2. The City Council finds that the state of emergency conditions related to COVID- 19 as set forth in the Governor's and City's Proclamations of Emergency and are on-going.

Section 3. The City Council further finds that state and county official recommend social distancing conditions causing imminent risk to attendees as described above exist.

Section 4. The City Council hereby recognizes and affirms the existence and conditions of a state of emergency as proclaimed by the Governor and the City in the City and affirms, authorizes, and proclaims the existence of a local emergency throughout the City.

Section 5. The City Council finds that the state of emergency as a result of COVID-19 continues to directly impact the ability of members of the City Council and the members of the City's Boards, Commissions, and standing committees to meet safely in person and such fact creates an imminent health risk to such members.

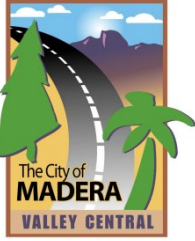
Section 6. The City Council hereby authorizes the City Council and all of the Boards, Commissions, and Standing Committees of City to conduct their meetings without compliance with Government Code section 54953(b)(3), and to instead comply with the remote meeting requirements as authorized by Government Code section 54953(e) *et seq.*

Section 7. The City Manager and City Clerk are authorized and directed to take all actions reasonably necessary to carry out the intent and purpose of this Resolution, including, conducting open and public meetings remotely in accordance with Government Code section 54953(e) *et seq.*, and other applicable provisions of the Brown Act, for all City Council meetings, and all Boards, Commissions, and standing committee meetings of the City.

Section 8. This Resolution shall take effect immediately upon its adoption and shall be effective until either (i) November 18, 2022 or (ii) such time as the City Council adopts a Subsequent Resolution in accordance with Government Code section 54953(e)(3) to extend the time during which the City Council and all City legislative bodies may continue to meet remotely, without

compliance with Government Code section 54953(b)(3), but otherwise as permitted by Government Code section 54953(e) *et seq.*

* * *



REPORT TO CITY COUNCIL

Approved by:

Jamie Hickman

Jamie Hickman, Interim Director of Public Works

Council Meeting of: October 19, 2022

Agenda Number: B-6

Arnoldo Rodriguez

Arnoldo Rodriguez, City Manager

SUBJECT:

Matching Grant for Airport Drainage Improvements

RECOMMENDATION:

Adopt a Resolution Accepting a Grant Award for the California Aid to Airports Program Grant Agreement for Airport Improvement Program (AIP) with the Federal Aviation Administration (FAA) in the amount of \$58,644 for drainage improvements

SUMMARY:

The City has a grant agreement with the Federal Aviation Administration, AIP No. 3-06-0144-034, for Airfield Drainage Improvements at the Madera Municipal Airport. The California Department of Transportation (Caltrans) Aeronautics Division, pursuant to Public Utilities Code section 21683.1, provides grants to match Federal Aviation Administration grants to airports. Staff recommends Council authorize staff to submit an application, accept an allocation of funds, and execute a grant agreement with the California Department of Transportation for an Airport Improvement Program (AIP) matching grant.

DISCUSSION:

On July 20, 2022, Council adopted a resolution to execute the Grant Offer for Airport Improvement Program (AIP) Project with the Federal Aviation Administration in the amount of \$1,172,875. The grant from the Federal Aviation Administration covers approximately 90 percent of the total cost of the project. The State provides -matching grants in the amount of 5 percent of the AIP grant, which is \$58,644. The remaining 5 percent would be paid from existing funds for Airport Operations. Thus, for investing 5 percent of the overall project costs, the City will receive 95 percent of the funding from the State or the FAA. Funding for the project is summarized on table 1.

Table 1: Drainage Improvements			
<i>Item</i>	<i>Council Action date</i>	<i>Costs</i>	<i>% of Project Costs</i>
FAA Grant	July 20, 2022	\$1,172,875	90%
State of CA Grant	This item	\$58,644	5%
Airport Operations Fund	-	\$58,644	5%
Total Funding for project:	-	\$1,290,163	100%

It is noted that on July 1, 2022 Council awarded a contract with Agee Construction Corporation for Agee Construction Corporation to complete the project. During the Council meeting, Council may recall that no prolonged closures of the airport are anticipated, sans the closure of the runway for approximately 30 hours.

FINANCIAL IMPACT:

Table 1 lists the sources of funding for this project. There will be no impact to the General Fund as there are sufficient existing funds to cover the remaining 5 percent of costs. The Airport is an Enterprise Fund that funds Airport improvements and operations.

CONSISTENCY WITH THE VISION MADERA 2025 PLAN:

Approval of this agreement is not addressed in the Vision or Action Plans and is not in conflict with the actions or goals contained in that plan.

ALTERNATIVES:

If Council chooses not to adopt this Resolution, the City will lose out on the opportunity to acquire the funding and will delay the airfield drainage improvements at the airport and/or other sources of funding will have to be found.

ATTACHMENTS:

1. Resolution
 - a. Exhibit 1-Grant Agreement

Resolution No. _____

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MADERA,
CALIFORNIA AUTHORIZING THE SUBMITTAL OF AN APPLICATION,
ACCEPTANCE OF AN ALLOCATION OF FUNDS AND EXECUTION OF A
GRANT AGREEMENT WITH THE CALIFORNIA DEPARTMENT OF
TRANSPORTATION, FOR AN AIRPORT IMPROVEMENT PROGRAM (AIP)
MATCHING GRANT**

WHEREAS, the City of Madera and the Federal Aviation Administration are parties to federal AIP grant 3-06-0144-034 for the drainage improvement project at the Madera Municipal Airport; and

WHEREAS, the California Department of Transportation (Caltrans), pursuant to the Public Utilities Code section 21683.1, provides grants of 5 percent of Federal Aviation Administration grants to airports; and

WHEREAS, Caltrans requires the City Council to adopt a resolution authorizing the submission of an application for an AIP Matching grant; and

WHEREAS, the City wishes to accept the terms of Caltrans' Grant offer.

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. Authorizes filing an application for a state AIP Matching grant for this project.
3. Authorizes accepting the allocation of state AIP matching funds for the project.
4. Authorizes execution of an AIP Matching Grant Agreement for this project and,
5. The Public Works Director or City Manager, or their designee is hereby authorized and empowered to execute the grant agreement in the name of the City of Madera.
6. This resolution is effective immediately upon adoption.

STATE MATCHING GRANT FOR FAA AIRPORT IMPROVEMENT PROGRAM - APPLICATION

DOA-0012 (REV 12/2021)

PLEASE PRINT OR TYPE AND COMPLETE ALL APPLICABLE ITEMS

AIRPORT INFORMATION

PUBLIC ENTITY City of Madera	COUNTY Madera
AIRPORT NAME Madera Municipal Airport	PERMIT NUMBER
CONTACT NAME Jamie Hickman	TITLE Public Works Operations Director
MAILING ADDRESS 1030 South Gateway, Madera, CA 93637	EMAIL jhickman@madera.gov
	PHONE (559) 661-5466

PROJECT INFORMATION

Project must be in the Department's most recent Capital Improvement Plan and the project cannot commence prior to the State's award of a matching grant or the project becomes ineligible for a matching grant. ☒ Check to acknowledge statement

DESCRIPTIVE TITLE OF APPLICANT'S PROJECT (as shown on page one of the executed federal grant and in the adopted Capital Improvement Plan): New Apron and Taxiway Storm Water Drainage Upgrade - Airfield Drainage Improvements	FEDERAL GRANT NUMBER 3-06-0144-034-2022
	FEDERAL GRANT \$ 1,172,875
	APPLICANT FUNDS \$ 71,676
	STATE FUNDS* \$ 58,644
	TOTAL COST OF PROJECT \$ 1,303,195
	*Maximum is 5% of the federal grant amount.

REQUIRED SUPPORTING DOCUMENTS

Pursuant to Public Utilities Code Section 21681-21684 and Section 4067 of the CAAP Regulations, submit the following documents with this application:

- Local government approval (*resolution or minute order*) as described in Section 4067(a).
- FAA Grant Agreement with FAA and sponsor signatures.
- Verification of full compliance with the California Environmental Quality Act (CEQA) by submitting information to fulfill either 1. or 2. below:
 - Copy of Notice of Exemption or provide the Categorical Exemption Class # 1 (*CEQA Guidelines Sections 15300-15333*).
 - Copy of Notice of Determination or provide the following information:
 - Environmental Impact Report (Title/Date) _____ State Clearinghouse (SCH) # _____ or
 - Negative Declaration (Title/Date) _____ State Clearinghouse (SCH) # _____ or
 - National Environmental Policy Act (NEPA) document (Title/Date) _____ (NEPA documents-Environmental Impact Statement or Finding of No Significant Impact must comply with CEQA provisions).
- Airport Layout Plan (ALP) showing project location(s) and dimensions or project sketch if no ALP exists.
- Completed CAAP Certification (Form DOA-0007), if not submitted to the Division of Aeronautics earlier for this fiscal year.
- Additional documentation may be required if items in the FAA AIP grant are not eligible for CAAP funding.

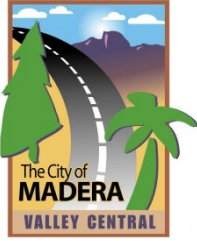
AUTHORIZATION

AUTHORIZED OFFICIAL'S SIGNATURE	DATE
PRINT NAME Arnoldo Rodriguez	TITLE City Manager
MAILING ADDRESS 205 W. 4th Street, Madera, CA 93637	EMAIL arodriguez@madera.gov
	PHONE (559) 661-5402

SEND COMPLETED FORM AND ALL REQUIRED DOCUMENTS TO:

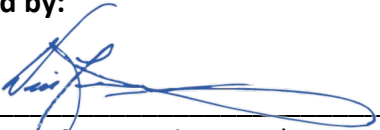
AeronauticsGL@dot.ca.gov**ADA Notice**

For individuals with sensory disabilities, this document is available in alternate formats. For alternate format information, contact the Forms Management Unit at (916) 445-1233, TTY 711, or write to Records and Forms Management, 1120 N Street, MS-89, Sacramento, CA 95814.



REPORT TO THE CITY COUNCIL

Approved by:



Will Tackett, Community Development Director



Arnoldo Rodriguez, City Manager

Council Meeting of: October 19, 2022

Agenda Number: B-7

SUBJECT:

Madera Municipal Code (MMC) Ordinance Text Amendment (OTA) No. 2020-02 relating to Wireless Facilities on Private Property and a Small Wireless Facilities in the Public Rights-of-Way Policy.

RECOMMENDATION:

1. Adopt an Ordinance of the City Council of the City of Madera Adding Chapter 9 to Title X of the Madera Municipal Code Relating to Wireless Facilities on Private Property by Title Only and Waive the Second Full Reading
2. Adopt a Resolution of the City Council of the City of Madera Adopting a Small Wireless Facilities in the Public Rights-of-Way Policy

SUMMARY:

At its September 21, 2022 meeting, City Council (Council) introduced and waived the first reading of the Ordinance which would add Chapter 9 to Title X of the City Municipal Code relating to wireless facilities and introduced the Small Wireless Facilities Policy in the Public Rights-of-Way. The Council is being requested to complete the second reading and adopt the Ordinance adding Chapter 9 to Title X of the City Municipal Code and to adopt the Resolution adopting a Small Wireless Facilities in the Public Rights-of-Way Policy.

ATTACHMENTS

1. Ordinance Adding Chapter 9 to Title X of the Municipal Code Relating to Wireless Facilities
2. Resolution Adopting a Small Wireless Facilities in the Public Rights-of-Way Policy
Exhibit A City Council Policy on Small Wireless Facilities in the Public Rights-of-Way

ATTACHMENT 1

ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MADERA

ADDING CHAPTER 9 TO TITLE X OF THE MUNICIPAL CODE RELATING TO WIRELESS FACILITIES

ORDINANCE NO. 2022-_____

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MADERA ADDING CHAPTER 9
TO TITLE X OF THE MADERA MUNICIPAL CODE RELATING TO WIRELESS FACILITIES**

WHEREAS, pursuant to the California Constitution, Article XI, section 7; California Government Code Section 37100 and other applicable law, the City Council of the City of Madera ("City Council") may make and enforce within its limits all local, police, sanitary and other ordinances, resolutions and other regulations not in conflict with general laws; and

WHEREAS, the federal Telecommunications Act of 1996, 47 U.S.C. § 332(c)(7)(B), preserves local government zoning authority as it relates to location and siting of wireless communication facilities, but limits local regulations in three key ways: (1) a local ordinance may not unreasonably discriminate among providers of functionally equivalent services; (2) a local ordinance may not prohibit or effectively prohibit service; and (3) a local ordinance may not regulate based on environmental impacts from radio frequency emissions; and

WHEREAS, the federal Telecommunications Act of 1996, 47 U.S.C. § 253 prohibits state and local requirements that prohibit or effectively prohibit any entity's ability to provide any telecommunication service but preserves the authority of state and local governments to manage the public right-of-way on a nondiscriminatory basis; and

WHEREAS, Section 7901 of the California Public Utilities Code grants telephone corporations the limited right to use the public right-of-way to the extent necessary to provide services to their customers in a manner that does not incommode the public's use of the public right-of-way; and

WHEREAS, Section 7901.1 of the California Public Utilities Code bolsters the rights reserved to California local governments under Section 7901 and affirms local authority to manage, on a nondiscriminatory basis, the time, place and manner in which telephone corporations access the public right-of-way and deploy their facilities; and

WHEREAS, the City Council finds this ordinance will, to the extent permitted by federal and California state law, protect and promote public health, safety, and welfare, and also balance the benefits that flow from robust, advanced wireless services within the City's local values, which includes without limitation the aesthetic character of the City, its neighborhoods, and community; and

WHEREAS, the Planning Commission held a duly noticed public hearing to consider this ordinance on July 26, 2022, at which time all interested parties had the opportunity to be heard, and after said public hearing, the Planning Commission adopted Resolution No. 1930, recommending that the City Council adopt this ordinance; and

WHEREAS, on August 17, 2022, the City Council held a duly noticed public hearing to consider the adoption of this ordinance.

THE CITY COUNCIL OF THE CITY OF MADERA DOES ORDAIN AS FOLLOWS:

SECTION 1. CHAPTER 9 is added to Title X of the Madera Municipal Code to read as follows:

CHAPTER 9: WIRELESS FACILITIES

10-9.01 Purpose and Intent.

10-9.02 Definitions.

10-9.03 Applicability.

10-9.04 Required Permits and Approvals.

10-9.05 Administrative Orders and Regulations.

10-9.06 Permit Applications.

10-9.07 Public Notice.

10-9.08 Approvals, Denials, and Appeals.

10-9.09 Location Standards.

10-9.10 Design Standards.

10-9.11 Standard Conditions of Approval.

10-9.12 Amortization.

10-9.13 Exceptions.

10-9.14 Peer and Independent Consultant Review.

10-9.15 Violations.

Section 10-9.01 PURPOSE AND INTENT.

- (A) The city of Madera (the “city”) intends this chapter to establish reasonable, uniform and comprehensive standards and procedures for wireless facilities deployment, construction, installation, collocation, modification, operation, relocation and removal within the city’s territorial boundaries, consistent with and to the extent permitted under federal and California state law. The standards and procedures contained in this chapter are intended to, and should be applied to, consistent with federal and state law, protect and promote public health, safety and welfare, and also balance the benefits that flow from robust, advanced wireless services with the city’s local values, which include without limitation the aesthetic character of the city, its neighborhoods and community. This chapter is also intended to reflect and promote the community interest by (1) ensuring that the balance between public and private interest is maintained on a case-by-case basis; (2) protecting the city’s visual character from potential adverse impacts or visual blight created or exacerbated by wireless communications infrastructure; (3) protecting and preserving the city’s environmental resources; and (4) promoting access to high-quality, advanced wireless services for the city’s residents, businesses and visitors.
- (B) This chapter is not intended to, nor shall it be interpreted or applied to: (1) prohibit or effectively prohibit any personal wireless service provider’s ability to provide personal wireless services; (2) prohibit or effectively prohibit any entity’s ability to provide any interstate or intrastate telecommunications service, subject to any competitively neutral and nondiscriminatory rules, regulations or other legal requirements for rights-of-way management; (3) unreasonably discriminate among providers of functionally equivalent services; (4) deny any request for authorization to place, construct or modify personal wireless service facilities on the basis of environmental effects of radio frequency emissions to the extent that such wireless facilities comply with the FCC’s regulations concerning such emissions; (5) prohibit any collocation or modification that the city may not deny under federal or California state law; (6) impose any

unfair, unreasonable, discriminatory or anticompetitive fees that exceed the reasonable cost to provide the services for which the fee is charged; or (7) otherwise authorize the city to preempt any applicable federal or California law.

Section 10-9.02 DEFINITIONS.

All references to codified statutes, regulations or other rules shall be deemed to refer to such statutes, regulations or other rules as they may be amended or superseded.

- (A) **“AMATEUR STATION”** means the same as defined by the FCC in 47 C.F.R. § 97.3, which defines the term as “a station in an amateur radio service consisting of the apparatus necessary for carrying on radiocommunications.” This term includes amateur radio antennas and related facilities used for amateur radio services.
- (B) **“APPROVAL AUTHORITY”** means the city official or body responsible for application review and vested with authority to approve or deny such applications. The approval authority for a conditional use permit shall be the Planning Commission. The approval authority for a site plan review shall be the Director.
- (C) **“CPUC”** means the California Public Utilities Commission established in the California Constitution, Article XII, § 5, or its duly appointed successor agency.
- (D) **“DIRECTOR”** means the Community Development Director of the city of Madera or the Director’s designee.
- (E) **“ELIGIBLE FACILITIES REQUEST”** means the same as defined in 47 U.S.C. § 1455(a)(2), and as interpreted by the FCC in 47 C.F.R. § 1.6100(b)(3).
- (F) **“FCC”** means the Federal Communications Commission, as constituted by the Communications Act of 1934, Pub. L. 73-416, 48 Stat. 1064, codified as 47 U.S.C. §§ 151 *et seq.* or its duly appointed successor agency.
- (G) **“HISTORIC RESOURCE”** means any prehistoric or historic district, site, building, structure or object included in, or eligible for inclusion in, the National Register of Historic Places, the California Register of Historical Resources or any “historic resource” as listed in Table HC-A of the General Plan. The term includes artifacts, records and remains related to or located within such properties. The term also includes properties with traditional religious and/or cultural importance to any Native American tribe.
- (H) **“OTARD”** means any “over-the-air reception device” subject to 47 C.F.R. §§ 1.4000 *et seq.*, which generally includes satellite television dishes and certain fixed wireless antennas not greater than one meter in diameter.
- (I) **“PERSONAL WIRELESS SERVICE FACILITIES”** mean the same as defined in 47 U.S.C. § 332(c)(7)(C)(ii), which defines the term as facilities that provide personal wireless services.
- (J) **“PERSONAL WIRELESS SERVICES”** mean the same as defined in 47 U.S.C. § 332(c)(7)(C)(i), which

defines the term as commercial mobile services, unlicensed wireless services and common carrier wireless exchange access services.

- (K) **“PLANNING COMMISSION”** means the Planning Commission of the city of Madera as established by the Madera Municipal Code.
- (L) **“RF”** means radio frequency.
- (M) **“SECTION 6409”** means Section 6409(a) of the Middle-Class Tax Relief and Job Creation Act of 2012, Pub. L. No. 112-96, 126 Stat. 156, codified as 47 U.S.C. § 1455(a).
- (N) **“SHOT CLOCK”** means the presumptively reasonable time defined by the FCC in which a state or local government must act on an application or request for authorization to place, construct or modify personal wireless service facilities.
- (O) **“SNALL WIRELESS FACILITY”** means the same as defined by the FCC in 47 C.F.R. § 1.6002(l).
- (P) **“STEALTH”** means concealment techniques that make a wireless facility look like something other than a wireless facility. Stealth concealment techniques include, without limitation: (1) transmission equipment placed completely within existing or replacement architectural features such that the installation causes no visible change in the underlying support structure and (2) new architectural features that mimic or blend with the underlying or surrounding structures in style, proportion and construction quality.
- (Q) **“WIRELESS FACILITY”** means a personal wireless service facility.

Section 10-9.03 APPLICABILITY.

- (A) *General.* This chapter applies to all requests for the city’s regulatory authorization to construct, install, operate, collocate, modify, relocate, remove or otherwise deploy wireless facilities on private property (whether owned by a private party or public entity) within the city’s territorial and jurisdictional boundaries, unless expressly exempted pursuant to this section.
- (B) *Wireless Facilities on City Property.* This chapter applies to permit applications for wireless facilities on property or structures owned or controlled by the city; provided, however, that this chapter does not govern whether or under what terms and conditions the city would lease, license or otherwise allow a wireless facility on such property or structures.
- (C) *Small Wireless Facilities.* Notwithstanding anything in this chapter to the contrary, all small wireless facilities are subject to a permit as specified in a City Council policy, which may be adopted, amended and/or repealed by a resolution of the City Council. All small wireless facilities shall comply with the City Council’s policy. If the City Council policy is repealed and not replaced, an application for a small wireless facility shall be processed pursuant to this chapter.
- (D) *Eligible Facilities Requests.* Notwithstanding anything in this chapter to the contrary, all eligible facilities requests and other applications submitted for approval pursuant to Section 6409 are subject to a City Council policy, which may be adopted, amended and/or repealed by a resolution

of the City Council. All eligible facilities requests and other applications submitted for approval pursuant to Section 6409 shall comply with the City Council's policy. If the City Council policy is repealed and not replaced, all eligible facilities requests and other applications submitted for approval pursuant to Section 6409 shall be processed pursuant to this chapter.

- (E) *Other Exemptions.* Notwithstanding anything in this chapter to the contrary, this chapter shall not be applicable to the following:
- (1) Wireless facilities operated by the city for public purposes;
 - (2) Wireless facilities installed completely indoors or within venues and used to extend personal wireless services into a business or the subscriber's private residence, such as a femto cell or indoor distributed antenna system;
 - (3) OTARD antennas;
 - (4) Antennas and related transmission equipment used in connection with a duly authorized amateur station; or
 - (5) Wireless facilities or other transmission equipment owned and operated by CPUC-regulated electric companies for use in connection with electrical power, generation, transmission and distribution facilities subject to CPUC General Order 131-D.

Section 10-9.04 REQUIRED PERMITS AND APPROVALS.

- (A) *Site Plan Review.* A site plan review, subject to the Director's prior review and approval, is required for all wireless facilities that are located in preferred locations as described in § 10-9.09 and compliant with all applicable design standards in § 10-9.10.
- (B) *Conditional Use Permit.* A conditional use permit, subject to the Planning Commission's prior review and approval, is required for all wireless facilities on private property that are located in discouraged locations as described in § 10-9.09, and do not qualify for site plan review, or require an exception under § 10-9.13.
- (C) *Other Permits and Regulatory Approvals.* In addition to any permit or approval required under this chapter, the applicant must obtain all other permits and regulatory approvals (such as compliance with the California Environmental Quality Act or Madera County Airport Land Use Commission requirements) as may be required by any other federal, state or local government agencies, which includes without limitation any other permits and/or approvals issued by other city departments or divisions. Any permit or approval granted under this chapter or deemed granted or deemed approved by law shall remain subject to any and all lawful conditions and/or legal requirements associated with such other permits or approvals. Furthermore, and to avoid potential confusion, an exemption from the permit requirement under § 10-9.03(E) does not exempt the same wireless facilities from any other permits or approvals required, which includes without limitation any ministerial permits from the city.

Section 10-9.05 ADMINISTRATIVE ORDERS AND REGULATIONS.

In addition to the requirements in this chapter, the Director may adopt such orders or regulations as the Director deems necessary or appropriate to protect and maintain public health, safety, welfare and/or convenience. All wireless facilities must conform to all applicable orders and regulations issued by the Director, unless the Director, in the Director's discretion, grants a prior written waiver to deviate, in whole or in part, any such order or regulation. The Director shall develop and publish guidelines to implement the waivers authorized by this section.

Section 10-9.06 PERMIT APPLICATIONS.

- (A) *Application Required.* The approval authority shall not approve any requests for authorization to construct, install, operate, collocate, modify, relocate, remove or otherwise deploy wireless facilities except upon a complete and duly filed application consistent with this section and any other written rules or requirements the city or the Director may establish from time to time in any publicly stated format.
- (B) *Application Fee.* The applicant shall submit the applicable permit application fee adopted by City Council resolution. If no permit application fee has been adopted, then the applicant must submit a signed written statement that acknowledges that the applicant will be required to submit a deposit estimated by the Director to reimburse the City for its reasonable costs incurred in connection with the application. Should the deposit be inadequate an additional deposit shall be required. If the deposit exceeds the actual costs, the difference will be returned to the applicant.
- (C) *Application Content.* All applications for a permit must include all the information and materials required by the Director for the application. The City Council authorizes the Director to develop, publish and from time-to-time update or amend permit application requirements, forms, checklists, guidelines, informational handouts and other related materials that the Director finds necessary, appropriate or useful for processing any application governed under this chapter. All such requirements must be in written form and publicly stated to provide applicants with prior notice. Notwithstanding anything in this chapter to the contrary, all applications shall, at a minimum, require the applicant to demonstrate that the proposed project will be in planned compliance with all applicable health and safety laws, regulations or other rules, which includes without limitation all building codes, electric codes and all FCC rules for human exposure to RF emissions.
- (D) *Application Submittal.* Unless the Director establishes an alternative submittal procedure pursuant to § 10-9.05, all applications must be submitted to the city at a pre-scheduled appointment with the department. Applicants may generally submit one application per appointment but may schedule successive appointments for multiple applications whenever feasible and not prejudicial to other applicants. The department shall use reasonable efforts to provide the applicant with an appointment within five working days after the department receives a written request and, if applicable, confirms that the applicant complied with the pre-submittal conference requirement. Any application received without an appointment, whether delivered in-person, by mail or through any other means, will not be considered duly filed.

- (E) *Optional Pre-Submittal Conference.* The city shall provide prospective applicants with the opportunity to schedule and attend a pre-submittal conference with city staff. The city encourages pre-submittal conferences for all proposed projects that require a conditional use permit. The pre-submittal conference is intended to streamline the review process through informal discussion that includes, without limitation, the appropriate project classification and review process, any latent issues in connection with the proposed or existing wireless facility, such as compliance with generally applicable rules for public health and safety; potential concealment issues or concerns (if applicable); coordination with other city departments and/or divisions responsible for application review; and application completeness issues. To mitigate unnecessary delays due to application incompleteness, applicants are encouraged (but not required) to bring any draft applications or other materials so that city staff may provide informal feedback and guidance about whether such applications or other materials may be incomplete or unacceptable. The city shall use reasonable efforts to provide the applicant with an appointment within five working days after receiving a written request and any applicable fee or deposit to reimburse the city for its reasonable costs to provide the services rendered in the pre-submittal conference.
- (F) *Optional Community Meetings.* The city encourages, but does not require, applicants to schedule, notice, arrange, and attend a voluntary pre-submittal community meeting with all interested members of the public for applications that require a conditional use permit. This voluntary community meeting does not cause the shot clock to begin and is intended to give applicants the opportunity to hear from members of the public regarding the proposed deployment. Applicants should schedule any voluntary community meetings at times and in locations that are conducive to maximizing public participation. Applicants are encouraged (but not required) to bring any draft applications, plans, maps, presentations or other materials to facilitate the public's understanding of the applicant's proposal. Applicants are also encouraged (but not required) to maintain minutes or a comment log of the community meeting. The City seeks to encourage dialogue that may allow applicants to address areas of concern. Community meetings may be conducted before or after submittal.
- (G) *Applications Deemed Withdrawn.* To promote efficient review and timely decisions, any application governed under this chapter will be automatically deemed withdrawn by the applicant when the applicant fails to tender a substantive response to the department within 90 calendar days after the department deems the application incomplete in a written notice to the applicant. The Director, in the Director's discretion, may grant a written extension for up to an additional 30 calendar days when the applicant submits a written request prior to the 90th day that shows good cause to grant the extension. Good cause for an extension shall include, without limitation, delays due to circumstances outside the applicant's reasonable control.

Section 10-9.07 PUBLIC NOTICE.

- (A) *Public Hearing Notice.* Notice of public hearing shall be given in accordance with § 10-3.1306 of this chapter for any conditional use permit application.
- (B) *Decision Notices.* Within five calendar days after the approval authority acts on an application governed under this chapter or before the shot clock expires (whichever occurs first), the Director shall send a written notice to the applicant. If the approval authority denies the application (with or without prejudice), the written notice to the applicant must contain the reasons for the denial.

All decision notices shall include instructions for how and when to file an appeal.

Section 10-9.08 APPROVALS, DENIALS AND APPEALS.

- (A) *Required Findings.* The approval authority may approve wireless facility applications only when the approval authority makes all the following findings:
- (1) the proposed wireless facility is in a preferred location; or the proposed wireless facility is in a discouraged location and the applicant has demonstrated through a meaningful comparative analysis that no more preferred location or support structure would be technically feasible and potentially available;
 - (2) the proposed wireless facility complies with all applicable development standards in this chapter and any other applicable findings required for the approval, such as § 10-3.1307(B) of this chapter (conditional use permits) or § 10-3.4.0106 of this chapter (site plan review);
 - (3) the applicant has provided a signed statement that indicates its willingness to allow other carriers and site operators to collocate transmission equipment with the proposed wireless facility whenever technically feasible and aesthetically desirable in accordance with applicable provisions in this chapter; and
 - (4) the applicant has demonstrated that the proposed wireless facility will comply with all applicable FCC regulations and guidelines for human exposure to RF emissions and will not, either individually or cumulatively with other transmitters in the vicinity, result in RF exposures that exceed the FCC's maximum permissible exposure level for the general population.
- (B) *Conditional Approvals; Denials without Prejudice.* Subject to any applicable federal or state laws, nothing in this chapter is intended to limit the approval authority's ability to conditionally approve or deny without prejudice any application governed under this chapter as may be necessary or appropriate to protect and promote the public health, safety and welfare, and to advance the goals or policies in the general plan and any applicable specific plan, the Madera Municipal Code, or this chapter.
- (C) *Appeals.* Within 10 days after the approval authority approves or denies any application under this chapter, any interested person may file an appeal in accordance with the provisions in § 10-3.1309 of this chapter for use permits or §§ 10-3.4.0116 and 10-3.4.0117 of this chapter for site plan review; provided, however, that (1) the notice provisions in this chapter shall control over those in § 10-3.1309 of this chapter and (2) appeals from an approval shall not be permitted when based solely on the environmental effects from RF emissions that are compliant with applicable FCC regulations and guidelines.

Section 10-9.09 LOCATION STANDARDS.

- (A) *Locations.* To assist applicants, staff and the approval authority understand and respond to the community's aesthetic preferences and values, this subsection describes preferred and discouraged locations for wireless facilities.

- (1) *Preferred Locations.* All applicants must, to the extent technically feasible and potentially available, propose new facilities in a preferred location. No alternative sites analysis is required for new stealth facilities proposed in any preferred location. For all other new facilities, the approval authority shall consider whether any more preferred location would be technically feasible or potentially available. The following locations are all “preferred” and ordered from most preferred to least preferred:
 - (a) industrial zones;
 - (b) commercial zones;
 - (c) other non-residential zones;
 - (d) Public Facilities zone when not directly adjacent to residentially zoned parcels.
- (2) *Discouraged Locations.* Applicants shall not propose to install wireless facilities in a discouraged location unless no alternative site in a preferred location would be technically feasible. If all preferred locations are technically infeasible, the applicant shall use the least-discouraged location. The following locations are discouraged, and ordered from most discouraged to least discouraged:
 - (a) historic resource zones and properties;
 - (b) Public Facilities zone when directly adjacent to residentially zoned parcels;
 - (c) residential zones.
- (B) *Support Structures.* To assist applicants, staff and the approval authority understand and respond to the community’s aesthetic preferences and values, and to mitigate the impact of wireless infrastructure deployment, the city requires wireless facilities to be installed on support structures, ordered from most preferred to least preferred, as follows:
 - (1) existing structures with existing wireless facilities;
 - (2) existing rooftops;
 - (3) existing building façades, signs, water tank/towers, field lights, or other non-tower structures;
 - (4) new freestanding structures outside the public rights-of-way.

To the extent that a proposed support structure is not included in this list, the Director may, in the Director’s discretion, determine the level of preference for such structure consistent with the goals and purpose of this subsection.

Section 10-9.10 DESIGN STANDARDS.

- (A) *Concealment.* All wireless facilities must be concealed to the maximum extent feasible with design elements and techniques that mimic or blend with the underlying support structure, surrounding environment and adjacent uses.

- (B) *Overall Height.* All wireless facilities must be compliant with maximum overall height limits applicable to structures on the underlying parcel; provided, however, that a stealth wireless facility may exceed the applicable height limit by not more than 10 feet.
- (C) *Setbacks.* All wireless facilities must be compliant with all setback requirements applicable to structures on the underlying parcel.
- (D) *Fall Zone.* All freestanding towers outside the public rights-of-way must be setback from habitable structures approved for residential occupancy by a distance equal to the tower height. The approval authority may waive the setback requirement for freestanding towers that meet Class 3 structural standards for critical infrastructure as defined in the most current revision of the ANSI/TIA-222 Structural Standard for Antenna Supporting Structures, Antennas and Small Wind Turbine Support Structures.
- (E) *Noise.* All wireless facilities must be compliant with all applicable noise regulations, which includes, without limitation, any noise regulations in the Madera Municipal Code. The approval authority may require the applicant to incorporate appropriate noise-baffling materials and/or noise-mitigation strategies to avoid any ambient noise from equipment reasonably likely to exceed the applicable noise regulations.
- (F) *Landscaping.* All wireless facilities proposed to be placed in a landscaped area must include landscape features (which may include, without limitation, trees, shrubs and ground cover) and a landscape maintenance plan. The approval authority may require additional landscape features to screen the wireless facility from public view, avoid or mitigate potential adverse impacts on adjacent properties or otherwise enhance the concealment required under this section. All plants proposed or required must be native and/or drought resistant.
- (G) *Security Measures.* To prevent unauthorized access, theft, vandalism, attractive nuisance or other hazards, reasonable and appropriate security measures, such as fences, walls and anti-climbing devices, may be approved. Security measures shall be designed and implemented in a manner that enhances or contributes to the overall concealment, and the approval authority may condition approval on additional concealment elements to mitigate any aesthetic impacts, which may include, without limitation, additional landscape features. The approval authority shall not approve barbed wire, razor ribbon, electrified fences or any similar security measures.
- (H) *Secondary Power Sources.* The approval authority may approve secondary or backup power sources and/or generators on a case-by-case basis. The approval authority shall not approve any permanent diesel generators or other similarly noisy or noxious generators in or within 200 feet from any residence; provided, however, the approval authority may approve sockets or other connections used for temporary backup generators.
- (I) *Lights.* Wireless facilities may not include exterior lights other than as may be required under Federal Aviation Administration, FCC, other applicable federal or state governmental regulations. All exterior lights permitted or required to be installed must be installed in locations and within enclosures that mitigates illumination impacts on other properties to the maximum extent feasible. Any lights associated with the electronic equipment shall be appropriately shielded from

public view. Any light beacons or lightning arresters shall be included in the overall height calculation.

- (J) *Signage; Decals; Advertisements.* All wireless facilities must include signage that accurately identifies the equipment owner/operator, the owner/operator's site name or identification number and a toll-free number to the owner/operator's network operations center. Wireless facilities may not bear any other signage, decals or advertisements unless expressly approved by the approval authority, required by law or recommended under FCC or other federal governmental agencies for compliance with RF emissions regulations.
- (K) *Future Expansion.* To the extent feasible and aesthetically desirable, all new wireless facilities should be designed and sited in a manner that accommodates potential future collocations and other expansions that can be integrated into the proposed wireless facility or its associated structures with no or negligible visual changes to the outward appearance. The approval authority may waive the requirements in this subsection when the approval authority determines future expansions at a proposed wireless facility would be aesthetically undesirable.
- (L) *Utilities.* All cables and connectors for telephone, primary electric and other similar utilities must be routed underground to the extent feasible in conduits large enough to accommodate future collocated wireless facilities. To the extent feasible, undergrounded cables and wires must transition directly into the pole base without any external doghouse. Meters, panels, disconnect switches and other associated improvements must be placed in inconspicuous locations to the extent possible. The approval authority shall not approve new overhead utility lines or service drops merely because compliance with the undergrounding requirements would increase the project cost. Microwave or other wireless backhaul is discouraged when it would involve a separate and unconcealed antenna.
- (M) *Parking; Access.* Any equipment or improvements constructed or installed in connection with any wireless facilities must not reduce any parking spaces below the minimum requirement for the subject property. Whenever feasible, wireless facilities should use existing parking and access rather than construct new parking or access improvements. Any new parking or access improvements should be the minimum size necessary to reasonably accommodate the proposed use.
- (N) *Compliance with Laws.* All wireless facilities must be designed and sited in compliance with all applicable federal, state and local laws, regulations, rules, restrictions and conditions, which includes without limitation the California Building Standards Code, Americans with Disabilities Act, City of Madera General Plan and any applicable specific plan, the Madera Municipal Code and any conditions or restrictions in any permit or other governmental approval issued by any public agency with jurisdiction over the project.
- (O) *Towers and Freestanding Wireless Facilities.* In addition to all other design requirements in this section, the following provisions shall be applied to an application for a tower or other freestanding wireless facility:
 - (1) *Tower-Mounted Equipment.* All tower-mounted equipment must be mounted as close to the vertical support structure as possible to reduce its overall visual profile. Applicants must

mount non-antenna, tower-mounted equipment (including, but not limited to, remote radio units/heads, surge suppressors and utility demarcation boxes) directly behind the antennas to the maximum extent feasible. All tower-mounted equipment, cables and hardware must be painted with flat/neutral colors subject to the approval authority's prior approval.

- (2) *Ground-Mounted Equipment.* All ground-mounted equipment must either be concealed underground, or concealed within an existing or new structure, or other enclosure(s) subject to the approval authority's prior approval. The approval authority may require additional concealment elements as the approval authority finds necessary or appropriate to blend the ground-mounted equipment, enclosure and/or other improvements into the natural and/or built environment.
- (3) *Monopines.* In addition to all other design requirements in this section, the following provisions shall be applied to an application for a monopine:
 - (a) *Shape and Branching.* Monopines shall be gradually tapered from bottom to top to resemble the natural conical pine-tree shape, with shorter branches at the top and wider branches at the bottom. All monopines shall include a "crown" or "topper" installed above the monopole to create a natural point at the top. Branches shall begin at no greater than 15 feet above ground level and maintain at least 3.5 branches per vertical foot when averaged between the bottom-most branch and the highest point on the monopole (excluding any "crown" or "topper" installed above the monopole).
 - (b) *Overall Height.* To maintain a natural appearance, a monopine may not exceed more than 10 feet above the average height of mature natural trees within the vicinity. If the applicant plants new natural trees around the proposed monopine, the approval authority shall consider the future mature height of such trees when evaluating compliance with this standard.
 - (c) *Bark Cladding.* The entire tower above any fence line shall be fitted with faux-pine bark cladding, painted or colored with browns or other appropriate earth tones to mimic natural pine bark.
 - (d) *Equipment Concealment.* All antennas, accessory equipment, cross arms, hardware, cables and other attachments to the monopine must be painted or colored with flat greens, browns or other appropriate earth tones to blend into the faux pine branches. All antennas, remote radio units, tower-mounted amplifiers and other similar equipment larger than one cubic foot shall be fitted with a faux-pine "sock" with faux-pine needles. No tower-mounted equipment shall be permitted to protrude beyond the branch canopy such that it would materially alter the tapered pine shape.
 - (e) *Material Selection and Approval.* All materials and finishes used to conceal the monopine shall be subject to prior approval by the department. Applicants shall use only high-quality materials to conceal the wireless facility. The applicant shall use color-extruded plastics for elements such as the faux-pine needles and faux-bark cladding to prolong the like-new appearance and reduce fading caused by exposure to the sun and other weather conditions.

(P) *Building-Mounted Wireless Facilities.* In addition to all other design requirements in this section, the following provisions shall be applied to an application for a wireless facility installed on a building rooftop or facade:

- (1) *Architectural Integration.* All applicants should, to the extent feasible, propose new non-tower wireless facilities that are completely concealed and architecturally integrated into the existing facade or rooftop features with no visible impacts from any publicly accessible areas at ground level (examples include, but are not limited to, antennas behind existing parapet walls or facades replaced with RF-transparent material and finished to mimic the replaced materials). Alternatively, when integration with existing building features is not feasible, the applicant should propose completely concealed new structures or appurtenances designed to mimic the support structure's original architecture and proportions (examples include, but are not limited to, cupolas, steeples, chimneys and water tanks). Facilities must be located behind existing parapet walls or other existing screening elements to the maximum extent feasible.
- (2) *Rooftop Wireless Facilities.* All rooftop-mounted equipment must be screened from public view with concealment measures that match the underlying structure in proportion, quality, architectural style and finish. The approval authority may approve unscreened rooftop equipment only when it expressly finds that such equipment is effectively concealed due to its low height and/or setback from the roofline.
- (3) *Facade-Mounted Wireless Facilities.* When wireless facilities cannot be placed behind existing parapet walls or other existing screening elements, the approval authority may approve facade-mounted equipment in accordance with this subsection. All facade-mounted equipment must be concealed behind screen walls and mounted as flush to the facade as practicable. The approval authority may not approve "pop-out" screen boxes unless the design is architecturally consistent with the original building or support structure. Except in industrial districts, the approval authority may not approve any exposed facade-mounted antennas, including but not limited to exposed antennas painted to match the facade. To the extent feasible, facade-mounted equipment must be installed on the facade(s) along the building frontage that is the least prominent or publicly visible.

(Q) *Administrative Design Guidelines.* The Director may develop, and from time to time amend, design guidelines consistent with the generally applicable design regulations to clarify the aesthetic and public safety goals and standards in this chapter for city staff, applicants and the public. The design guidelines shall provide more detailed standards to implement the general principals articulated in this chapter and may include specific standards for particular wireless facilities or site locations but shall not unreasonably discriminate between functionally equivalent service providers. The design guidelines, and any subsequent amendments, shall not be effective unless approved by a resolution adopted by the City Council. If a conflict arises between the development standards specified in this chapter and the design guidelines, the development standards shall control.

Section 10-9.11 STANDARD CONDITIONS OF APPROVAL.

(A) *Standard Conditions.* Except as may be authorized in subsection (B), all wireless facilities approved under this chapter or deemed approved by the operation of law shall be automatically subject to the conditions in this subsection (A) and these conditions shall be deemed to be incorporated by reference to any permit approved or deemed approved by law.

- (1) *Permit Term; Approval Applies to Land.* This permit will automatically expire 10 years and one day from its issuance unless California Government Code § 65964(b) authorizes the city to establish a shorter term for public safety or substantial land use reasons. Any other permits or approvals issued in connection with any collocation, modification or other change to this wireless facility, which includes without limitation any permits or other approvals deemed-granted or deemed-approved under federal or state law, will not extend this term limit unless expressly provided otherwise in such permit or approval or required under federal or state law. This permit shall run with the land and shall be valid for the term specified in these conditions of approval. No change in ownership of the wireless facility, the site, or the subject property shall affect the permit term. This permit may not be transferred to another site or property.
- (2) *Permit Renewal.* The permittee may apply for permit renewal not more than one year before this permit expires. The permittee must demonstrate that the subject wireless facility complies with all the conditions of approval associated with this permit and all applicable provisions in this chapter that exist at the time the decision to renew or not renew is rendered. The Director may modify or amend the conditions on a case-by-case basis as may be necessary or appropriate to ensure compliance with this chapter or other applicable law. Upon renewal, this permit will automatically expire 10 years and one day from its issuance.
- (3) *Approved Plans.* Any final construction plans shall incorporate the permit, together with all conditions of approval and the photo simulations associated with the permit (collectively, the “Approved Plans”). The permittee must construct, install and operate the wireless facility in substantial compliance with the Approved Plans. Any alterations, modifications or other changes to the Approved Plans, whether requested by the permittee or required by other departments or public agencies with jurisdiction over the wireless facility, shall be subject to the Director’s prior review and approval. After the Director receives a written request to approve an alteration, modification or other change to the Approved Plans, the Director may refer the request to the approval authority if the Director finds that it substantially deviates from the Approved Plans or implicates a significant or substantial land-use concern.
- (4) *CPUC GO-159A Certification.* Within 15 business days after the city issues this permit, the permittee shall serve copies of California Public Utility Commission notification letters required by CPUC General Order No. 159A to the City Clerk, Director and City Manager.
- (5) *Build-Out Period.* This permit will automatically expire 12 months from the approval date (the “Build-Out Period”) unless the permittee obtains all other permits and approvals required to install, construct and/or operate the approved wireless facility, which includes without limitation any permits or approvals required by any federal, state or local public agencies with jurisdiction over the subject property, support structure or the wireless facility and/or its use. The permittee may request in writing, and the city may grant in writing, one six-month extension if the permittee submits substantial and reliable written evidence demonstrating justifiable cause for such extension. If the Build-Out Period and any extension finally expire, this permit shall be automatically void but the permittee may resubmit a complete application, including all application fees, for the same or substantially similar project.

- (6) *Post-Installation Certification.* Within 60 calendar days after the permittee commences full, unattended operations of a wireless facility approved under this chapter or deemed-approved by law, the permittee shall provide the Director with documentation reasonably acceptable to the Director that the wireless facility has been installed and/or constructed in strict compliance with the approved construction drawings and photo simulations. Such documentation shall include without limitation as-built drawings, GIS data and site photographs.
- (7) *Site Maintenance.* The permittee shall keep the site, which includes without limitation any and all improvements, equipment, structures, access routes, fences and landscape features, in a neat, clean and safe condition in accordance with the approved construction drawings and all conditions in this permit. At all times, the permittee shall keep the site area free from all litter and debris. The permittee shall regularly inspect the wireless facility to determine whether any maintenance is needed. The permittee, at no cost to the city, shall remove and remediate any graffiti or other vandalism on the wireless facility within 48 hours after the permittee receives notice or otherwise becomes aware that such graffiti or other vandalism occurred.
- (8) *Compliance with Laws.* The permittee shall maintain compliance at all times with all federal, state and local statutes, regulations, orders or other rules that carry the force of law ("Laws") applicable to the permittee, the subject property, the wireless facility or any use or activities in connection with the use authorized in this permit, which includes without limitation any Laws applicable to human exposure to RF emissions and any standards, specifications or other requirements identified by the Director (such as, without limitation, those requirements affixed to a building permit). The permittee expressly acknowledges and agrees that this obligation is intended to be broadly construed and that no other specific requirements in these conditions are intended to reduce, relieve or otherwise lessen the permittee's obligations to maintain compliance with all Laws. No failure or omission by the city to timely notice, prompt or enforce compliance with any applicable provision in the Madera Municipal Code, this chapter, any permit, any permit condition or any applicable Laws, shall be deemed to relieve, waive or lessen the permittee's obligation to comply in all respects with same.
- (9) *Adverse Impacts on Other Properties.* The permittee shall use all reasonable efforts to avoid any and all unreasonable, undue or unnecessary adverse impacts on nearby properties that may arise from the permittees or its authorized personnel's construction, installation, operation, modification, maintenance, repair, removal and/or other activities on or about the site and/or wireless facility. The permittee shall not perform or cause others to perform any construction, installation, operation, modification, maintenance, repair, removal or other work that involves heavy equipment or machines except during normal construction work hours authorized by the Madera Municipal Code. The restricted work hours in this condition will not prohibit any work required to prevent an actual, immediate harm to property or persons, or any work during an emergency declared by the city or other state or federal government agency or official with authority to declare an emergency within the city. The Director may issue a stop work order for any activities that violates this condition in whole or in part. If the Director finds good cause to believe that ambient noise from the wireless facility or related equipment violates applicable provisions in the Madera Municipal Code, the Director, in addition to any other actions or remedies authorized by the permit, the Madera Municipal Code or other applicable laws, may require the permittee to commission a noise

study by a qualified professional to evaluate the wireless facility's compliance.

- (10) *Inspections; Emergencies.* The permittee expressly acknowledges and agrees that, upon reasonable prior notice to the permittee, the city's officers, officials, staff, agents, contractors or other designees may enter onto the site and inspect the wireless facility and related equipment and/or improvements to ensure compliance with this permit and all associated conditions. Notwithstanding the prior sentence, the city's officers, officials, staff, agents, contractors or other designees may, but will not be obligated to, enter onto the site area without prior notice to support, repair, disable or remove any improvements or equipment in emergencies or when such improvements or equipment threatens actual, imminent harm to property or persons. The permittee, if present, may observe the city's officers, officials, staff or other designees while any such inspection or emergency access occurs.
- (11) *Contact Information.* At all times relevant to this permit, the permittee shall keep on file with the Director basic contact and site information. This information shall include, but is not limited to, the following: (A) the name, physical address, notice address (if different), direct telephone number and email address for (i) the permittee and, if different from the permittee, the (ii) site operator, (ii) equipment owner, (iii) site manager and (iv) agent for service of process; (B) the wireless facility's site identification number and/or name used by the permittee and, to the extent applicable, site operator, equipment owner and site manager; and (C) a toll-free telephone number to the wireless facility's network operations center where a live person with power-down control over the wireless facility is available 24 hours-per-day, seven days-per-week. Within 10 business days after a written request by the city, the permittee shall furnish the Director with an updated form that includes all the most-current information described in this condition.
- (12) *Indemnification.* The permittee and, if applicable, the property owner upon which the wireless facility is installed shall defend, indemnify and hold harmless the city, City Council and the city's boards, commissions, agents, officers, officials, employees and volunteers (collectively, the "indemnitees") from any and all (A) damages, liabilities, injuries, losses, costs and expenses and from any and all claims, demands, law suits, writs and other actions or proceedings ("claims") brought against the indemnitees to challenge, attack, seek to modify, set aside, void or annul the city's approval of this permit, and (B) other claims of any kind or form, whether for personal injury, death or property damage, that arise from or in connection with the permittee's or its agents', directors', officers', employees', contractors', subcontractors', licensees' or customers' acts or omissions in connection with this permit or the wireless facility. In the event the city becomes aware of any claims, the city will use best efforts to promptly notify the permittee and the private property owner (if applicable) and shall reasonably cooperate in the defense. The permittee expressly acknowledges and agrees that the city shall have the right to approve, which approval shall not be unreasonably withheld, the legal counsel providing the city's defense, and the property owner and/or permittee (as applicable) shall promptly reimburse the city for any costs and expenses directly and necessarily incurred by the city in the course of the defense. The permittee expressly acknowledges and agrees that the permittee's indemnification obligations under this condition are a material consideration that motivates the city to approve this permit, and that such indemnification obligations will survive the expiration, revocation or other termination of this permit.

- (13) *Removal Bond.* Before the city issues any permits required to commence construction in connection with this permit, the permittee shall post a bond issued by a surety and in a form acceptable to the Director in an amount reasonably necessary to cover the cost to remove the improvements and restore all affected areas based on a written estimate from a qualified contractor with experience in wireless facilities or similar infrastructure removal. The written estimate must include the cost to remove all equipment and other improvements, which includes without limitation all antennas, radios, batteries, generators, utilities, cabinets, mounts, brackets, hardware, cables, wires, conduits, structures, shelters, towers, poles, footings and foundations, whether above ground or below ground, constructed or installed in connection with the wireless facility, plus the cost to completely restore any areas affected by the removal work to a standard compliant with applicable laws. In establishing or adjusting the bond amount required under this condition, the Director shall take into consideration any information provided by the permittee regarding the cost to remove the wireless facility to a standard compliant with applicable laws. The performance bond shall expressly survive the duration of the permit term to the extent required to effectuate a complete removal of the subject wireless facility in accordance with this condition.
- (14) *Permit Revocation.* Notwithstanding any revocation procedures in Title X, any permit granted under this chapter or deemed approved by the operation of law may be revoked in accordance with the provisions and procedures in this condition. The Director may initiate revocation proceedings when the Director has information that the facility may not be in compliance with all applicable laws, which includes without limitation, any permit in connection with the facility and any associated conditions with such permit(s). A permit granted under this chapter or deemed approved by the operation of law may be revoked only by the City Council after a duly notice public hearing. Before any public hearing to revoke a permit granted under this chapter or deemed approved by the operation of law, the Director must issue a written notice to the permittee that specifies (A) the facility; (B) the violation(s) to be corrected; (C) the timeframe in which the permittee must correct such violation(s); and (D) that, in addition to all other rights and remedies the city may pursue, the city may initiate revocation proceedings for failure to correct such violation(s). The City Council may revoke a permit when it finds substantial evidence in the written record to show that the facility is not in compliance with any applicable laws, which includes without limitation, any permit in connection with the facility and any associated conditions with such permit(s). Any decision by the City Council to revoke or not revoke a permit shall be final and not subject to any further appeals. Within five business days after the City Council adopts a resolution to revoke a permit, the Director shall provide the permittee with a written notice that specifies the revocation and the reasons for such revocation.
- (15) *Record Retention.* Throughout the permit term, the permittee must maintain a complete and accurate copy of the written administrative record, which includes without limitation the permit application, this permit, the Approved Plans and photo simulations incorporated into this approval, all conditions associated with this approval, any ministerial permits or approvals issued in connection with this approval and any records, memoranda, documents, papers and other correspondence entered into the public record in connection with the permit (collectively, "Records"). If the permittee does not maintain such Records as required in this condition, any ambiguities or uncertainties that would be resolved by inspecting the missing Records will be construed against the permittee. The permittee shall protect all Records from damage from fires, floods and other hazards that may cause deterioration. The permittee may

keep Records in an electronic format; provided, however, that hard copies or electronic Records kept in the city's regular files will control over any conflicts between such city-controlled copies or Records and the permittee's electronic copies, and complete originals will control over all other copies in any form. The requirements in this condition shall not be construed to create any obligation to create or prepare any Records not otherwise required to be created or prepared by other applicable laws. Compliance with the requirements in this condition shall not excuse the permittee from any other similar record-retention obligations under applicable law.

- (16) *Abandoned Facilities.* The wireless facility authorized under this permit shall be deemed abandoned if not operated for any continuous 12-month period. Within 90 days after a wireless facility is abandoned or deemed abandoned, the permittee and/or property owner shall completely remove the wireless facility and all related improvements and shall restore all affected areas to a condition compliant with all applicable laws, which includes without limitation the Madera Municipal Code. In the event that neither the permittee nor the property owner complies with the removal and restoration obligations under this condition within said 90-day period, the city shall have the right (but not the obligation) to perform such removal and restoration with or without notice, and the permittee and property owner shall be jointly and severally liable for all costs and expenses incurred by the city in connection with such removal and/or restoration activities and shall reimburse the city for all such costs 30 calendar days after a written demand for reimbursement and reasonable documentation to support such costs.
- (17) *Landscaping.* The permittee shall replace any landscape features damaged or displaced by the construction, installation, operation, maintenance or other work performed by the permittee or at the permittee's direction on or about the site. If any trees are damaged or displaced, the permittee shall hire and pay for a licensed arborist to select plant and maintain replacement landscaping in an appropriate location for the species. Any replacement tree must be substantially the same size as the damaged tree or as otherwise approved by the city. The permittee shall be responsible to maintain any replacement landscape features for a three-year period after such landscaping has been installed. Notwithstanding anything in this condition to the contrary, the Director may agree in a written agreement signed by the permittee to accept an annual in-lieu fee to perform the maintenance work on the permittee's behalf.
- (18) *Cost Reimbursement.* The permittee acknowledges and agrees that (A) the permittee's request for authorization to construct, install and/or operate the wireless facility will cause the city to incur costs and expenses; (B) the permittee shall be responsible to reimburse the city for all costs incurred in connection with the permit, which includes without limitation costs related to application review, permit issuance, site inspection and any other costs reasonably related to or caused by the request for authorization to construct, install and/or operate the wireless facility; (C) any application fees required for the application may not cover all such reimbursable costs and that the permittee shall have the obligation to reimburse the city for all such costs 30 calendar days after a written demand for reimbursement and reasonable documentation to support such costs; and (D) the city shall have the right to withhold any permits or other approvals in connection with the wireless facility until and unless any outstanding costs have been reimbursed to the city by the permittee.

- (19) *Successors and Assigns.* The conditions, covenants, promises and terms contained in this permit will bind and inure to the benefit of the city and permittee and their respective successors and assigns.
- (20) *Truthful and Accurate Statements.* The permittee acknowledges that the city's approval relies on the written and/or oral statements by permittee and/or persons authorized to act on permittee's behalf. In any matter before the city in connection with the permit or the wireless facility, neither the permittee nor any person authorized to act on permittee's behalf shall, in any written or oral statement, intentionally provide material factual information that is incorrect or misleading or intentionally omit any material information necessary to prevent any material factual statement from being incorrect or misleading.
- (21) *City's Standing Reserved.* The city's grant or grant by operation of law of a permit pursuant to this chapter does not waive, and shall not be construed to waive, any standing by the city to challenge any (A) FCC rules or regulations that interpret the Telecommunications Act and/or Section 6409 of the Spectrum Act or (B) any permit issued pursuant to this chapter.
- (22) *Severable Conditions.* If any provision in these conditions or such provision's application to any person, entity or circumstances is or held by any court with competent jurisdiction to be invalid or unenforceable: (A) such provision or its application to such person, entity or circumstance will be deemed severed from this permit; (B) all other provisions in this permit or their application to any person, entity or circumstance will not be affected; and (C) all other provisions in this permit or their application to any person, entity or circumstance will be valid and enforceable to the fullest extent permitted by law.
- (B) *Modified Conditions.* The City Council authorizes the Director to modify, add or remove conditions to any permit as the Director deems necessary or appropriate to: (1) protect and/or promote the public health, safety and welfare; (2) tailor the standard conditions in subsection (A) to the particular facts and circumstances associated with the deployment; and/or (3) memorialize any changes to the proposed deployment needed for compliance with this chapter, generally applicable health and safety requirements and/or any other applicable laws.

Section 10-9.12 AMORITIZATION.

Any nonconforming wireless facilities in existence at the time this chapter becomes effective must be brought into conformance with this chapter in accordance with the amortization schedule in this chapter. As used in this section, the "fair market value" will be the construction costs listed on the building permit or application for the subject wireless facility and the "minimum years" allowed will be measured from the date on which this chapter becomes effective.

Fair Market Value on Effective Date	Minimum Years Allowed
less than \$50,000.....	5
\$50,000 to \$500,000.....	10

The Director may grant a written extension to a date certain when the wireless facility owner shows (1) a good faith effort to cure non-conformance; (2) the application of this section would violate applicable laws; or (3) extreme economic hardship would result from strict compliance with the amortization schedule. Any extension must be the minimum time period necessary to avoid such extreme economic hardship. The Director may not grant any permanent exemption from this section.

Nothing in this section is intended to limit any permit term to less than 10 years for any permit granted on or after January 1, 2007. In the event that the amortization required in this section would reduce the permit term to less than 10 years for any permit granted on or after January 1, 2007, then the minimum years allowed will be automatically extended by the difference between 10 years and the number of years since the city granted such permit. Nothing in this section is intended or may be applied to prohibit any collocation or modification covered under 47 U.S.C. § 1455(a) on the basis that the subject wireless facility is a legal nonconforming wireless facility.

Section 10-9.13 EXCEPTIONS.

- (A) *Preface.* The provisions in this section establish a procedure by which the city may grant an exception to the standards in this chapter but only to the extent necessary to avoid conflict with applicable federal or state law. When the applicant requests an exception, the approval authority shall consider the findings in subsection (B) in addition to the findings required under § 10-9.08. Each exception is specific to the facts and circumstances in connection with each application. An exception granted in one instance shall not be deemed to create a presumption or expectation that an exception will be granted in any other instance.
- (B) *Findings for an Exception.* The approval authority may grant an exception to any provision or requirement in this chapter only if the approval authority finds that:
 - (1) a denial based on the application's noncompliance with a specific provision or requirement would violate federal law, state law or both; or
 - (2) a provision in this chapter, as applied to the applicant, would violate any rights or privileges conferred on the applicant by federal or state law.
- (C) *Scope of Exception.* If the approval authority finds that an exception should be granted, the exception shall be narrowly tailored so that the exception deviates from this chapter to least extent necessary for compliance with federal or state law.
- (D) *Burden of Proof.* The applicant shall have the burden to prove to the approval authority that an exception should be granted pursuant to this section. The standard of evidence shall be the same as required by applicable federal or state law for the issue raised in the applicant's request for an exception.

Section 10-9.14 PEER AND INDIVIDUAL CONSULTANT REVIEW.

- (A) *Authorization.* The City Council authorizes the Director to, in the Director's discretion, select and retain an independent consultant with specialized training, experience and/or expertise in telecommunications issues satisfactory to the Director in connection any permit application. The Director may request an independent consultant review on any issue that involves specialized or expert knowledge in connection with wireless facilities deployment or permit applications for wireless facilities, which include without limitation: (1) permit application completeness and/or accuracy; (2) pre-construction planned compliance with applicable regulations for human exposure to RF emissions; (3) post-construction actual compliance with applicable regulations for human exposure to RF emissions; (4) whether and to what extent a proposed project will comply with applicable laws; (5) the applicability, reliability and/or sufficiency of any information, analyses or methodologies used by the applicant to reach any conclusions about any issue with the city's discretion to review; and (6) any other issue identified by the Director that requires expert or specialized knowledge. The Director may request that the independent consultant prepare written reports, testify at public meetings, hearings and/or appeals and attend meetings with city staff and/or the applicant.
- (B) *Cost Reimbursement.* Subject to applicable laws, the applicant shall be responsible for the reasonable costs actually incurred by the city in connection with a consultant's review, which may include, without limitation, costs incurred by the consultant to attend and participate in any meetings or hearings related to the application. Within a reasonable time after notice from the Director, the applicant shall deposit funds in an amount equal to the estimated costs for the consultant's services, as determined by the Director. The funds shall be applied to the consultant's invoices as such invoices are approved by the Director. If the deposit exceeds the total costs for the consultant's services, the Director shall promptly return any unused funds to the applicant after the wireless facility has been installed and passes a final inspection. If the reasonable costs for the consultant's services exceed the deposit, the Director shall invoice the applicant for the balance. The city shall not issue any building permit or other construction permit to any applicant with any unpaid invoices.

Section 10-9.15 VIOLATIONS.

Any use or condition caused or permitted to exist in violation of any provision of this chapter shall be and hereby is declared a public nuisance and may be subject to administrative citations as set forth in Title I, Chapter 9 of the Municipal Code, abatement pursuant to §§ 10-3.1601 *et seq.* of this chapter, California Code of Civil Procedure § 731, or any other remedy available to the city.

Section 10-9.16 CONFLICTING PROVISIONS.

To the extent, that any provisions in the Madera Municipal Code Section 10.3.419 are inconsistent with this chapter, this chapter shall prevail.

SECTION 2. *Severability.* If any section, subsection, paragraph, sentence, clause, phrase or term (each a "Provision") in this ordinance or Madera Municipal Code Title X, Chapter 9, or any Provision's application to any person or circumstance, is held illegal, invalid or unconstitutional by a court of competent jurisdiction, all other Provisions not held illegal, invalid or unconstitutional, or such Provision's application to other persons or circumstances, shall not be affected. The City Council declares that it would have

passed this ordinance and Madera Municipal Code Title X, Chapter 9, and each Provision therein, whether any one or more Provisions be declared illegal, invalid or unconstitutional.

SECTION 3. *CEQA.* If this ordinance qualifies as a “project” subject to California Environmental Quality Act (“CEQA”) Guidelines § 15378 and California Public Resources Code § 21065, the City Council finds that, pursuant to CEQA Guidelines § 15061(b)(3), there is no possibility that this project will have a significant impact on the physical environment. This ordinance adds regulations related to wireless facilities in a manner that complies with federal regulations. This ordinance does not directly or indirectly authorize or approve any actual changes in the physical environment. Applications for any new wireless facility or change to an existing wireless facility would be subject to additional environmental review on a case-by-case basis. Accordingly, the City Council finds that this ordinance is exempt from CEQA under the general rule.

SECTION 4. *Effective Date.* This ordinance shall become effective thirty days after its adoption.

SECTION 5. *Publication.* The City Clerk is authorized to cause this ordinance or a summary of this ordinance to be published in a newspaper of general circulation in the City of Madera, within fifteen days after its adoption. If a summary of the ordinance is published, the City Clerk shall cause a certified copy of the full text of the proposed ordinance to be posted at City Hall at least five days prior to the meeting at which the ordinance is adopted and again after the meeting at which it is adopted. The ordinance shall become effective thirty days after its adoption.

* * * * *

ATTACHMENT 2
RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MADERA
ADOPTING A SMALL WIRELESS FACILITIES IN THE PUBLIC RIGHTS-OF-WAY POLICY

RESOLUTION NO. 2022-_____

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MADERA ADOPTING A POLICY
ON SMALL WIRELESS FACILITIES IN THE PUBLIC RIGHTS-OF-WAY**

WHEREAS, pursuant to the California Constitution, Article XI, section 7; California Government Code Section 37100 and other applicable law, the City Council of the City of Madera ("City Council") may make and enforce within its limits all local, police, sanitary and other ordinances, resolutions and other regulations not in conflict with general laws; and

WHEREAS, the federal Telecommunications Act of 1996, 47 U.S.C. § 332(c)(7)(B), preserves local government zoning authority as it relates to location and siting of wireless communication facilities, but limits local regulations in three key ways: (1) a local ordinance may not unreasonably discriminate among providers of functionally equivalent services; (2) a local ordinance may not prohibit or effectively prohibit service; and (3) a local ordinance may not regulate based on environmental impacts from radio frequency emissions; and

WHEREAS, the federal Telecommunications Act of 1996, 47 U.S.C. § 253 prohibits state and local requirements that prohibit or effectively prohibit any entity's ability to provide any telecommunication service but preserves the authority of state and local governments to manage the public right-of-way on a nondiscriminatory basis; and

WHEREAS, Section 7901 of the California Public Utilities Code grants telephone corporations the limited right to use the public right-of-way to the extent necessary to provide services to their customers in a manner that does not incommode the public's use of the public right-of-way; and

WHEREAS, Section 7901.1 of the California Public Utilities Code bolsters the rights reserved to California local governments under Section 7901 and affirms local authority to manage, on a nondiscriminatory basis, the time, place and manner in which telephone corporations access the public right-of-way and deploy their facilities; and

WHEREAS, on September 27, 2018, the FCC adopted a *Declaratory Ruling and Third Report and Order*, FCC 18-133 (the "Small Cell Order"), in connection with two informal rulemaking proceedings entitled *Accelerating Wireless Broadband Deployment by Removing Barriers to Infrastructure Investment*, WT Docket No. 17-79, and *Accelerating Wireline Broadband Deployment by Removing Barriers to Infrastructure Investment*, WC Docket No. 17-84. The Small Cell Order set forth limitations on state and local government regulation of small cell wireless facilities that are placed on vertical infrastructure such as utility poles and street light standards located in the public rights-of-way. The Small Cell order: (1) limited the level of local permitting and discretion; (2) established "shot clock" rules (e.g., time limits and deadlines) for processing action on local permits; and (3) limited the fees that can be charged for the facilities. The Small Cell Order further established that any aesthetic regulations and fees required for processing small wireless facilities be published in advance; and

WHEREAS, on October 19, 2022 the City Council adopted Ordinance No. _____ adding Chapter 9 to Title X of the Madera Municipal Code relating to wireless facilities; and

WHEREAS, Ordinance No. _____ provides that all small wireless facilities, as defined by the FCC in 47 C.F.R. § 1.6002(l), proposed in the public rights-of-way are subject to a City Council policy adopted pursuant to a City Council resolution.

NOW THEREFORE, THE CITY COUNCIL OF THE CITY OF MADERA DOES RESOLVE AS FOLLOWS:

SECTION 1. Findings. The City Council finds that: (a) the facts set forth in the recitals in this Resolution are true and correct and incorporated by reference; (b) the recitals constitute findings in this matter and, together with the staff report, other written reports, public testimony and other information contained in the record, are an adequate and appropriate evidentiary basis for the actions taken in this Resolution; (c) the provisions in this Resolution are consistent with the General Plan, Municipal Code and applicable federal and state law; and (d) this Resolution will not be detrimental to the public interest, health, safety, convenience or welfare.

SECTION 2. Policy Adopted. The City Council hereby adopts the City Council Policy on Small Wireless Facilities in the Public Rights-of-Way attached hereto and incorporated herein by this reference at **Exhibit A** (the “Policy”).

SECTION 3. Severability. If any section, subsection, paragraph, sentence, clause, phrase or term (each a “Provision”) in this Resolution or Policy, or any Provision’s application to any person or circumstance, is held illegal, invalid or unconstitutional by a court of competent jurisdiction, all other Provisions not held illegal, invalid or unconstitutional, or such Provision’s application to other persons or circumstances, shall not be affected. The City Council declares that it would have passed this Resolution and Policy, and each Provision therein, whether any one or more Provisions be declared illegal, invalid or unconstitutional.

SECTION 4. CEQA. If this Resolution qualifies as a “project” subject to California Environmental Quality Act (“CEQA”) Guidelines § 15378 and California Public Resources Code § 21065, the City Council finds that, pursuant to CEQA Guidelines § 15061(b)(3), there is no possibility that this project will have a significant impact on the physical environment. This Resolution adopts the Policy in a manner that complies with federal regulations. This Resolution does not directly or indirectly authorize or approve any actual changes in the physical environment. Applications for any new wireless facility or change to an existing wireless facility would be subject to additional environmental review on a case-by-case basis. Accordingly, the City Council finds that this Resolution is exempt from CEQA under the general rule.

SECTION 5. Effective Date. This Resolution shall not become effective unless and until Ordinance No. _____ becomes effective.

SECTION 6. Publication. The City Clerk is hereby directed to cause this Resolution or summary of this Resolution to be posted and/or published in the manner required by applicable law.

Attachments:

Exhibit A – City Council Policy on Small Wireless Facilities in the Public Rights-of-Way

* * * * *

EXHIBIT A OF ATTACHMENT 2
CITY COUNCIL POLICY ON SMALL WIRELESS FACILITIES
IN THE PUBLIC RIGHTS-OF-WAY POLICY

CITY OF MADERA	POLICY NO.
Adopted:	
Small Wireless Facilities in the Public Rights-of-Way	

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1. PURPOSE AND INTENT

- (a) The City of Madera (the “City”) intends this policy to establish reasonable, uniform and comprehensive standards and procedures for small wireless facilities deployment, construction, installation, collocation, modification, operation, relocation and removal within the city’s territorial boundaries, consistent with and to the extent permitted under federal and California state law. The standards and procedures contained in this policy are intended to, and should be applied to, protect and promote public health, safety and welfare, and balance the benefits that flow from robust, advanced wireless services with the city’s local values, which include without limitation the aesthetic character of the city, its neighborhoods and community. This policy is also intended to reflect and promote the community interest by (1) ensuring that the balance between public and private interests is maintained; (2) protecting the city’s visual character from potential adverse impacts and/or visual blight created or exacerbated by small wireless facilities and related communications infrastructure; (3) protecting and preserving the city’s environmental resources; (4) protecting and preserving the city’s public rights-of-way and municipal infrastructure located within the city’s public rights-of-way; and (5) promoting access to high-quality, advanced wireless services for the city’s residents, businesses and visitors.
- (b) This policy is intended to establish clear procedures for application intake and completeness review. The City Council finds that chronically incomplete applications significantly contribute to unreasonable delay and create barriers to infrastructure deployment. Chronically incomplete applications unfairly prejudice other applicants who may be prepared to submit complete applications for infrastructure in the same or substantially the same location. Chronically incomplete applications also unfairly prejudice the city’s ability to act on such applications within the “presumptively reasonable” timeframes established by the FCC. The provisions in this policy afford applicants and city staff opportunities for direct, real-time communication about completeness issues to mitigate incomplete applications prior to submittal. The provisions in this policy also encourage applicants to timely respond to incomplete notices.
- (c) This policy is not intended to, nor shall it be interpreted or applied to: (1) prohibit or effectively prohibit any personal wireless service provider’s ability to provide personal wireless services; (2) prohibit or effectively prohibit any entity’s ability to provide any telecommunications service, subject to any competitively neutral and nondiscriminatory rules, regulations or other legal requirements for rights-of-way management; (3) unreasonably discriminate among providers of functionally equivalent personal wireless services; (4) deny any request for authorization to place, construct or modify personal wireless service facilities on the basis of environmental effects of radio frequency emissions to the extent that such wireless facilities comply with the FCC’s regulations concerning such emissions; (5) prohibit any collocation or modification that the city may not deny under federal or California state law; (6) impose any unreasonable, discriminatory or

anticompetitive fees that exceed the reasonable cost to provide the services for which the fee is charged; or (7) otherwise authorize the city to preempt any applicable federal or California law.

2. DEFINITIONS

All references to codified statutes, regulations or other rules shall be deemed to refer to such statutes, regulations or other rules as they may be amended or superseded.

- (a) **“Accessory Equipment”** means equipment other than antennas used in connection with a small wireless facility. The term includes “transmission equipment” as defined by the FCC in 47 C.F.R. § 1.6100(b)(8).
- (b) **“Amateur Station”** means the same as defined by the FCC in 47 C.F.R. § 97.3, which defines the term as “a station in an amateur radio service consisting of the apparatus necessary for carrying on radiocommunications.” This term includes amateur radio antennas and related facilities used for amateur radio services.
- (c) **“Antenna”** means same as defined by the FCC in 47 C.F.R. § 1.6002(b).
- (d) **“Approval Authority”** means the city official or body responsible for application review and vested with authority to approve or deny such applications.
- (e) **“Arterial”** means a street which provides the principle network for traffic flow in the community, connecting areas of major activity to each other and to state highways and important County roads. Arterials will generally include up to four lanes (two in each direction), although total widths of six lanes may be appropriate in some locations. To reduce traffic interruptions and improve safety, direct access via driveways is generally not permitted. The term “arterial” as used in this policy is defined in the Circulation and Infrastructure Element of the General Plan at Policy CI-3. For purposes of this policy, the streets in the Madera Loop and state highways over which the city exercises jurisdiction qualify as arterials.
- (f) **“City Engineer”** means the city of Madera City Engineer or the City Engineer’s designee.
- (g) **“Collector”** means a street which provides access and movement between residential, commercial, and industrial areas. The primary function of collector streets is to collect and distribute traffic between local streets and the arterial roadway system. Collectors will generally include up to four lanes (two in each direction). To reduce traffic interruptions and improve safety, direct access via driveways is generally not permitted. The term “collector” as used in this policy is defined in the Circulation and Infrastructure Element of the General Plan at Policy CI-3.
- (h) **“Collocation”** means the same as defined by the FCC in 47 C.F.R. § 1.6002(g).

- (i) **“CPUC”** means the California Public Utilities Commission established in the California Constitution, Article XII, § 5, or its duly appointed successor agency.
- (j) **“Decorative Pole”** means any pole that includes decorative or ornamental features, design elements and/or materials for aesthetic purposes.
- (k) **“Director”** means the Community Development Director of the city of Madera or the Director’s designee.
- (l) **“Eligible Facilities Request”** means the same as defined in 47 U.S.C. § 1455(a)(2), and as interpreted by the FCC in 47 C.F.R. § 1.6100(b)(3).
- (m) **“FCC”** means the “Federal Communications Commission”, as constituted by the Communications Act of 1934, Pub. L: 73-416, 48 Stat. 1064, codified as 47 U.S.C. §§ 151 *et seq.* or its duly appointed successor agency.
- (n) **“Historic Resource”** means any prehistoric or historic district, site, building, structure or object included in, or eligible for inclusion in, the National Register of Historic Places, the California Register of Historical Resources or any “historic resource” as listed in Table HC-A of the General Plan. The term includes artifacts, records and remains related to or located within such properties. The term also includes properties with traditional religious and/or cultural importance to any Native American tribe.
- (o) **“Local/Branch Collector”** means a single lane street which collects traffic from local streets and feed into the collector and arterial system. Design speeds are lower than for Collector roadways (potentially through the use of meanders, roundabouts, narrower road sections, etc.). To reduce traffic interruptions and improve safety, direct access via driveways is generally not permitted. The term “local/branch collector” as used in this policy is defined in the Circulation and Infrastructure Element of the General Plan at Policy CI-3.
- (p) **“Local Street”** means a roadway which provides access to individual homes and businesses. Local streets have one lane in each direction. Local streets are shown on the Circulation Map for informational purposes only; the General Plan does not define the desired alignments of local streets. The term “local street” as used in this policy is defined in the Circulation and Infrastructure Element of the General Plan at Policy CI-3.
- (q) **“Non-Pole Concealment Structure”** means a structure within the public rights-of-way, other than a pole, that can be adapted (either in its current form or through a replacement) to conceal antennas and/or accessory equipment for small wireless facilities. Examples may include, without limitation, monuments, kiosks, bus shelters and other street furniture.

- (r) **"OTARD"** means any "over-the-air reception device" subject to 47 C.F.R. §§ 1.4000 *et seq.*, which generally includes satellite television dishes and certain fixed wireless antennas not greater than one meter in diameter.
- (s) **"Personal Wireless Service Facilities"** mean the same as defined in 47 U.S.C. § 332(c)(7)(C)(ii).
- (t) **"Personal Wireless Services"** mean the same as defined in 47 U.S.C. § 332(c)(7)(C)(i).
- (u) **"Prohibited Support Structure"** means any support structure on which the city prohibits the deployment of wireless facilities, except when authorized as a pre-approved design pursuant to this policy. Prohibited support structures include decorative poles; traffic signal poles, cabinets or related structures; new, nonreplacement wood poles; and any utility pole scheduled for removal within 18 months from the time the Director acts on the application for such pole.
- (v) **"Public Right-of-Way"** or **"Public Rights-of-Way"** means land or an interest in land which by deed, conveyance, agreement, easement, dedication, usage or process of law is reserved for or dedicated to or open to the use by the general public for road or highway purposes. The term does not include private or public utility easements unless such easement is reserved for or dedicated to or open to the use by the general public for road or highway purposes.
- (w) **"RF"** means radio frequency.
- (x) **"Section 6409"** means Section 6409(a) of the Middle-Class Tax Relief and Job Creation Act of 2012, Pub. L. No. 112-96, 126 Stat. 156, codified as 47 U.S.C. § 1455(a).
- (y) **"Shot Clock"** means the presumptively reasonable time defined by the FCC in which a state or local government must act on an application or request for authorization to place, construct or modify personal wireless service facilities.
- (z) **"Small Wireless Facility"** means same as defined by the FCC in 47 C.F.R. § 1.6002(l).

3. APPLICABILITY

- (a) **General.** This policy applies to all requests for the city's regulatory authorization to construct, install, operate, collocate, modify, relocate, remove or otherwise deploy small wireless facilities within the public rights-of-way within the city's territorial and jurisdictional boundaries, unless expressly exempted pursuant to this section 3.

- (b) **Small Wireless Facilities on City Property.** This policy applies to permit applications, submitted to the city in its regulatory capacity, for small wireless facilities on property or structures owned or controlled by the city; provided, however, that this policy does not govern whether or under what terms and conditions the city, in its proprietary capacity as the property or structure owner, would lease, license or otherwise allow a small wireless facility on such property or structures.
- (c) **Eligible Facilities Requests.** Notwithstanding anything in this policy to the contrary, this policy shall not be applicable to eligible facilities requests and/or other applications submitted for approval pursuant to Section 6409.
- (d) **Other Exemptions.** Notwithstanding anything in this policy to the contrary, this policy shall not be applicable to the following:
 - (1) wireless facilities operated by the city for public purposes;
 - (2) small wireless facilities installed completely indoors or within venues and used to extend personal wireless services into a business or subscriber's private residence, such as a femto cell or indoor DAS;
 - (3) OTARD antennas;
 - (4) antennas and related transmission equipment used in connection with a duly authorized amateur station; or
 - (5) wireless facilities or other transmission equipment owned and operated by CPUC-regulated electric companies for use in connection with electrical power, generation, transmission and distribution facilities subject to CPUC General Order 131-D.

4. REQUIRED PERMITS AND APPROVALS

- (a) **Site Plan Review.** All small wireless facilities shall require a site plan review subject to the Director's prior review and approval.
- (b) **Other Permits and Regulatory Approvals.** In addition to a site plan review, the applicant must obtain all other permits and regulatory approvals as may be required by any other federal, state or local government agencies, which includes without limitation any ministerial permits and/or other approvals issued by other city departments or divisions. All applications for ministerial permits submitted in connection with a proposed small wireless facility must contain a valid site plan approval issued by the city for the proposed small wireless facility. Any application for any ministerial permit(s) submitted without such site plan approval may be denied without prejudice. Any site plan approval granted under this policy shall remain subject to all lawful conditions and/or legal requirements associated with

such other permits or approvals. Furthermore, and to avoid potential confusion, an exemption from the site plan review requirement under section 3(d) does not exempt the same wireless facilities from any other permits or approvals required, which includes without limitation any ministerial permits from the city.

5. ADMINISTRATIVE ORDERS AND REGULATIONS

In addition to the requirements in this policy, the Director may adopt such orders or regulations as the Director deems necessary or appropriate to protect and maintain public health, safety, welfare and convenience. All small wireless facilities must conform to all applicable orders and regulations issued by the Director, unless the Director, in the Director's discretion, grants a prior written waiver to deviate, in whole or in part, any such order or regulation. Waivers by the Director shall be considered and approved or denied on a competitively neutral and nondiscriminatory basis. The Director shall develop and publish guidelines to implement the waivers authorized by this section.

6. PERMIT APPLICATIONS

- (a) **Application Required.** The Director shall not approve any requests for authorization to construct, install, operate, collocate, modify, relocate, remove or otherwise deploy small wireless facilities except upon a complete and duly filed application consistent with this section and any other written rules or requirements the city or the Director may establish from time to time in any publicly-stated format.
- (b) **Application Fee.** The applicant shall submit the applicable permit application fee adopted by City Council resolution. Batched applications must include the permit application fee for each small wireless facility in the batch. If no permit application fee has been adopted, then the applicant must submit a signed written statement that acknowledges that the applicant will be required to submit a deposit estimated by the Director to reimburse the city for its reasonable costs incurred in connection with the application. Should the deposit be inadequate an additional deposit shall be required. If the deposit exceeds the actual costs, the difference will be returned to the applicant.
- (c) **Application Content.** All applications for a permit must include all the information and materials required by the Director for the application. The City Council authorizes the Director to develop, publish and from time to time update or amend permit application requirements, forms, checklists, guidelines, informational handouts and other related materials that the Director finds necessary, appropriate or useful for processing any application governed under this policy. All such requirements must be in written form and publicly stated to provide applicants with prior notice. Notwithstanding anything in this policy to the contrary, all applications shall, at a minimum, require the applicant to demonstrate that the proposed project will be in planned compliance with all applicable health and safety laws, regulations or other rules, which includes without limitation all building codes, electric codes and all FCC rules for human exposure to RF emissions.

- (d) **Application Submittal.** Unless the Director establishes an alternative submittal procedure pursuant to section 5, all applications must be submitted to the city during at a pre-scheduled appointment. Applicants may submit one application per small wireless facility up to a maximum of five separate applications for small wireless facilities together as a batched application per appointment but may schedule successive appointments for multiple applications whenever feasible and not prejudicial to other applicants. The city shall use reasonable efforts to provide the applicant with an appointment within five working days after the city receives a written request. Any application received without an appointment, whether delivered in-person, by mail or through any other means, will not be considered duly filed.
- (e) **Optional Pre-Submittal Conference.** The city shall provide prospective applicants with the opportunity to schedule and attend a pre-submittal conference with city staff. The city encourages pre-submittal conferences for all applications. The pre-submittal conference is intended to streamline the review process through informal discussion that includes, without limitation, the appropriate project classification and review process, any latent issues in connection with the proposed or existing small wireless facility, such as compliance with generally applicable rules for public health and safety; potential concealment issues or concerns (if applicable); coordination with other city departments and/or divisions responsible for application review; and application completeness issues. To mitigate unnecessary delays due to application incompleteness, applicants are encouraged (but not required) to bring any draft applications or other materials so that city staff may provide informal feedback and guidance about whether such applications or other materials may be incomplete or unacceptable. The city shall use reasonable efforts to provide the applicant with an appointment within five working days after receiving a written request and any applicable fee or deposit to reimburse the city for its reasonable costs to provide the services rendered in the pre-submittal conference.
- (f) **Optional Community Meetings.** The city encourages, but does not require, applicants to schedule, notice, arrange, and attend a voluntary pre-submittal community meeting with all interested members of the public. This voluntary community meeting does not cause the shot clock to begin and is intended to give applicants the opportunity to hear from members of the public regarding the proposed deployment. Applicants should schedule any voluntary community meetings at times and in locations that are conducive to maximizing public participation. Applicants are encouraged (but not required) to bring any draft applications, plans, maps, presentations or other materials to facilitate the public's understanding of the applicant's proposal. Applicants are also encouraged (but not required) to maintain minutes or a comment log of the community meeting. The city seeks to encourage dialogue that may allow applicants to address areas of concern and may lessen the likelihood of appeals of the Director's decision to the City Manager by any interested person or entity. Community meetings may be conducted before or after submittal.

- (g) **Applications Deemed Withdrawn.** To promote efficient review and timely decisions, any application governed under this policy will be automatically deemed withdrawn by the applicant when the applicant fails to tender a substantive response to the city within 90 calendar days after the city deems the application incomplete in a written notice to the applicant. The Director, in the Director's discretion, may grant a written extension for up to an additional 30 calendar days when the applicant submits a written request prior to the 90th day that shows good cause to grant the extension. Good cause for an extension shall include, without limitation, delays due to circumstances outside the applicant's reasonable control.

7. PUBLIC NOTICE

Within five calendar days after the Director acts on an application governed under this policy or before the shot clock expires (whichever occurs first), the Director shall send a written notice to the applicant and any interested person that requests notice of the decision. If the Director denies the application (with or without prejudice), the written notice to the applicant must contain the reasons for the denial. All decision notices shall include instructions for how and when to file an appeal.

8. APPROVALS; DENIALS; APPEALS

- (a) **Initial Administrative Decision.** The Director shall approve, conditionally approve or deny a complete and duly filed permit application without a public hearing. To allow interested persons with a meaningful opportunity to appeal the Director's decision, the Director shall act within 29 shot clock days from a duly filed application.
- (b) **Required Findings for Approval.** The Director (or the City Manager on appeal) may approve or conditionally approve an application for a site plan review only when it makes all the following findings:
- (1) the proposed project qualifies as a "small wireless facility" as defined by the FCC;
 - (2) the proposed project complies with the location standards in section 9;
 - (3) the proposed project complies with the design standards in section 10;
 - (4) the proposed project meets the required findings for site plan review under Madera Municipal Code § 10-3.4.0106;
 - (5) the applicant has shown that it can obtain any wireline communications and electrical service connections necessary to operate the small wireless facility and the project plans show the proposed route for all such connections between their source and the small wireless facility;

- (6) the applicant has demonstrated that the proposed project will be in planned compliance with all applicable FCC regulations and guidelines for human exposure to RF emissions; and
- (7) all public notices required for the application have been given.
- (c) **Conditional Approvals; Denials without Prejudice.** Subject to any applicable federal or state laws, nothing in this policy is intended to limit the Director's ability to conditionally approve or deny without prejudice any application governed under this policy as may be necessary or appropriate to protect and promote the public health, safety and welfare, and to advance the goals or policies in the general plan and any applicable specific plan, the Madera Municipal Code and/or this policy.
- (d) **Appeals.** Any interested person may appeal the Director's decision to the City Manager. The appeal must be filed with the City Clerk within seven calendar days from the date of the Director's decision. The appeal must contain a short and plain statement about the basis for the appeal, which may be supplemented after the notice period has expired but before the appeal hearing. Appeals from an approval shall not be permitted when based on reasons otherwise compliant under this policy, including appeals based on duly adopted preapproved designs or the environmental effects from RF emissions that are compliant with applicable FCC regulations and guidelines. The City Manager shall hear appeals *de novo* and issue the applicant and any person entitled to notice a written decision within five calendar days after the appeal hearing. If the City Manager denies the application on appeal (whether by affirmation or reversal), the written notice shall contain the reasons for the decision. The City Manager's decision shall be final and not subject to any further appeals.

9. LOCATION STANDARDS

- (a) **Locations.** To assist applicants, staff and the approval authority understand and respond to the community's aesthetic preferences and values, this section describes preferred and discouraged locations for small wireless facilities in the public rights-of-way.
 - (1) **Preferred Locations.** The city requires small wireless facilities in the public rights-of-way to be installed at locations, ordered from most preferred to least preferred, as follows:
 - (A) industrial zones along any road classification (arterial, collector, local/branch collector, local street);
 - (B) commercial zones along any road classification (arterial, collector, local/branch collector, local street);
 - (C) other non-residential zones along arterials or collectors;

- (D) other non-residential zones along local/branch collector or local streets;
 - (E) Public Facilities zone not directly adjacent to any residential zones.
- (2) **Discouraged Locations.** Applicants shall not propose to install small wireless facilities in a discouraged location unless no alternative site in a preferred location would be technically feasible. If all preferred locations are technically infeasible, the applicant shall use the least-discouraged location. The following locations are discouraged, and ordered from most discouraged to least discouraged:
- (A) any location within 100 feet of a historically designated property or resource.
 - (B) any location within 100 feet of a residential zone or within 100 feet of a residence;
 - (C) residential zones along local streets;
 - (D) residential zones along local/branch collectors;
 - (E) residential zones along collectors;
 - (F) residential zones along arterials;
 - (G) Public Facilities zone located directly adjacent to residential zones.
- (3) **Additional Location Standards.** In addition to all other standards in this section 9, small wireless facilities and all associated antennas, accessory equipment or improvements shall:
- (A) be placed as close as possible to alignment with the property line that divides two parcels abutting the public rights-of-way;
 - (B) not be placed directly in front of any ground-level door;
 - (C) not be placed directly in front of any first- or multi -story window;
 - (D) not be placed within any clear zone at any intersections;
 - (E) not be placed in any location that obstructs view lines for traveling vehicles, bicycles and pedestrian;
 - (F) not be placed in any location that obstructs views of any traffic signs or signals;

- (G) not be placed in any location that obstructs illumination patterns for existing streetlights;
 - (H) for new, non-replacement support structures, be placed at least 50 feet from any streetlight, utility pole or other similar support structure.
- (b) **Support Structures.** To assist applicants, staff and the approval authority understand and respond to the community's aesthetic preferences and values, and to mitigate unnecessary obstructions in the public rights-of-way, this section 9(b) describes preferred and prohibited support structures.
- (1) **Support Structure Preferences.** The city requires small wireless facilities in the public rights-of-way to be installed on support structures, ordered from most preferred to least preferred, as follows:
- (A) existing or replacement non-pole concealment structures, such as monuments, kiosks, bus shelters and other street furniture;
 - (B) existing or replacement streetlights;
 - (C) existing or replacement utility poles;
 - (D) new, non-replacement streetlights;
 - (E) new, non-replacement non-pole concealment structures.
- (2) **Prohibited Support Structures.** Small wireless facilities shall not be installed on the following support structures:
- (A) traffic signals;
 - (B) decorative poles;
 - (C) temporary or non-replacement wood poles.
- (c) **Replacement Pole Locations.** All replacement poles must be: (1) located as close to the removed pole's location as possible; (2) aligned with the other existing poles along the public rights-of-way; and (3) compliant with all applicable standards and specifications issued by the Director, which may include, without limitation, requirements related to aesthetics, materials and safety.
- (d) **Encroachments Over Private Property.** No small wireless facility, or any antenna, accessory equipment or other improvements associated with a small wireless facility, may extend onto or over any private or public property outside the public rights-of-way without the property owner's prior written consent.

10. DESIGN STANDARDS

- (a) **General Design Standards.** The standards in this section 10(a) shall be applicable to all small wireless facilities in the public rights-of-way:
- (1) **Concealment.** All small wireless facilities must be stealth to the maximum extent feasible with design elements and techniques that mimic or blend with the underlying support structure, surrounding environment and adjacent uses.
 - (2) **Overall Height.** No small wireless facility may extend more than six feet above the support structure, plus any minimum separation between the antenna and other pole attachments required by applicable health and safety regulations.
 - (3) **Finishes.** All exterior surfaces shall be painted, colored and/or wrapped in flat, nonreflective hues that match the underlying support structure or blend with the surrounding environment. All surfaces shall be treated with graffiti-resistant sealant. All finishes shall be subject to the approval authority's prior approval.
 - (4) **Noise.** All small wireless facilities must be compliant with all applicable noise regulations. Equipment likely to create noise, such as cooling fans, are strongly discouraged except when placed in an underground vault. The approval authority may require the applicant to incorporate appropriate noise-baffling materials and/or noise-mitigation strategies to avoid any ambient noise from equipment reasonably likely to exceed the applicable noise regulations.
 - (5) **Trees and Landscaped Plants.** Small wireless facilities shall not cause ground disturbance within any tree drip line. Small wireless facilities may not displace any existing tree or landscape features. All small wireless facilities proposed to be placed in a landscaped area in the public rights-of-way must include landscape features (which may include, without limitation, shrubs and ground cover) and a landscape maintenance plan. The approval authority may require additional landscape features for small wireless facilities proposed to be placed in a landscaped area in the public rights-of-way to screen the small wireless facility from public view, avoid or mitigate potential adverse impacts on adjacent properties or otherwise enhance the concealment required under this policy. All plants proposed or required must be native and/or drought-resistant and be consistent with any landscaping requirements for the underlying zone.
 - (6) **Security Measures.** To prevent unauthorized access, theft, vandalism, attractive nuisance or other hazards, reasonable and appropriate security measures, such as locks, removable climbing pegs and anti-climbing devices, may be approved. Security measures shall be designed and implemented in a manner that enhances or contributes to the overall concealment, and the approval authority may condition approval on additional concealment elements to mitigate any aesthetic impacts, which may include, without limitation,

additional landscape features. The approval authority shall not approve barbed wire, razor ribbon, electrified fences or any similar security measures. Cabinets and equipment shrouds must be kept secured to prevent unauthorized access. Alarm systems shall not include any audible sirens or other sounds.

- (7) **Secondary Power Sources.** The approval authority may approve secondary or backup power sources on a case-by-case basis. The approval authority shall not approve any permanent diesel generators within the public rights-of-way or at any other location or within 200 feet from any residence; provided, however, the approval authority may approve sockets or other connections used for temporary backup generators.
- (8) **Lights.** All new or replacement street lights and street light fixtures must be aimed and shielded so that their illumination effects are directed downwards and confined within the public rights-of-way in a manner consistent with any other standards and specifications as identified or required by the approval authority. Small wireless facilities may not include exterior lights other than as may be required under Federal Aviation Administration, FCC or other applicable federal or state governmental regulations. All antennas, accessory equipment and other improvements with indicator, status or other lights must be installed in locations and within enclosures that eliminate illumination impacts visible from publicly accessible areas. Any light beacons or lightning arresters shall be included in the overall height calculation.
- (9) **Signage; Decals; Advertisements.** All small wireless facilities must include signage that accurately identifies the equipment owner/operator, the owner/operator's site name or identification number and a toll-free number to the owner/operator's network operations center. Small wireless facilities may not bear any other signage, decals or advertisements unless expressly approved by the approval authority, required by law or recommended under FCC or other federal governmental agencies for compliance with RF emissions regulations.
- (10) **Parking.** Small wireless facilities and any associated accessory equipment or other improvements shall not reduce any street parking spaces within the public rights-of-way.
- (11) **Fire Safety.** All small wireless facilities shall include (1) a power shut off immediately accessible to fire service personnel, through a Knox box or similar rapid-access system approved by the fire safety authority, upon arrival at the scene of a fire and/or anticipated power surge due to power being turned off or on for any reason; (2) surge protection devices capable of mitigating a direct or partial direct lightning discharge; (3) surge protection devices capable of mitigating significant electrical disturbances that may enter the small wireless facility via conductive cables; (4) at least one-hour fire resistant interior surfaces to be used in the composition of all structures; and (5) monitored automatic fire

notification and suppression systems for all small wireless facilities as approved by the applicable fire safety authority.

- (12) **Compliance with Laws.** All small wireless facilities must be designed and sited in compliance with all applicable federal, state and local laws, regulations, rules, restrictions and conditions, which includes without limitation the California Building Standards Code, Americans with Disabilities Act, general plan and any applicable specific plan, the Madera Municipal Code and any conditions or restrictions in any permit or other governmental approval issued by any public agency with jurisdiction over the project.
- (b) **Antennas.** In addition to all generally applicable design standards in section 10(a), this Section 10(b) sets out specific preferences and standards for antennas.
 - (1) **Placement.** Antennas should be placed above the pole, unless the approval authority finds that an alternative placement results in an aesthetically superior design based on site-specific circumstances.
 - (2) **Stealth/Concealment.** All antennas and associated cables, jumpers, wires, mounts, masts, brackets and other connectors and hardware must be installed within a unified shroud or “radome” to the extent technically feasible. Antenna shrouds must be visually consistent with the underlying pole’s design, color and scale. Antenna shrouds placed above a pole must taper down to the point where the shroud and pole connect to conceal the cables below the antennas and create a smooth transition into the pole. All antenna mounting posts shall be trimmed so that the post does not extend above the antenna. For antennas approved to be affixed to the side of the pole within a shroud, all cables must be concealed within the shroud and extension arm to create a smooth transition into the pole, to the maximum extent feasible, or back into the external conduit on the pole, if any.
 - (3) **Volume.** Any individual antenna (including its concealment) shall not exceed three cubic feet in volume. The cumulative limit for all antenna (including their concealment) on a single small wireless facility shall not exceed: (A) three cubic feet for small wireless facilities within 250 feet from a residential dwelling; or (B) six cubic feet for small wireless facilities in all other locations.
- (c) **Accessory Equipment.** In addition to all generally applicable design standards in Section 10(a), this Section 10(c) sets out specific preferences and standards for accessory equipment.
 - (1) **Placement Preferences.** This subsection describes the city’s general preferences for accessory equipment placement and configuration on or around the pole. Applicants shall propose small wireless facilities in compliance with these preferences to the maximum extent feasible. The approval authority may approve a lesser-preferred configuration for the accessory equipment

when the applicant demonstrates that more-preferred configurations are technically infeasible, or the approval authority finds that a lesser-preferred configuration is more consistent with existing poles and the surrounding environment. The city generally prefers accessory equipment to be placed, ordered from most preferred to least preferred, as follows:

- (A) within an environmentally controlled underground equipment vault;
 - (B) within an architecturally integrated enclosure at the base of the pole;
 - (C) within a shroud mounted above ground level on the pole;
 - (D) within a separate surface-mounted equipment cabinet.
- (2) **Volume.** The cumulative limit for all accessory equipment (including their concealment) on a single small wireless facility shall not exceed: (A) 10 cubic feet for small wireless facilities within 250 feet from a residential dwelling; or (B) 17 cubic feet for small wireless facilities in all other locations. These limits shall not be applicable to undergrounded accessory equipment.
- (3) **Undergrounded Equipment.** Consistent with CPUC and local policies, the city strongly prefers undergrounded accessory equipment whenever possible because it mitigates unnecessary physical obstructions and aesthetic harm caused by unsightly infrastructure in the public rights-of-way. This section 10(c)(3) sets out specific preferences and standards for undergrounded accessory equipment.
- (A) **When Required.** Accessory equipment (other than any electric meter (where permitted) and an emergency disconnect switch) shall be placed underground when proposed in any (i) underground utility district; (ii) any area where all existing utilities are substantially undergrounded; or (iii) any location where the approval authority finds substantial evidence that the additional above-ground accessory equipment would incommode the public's uses in the public rights-of-way.
 - (B) **Equipment Vaults.** All undergrounded accessory equipment must be installed in an environmentally controlled vault that is load-rated to meet the city's standards and specifications. Underground vaults located beneath a sidewalk must be constructed with a slip-resistant cover and properly secured to prevent unauthorized access. Vents for airflow shall be flush-to-grade when placed within the sidewalk and may not exceed two feet above grade when placed off the sidewalk. Vault lids may contain manufacturer and site operator information but shall not exhibit commercial advertisements.

- (4) **Base-Mounted Accessory Equipment.** This section 10(c)(4) sets out specific preferences and standards for base-mounted accessory equipment.
- (A) **Concealment.** Base-mounted accessory equipment enclosures must be architecturally integrated with the pole and surrounding environment. For poles that already include a larger or decorative base, the base-mounted accessory equipment enclosure should mimic the existing design and/or decorative features. Base-mounted accessory equipment enclosures should include a tapered or decorative transition between the enclosure and the pole, unless (i) the proposed facility is a pre-approved design that does not include such a transition or (ii) the approval authority finds that such a transition would be less aesthetically desirable considering the pole and surrounding environment.
 - (B) **Maximum Dimensions.** Any base-mounted accessory equipment enclosure integrated into the pole shall not exceed the following dimensions: (i) 48 inches in height, measured from grade level to the highest point on the enclosure, but excluding any decorative design elements that transition the wider base into the narrower pole; and (ii) 26 inches in length or width on any rectangular enclosure or 28 inches in diameter for any round, hexagonal, octagonal or similarly shaped enclosure.
 - (C) **Graffiti and Litter Prevention.** Base-mounted accessory equipment enclosures must be coated with anti-graffiti finishes. To prevent litter and other objects placed on such equipment, base-mounted accessory equipment enclosures should not have any flat horizontal surfaces greater than 1.5 square inches.
- (5) **Pole-Mounted Accessory Equipment.** This section 10(c)(5) sets out specific preferences and standards for pole-mounted accessory equipment.
- (A) **Concealment.** Applicants should propose to place any pole-mounted accessory equipment in the least conspicuous position under the circumstances presented by the proposed pole and location. Pole-mounted accessory equipment may be installed behind street, traffic or other signs to the extent that the installation complies with applicable public health and safety regulations. Unless placed behind a street sign or some other concealment that dictates the equipment orientation on the pole, all pole-mounted accessory equipment should be oriented away from prominent views. In general, the proper orientation will likely be toward the street to reduce the overall profile when viewed from the nearest abutting properties. If orientation toward the street is not feasible, then the proper orientation will most likely be away from oncoming traffic. If more than one orientation would be technically feasible, the Director may select the most appropriate orientation.

- (B) **Minimum Ground Clearance.** The lowest point on any pole-mounted accessory equipment shall be at least 8 feet above ground level adjacent to the pole. If applicable laws require any pole-mounted accessory equipment component to be placed less than 8 feet above ground level, the clearance from ground level shall be no less than required for compliance with such laws.
 - (C) **Horizontal Extensions.** Pole-mounted accessory equipment should be as close to flush with the pole as technically feasible and shall not extend over any roadway for vehicular travel or any abutting private property. If applicable laws preclude flush-mounted accessory equipment, the separation gap between the pole and the accessory equipment shall be no greater than required for compliance with such laws and concealed by opaque material (such as cabinet “flaps” or “wings”).
- (6) **Surface-Mounted Equipment Cabinets.** This section 10(c)(6) sets out specific preferences and standards for surface-mounted accessory equipment.
- (A) **Concealment.** Concealment for surface-mounted equipment cabinets will be assessed on a site-specific basis and consider the location and existing uses and aesthetic elements in the vicinity. In general, the city prefers surface-mounted accessory equipment to be concealed as follows: (i) within a landscaped parkway, median or similar location, behind or among new/existing landscape features and painted or wrapped in flat natural colors to blend with the landscape features; (ii) if landscaping concealment is not technically feasible, disguised as other street furniture adjacent to the support structure, such as, for example, mailboxes, benches, trash cans and information kiosks; and (iii) if neither landscaping concealment or street furniture is available, accessory equipment should be completely shrouded or placed in a cabinet substantially similar in appearance to existing surface-mounted accessory equipment cabinets in the vicinity.
 - (B) **Public Safety.** To promote and protect public health and safety and prevent potential hazards hidden behind large equipment cabinets, individual surface-mounted accessory equipment cabinet may not exceed four feet in height or four feet in width. Surface-mounted accessory equipment enclosures must be coated with anti-graffiti finishes. To prevent litter and other objects placed on such equipment, surface-mounted accessory equipment enclosures should not have any flat horizontal surfaces greater than 1.5 square inches.
- (d) **Utilities.** The provisions in this section 10(d) are applicable to all utilities and other related improvements that serve small wireless facilities.

- (1) **Overhead Lines.** The approval authority shall not approve any new overhead utility lines in underground utility districts. In areas with existing overhead lines, new communication lines shall be “overlashed” with existing communication lines to the extent feasible, but service conduits shall be placed underground. No new overhead utility service drops shall be permitted to traverse any roadway used for vehicular transit.
 - (2) **Vertical Cable Risers.** All cables, wires and other connectors must be routed through conduits within the pole or other support structure, and all conduit attachments, cables, wires and other connectors must be concealed from public view. To the extent that cables, wires and other connectors cannot be routed through the pole, such as with wood utility poles, applicants shall route them through external conduits or shrouds that have been finished to match the underlying pole. The applicant shall minimize the number and size of external conduits to the extent technically feasible.
 - (3) **Spools and Coils.** To reduce clutter and deter vandalism, excess fiber optic or coaxial cables shall not be spooled, coiled or otherwise stored on the pole outside equipment cabinets or shrouds
 - (4) **Electric Meters.** Small wireless facilities shall use flat-rate electric service or other method that obviates the need for a separate above-grade electric meter. If flat-rate service is not available, applicants may install a separate meter pedestal per city standards. If the proposed project involves a surface-mounted equipment cabinet, an electric meter may be integrated with the cabinet, but the approval authority shall not approve a separate surface-mounted electric meter pedestal. In no case shall permittee be permitted to use electricity/power provided by a city-owned streetlight or city-owned circuit without separate written authorization from the city.
 - (5) **Existing Underground Conduits.** To reduce unnecessary wear and tear on the public rights-of-way, applicants are encouraged to use existing conduits whenever available and technically feasible. Access to any conduit owned by the city shall be subject to a separate written agreement and the Director’s prior written approval, which the Director may withhold or condition as the Director deems necessary or appropriate to protect the city’s infrastructure, prevent interference with the city’s municipal functions and public health and safety.
- (e) **Historic Resources.** This policy shall not be construed or applied to limit the city’s authority to enforce other laws or regulations intended to protect or preserve historic resources. Any small wireless facility that adversely impacts any historic resource shall not be approved without an exception pursuant to section 13.

11. PRE-APPROVED DESIGNS

- (a) **Preface.** To expedite the review process and encourage collaborative designs among applicants and the city, the City Council authorizes the Director to designate one or more pre-approved designs for small wireless facilities. This section sets out the process to establish or repeal a pre-approved design and the expedited review procedures and findings applicable to these applications.
- (b) **Adoption.** The Director, in the Director's discretion, may establish a pre-approved design when the Director finds that a proposed pre-approved design would be (i) in substantial conformance with the applicable design requirements in section 10 and (ii) architecturally compatible with the areas in which the pre-approved design would be available. The Director shall post a public notice at City Hall and on the city's website. The notice must generally describe the pre-approved design, include a photograph or photo simulation, specify whether the pre-approved design would be limited or restricted in any areas. The pre-approved design shall become effective 15 days from the notice required in this section. A decision by the Director not to adopt a proposed pre-approved design or the Director's failure to act on a request for a proposed pre-approved design is not appealable.
- (c) **Repeal.** The Director may repeal any pre-approved design by notice posted at City Hall and on the city's website. The repeal shall be immediately effective. The Director's repeal, refusal to repeal or failure to act on a request to repeal a pre-approved design is not appealable.
- (d) **Nondiscrimination.** An established pre-approved design may be used by any applicant, whether the applicant originally initiated the pre-approval process or not. The Director's decision to adopt a pre-approved design expresses no preference or requirement that applicants use the specific vendor or manufacturer that fabricated the design depicted in the pre-approved plans. Any other vendor or manufacturer that fabricates a small wireless facility to the standards and specifications in the pre-approved design with like materials, finishes and overall quality shall be acceptable as a pre-approved design.
- (e) **Modified Findings for Approval.** For any complete site plan review application using a pre-approved design, the approval authority shall presume that the proposed project complies with the findings required under sections 8(b)(1) and 8(b)(3). No such presumption shall be applicable to the required findings under sections 8(b)(2), 8(b)(4) and 8(b)(5).

12. STANDARD CONDITIONS OF APPROVAL

- (a) **Standard Conditions.** Except as may be modified in section 12(b), all small wireless facilities approved under this policy shall be automatically subject to the conditions in this section 12(a) and these conditions shall be deemed to be

incorporated by reference to any site plan approval, whether approved by the city or deemed approved by law.

- (1) **Permit Term.** This permit will automatically expire 10 years and one day from its issuance unless California Government Code § 65964(b) authorizes the city to establish a shorter term for public safety reasons or substantial land use reasons. Any other permits or approvals issued in connection with any collocation, modification or other change to this small wireless facility, which includes without limitation any permits or other approvals deemed-granted or deemed-approved under federal or state law, will not extend this term limit unless expressly provided otherwise in such permit or approval or required under federal or state law.
- (2) **Permit Renewal.** The permittee may apply for permit renewal not more than one year before this permit expires. The permittee must demonstrate that the subject small wireless facility complies with all the conditions of approval associated with this permit and all applicable provisions in the Madera Municipal Code and this policy that exists at the time the decision to renew or not renew is rendered. The Director may modify or amend the conditions on a case-by-case basis as may be necessary or appropriate to ensure compliance with the Madera Municipal Code, this policy or other applicable law. Upon renewal, this permit will automatically expire 10 years and one day from its issuance.
- (3) **Approved Plans.** Any final construction plans shall incorporate the permit, together with all conditions of approval and the photo simulations associated with the permit (collectively, the “Approved Plans”). The permittee must construct, install and operate the small wireless facility in substantial compliance with the Approved Plans. Any alterations, modifications or other changes to the Approved Plans, whether requested by the permittee or required by other departments or public agencies with jurisdiction over the small wireless facility, shall be subject to the Director’s prior review and approval. After the Director receives a written request to approve an alteration, modification or other change to the Approved Plans, the Director may refer the request to the approval authority if the Director finds that it substantially deviates from the Approved Plans or implicates a significant or substantial land-use concern.
- (4) **CPUC GO-159A Certification.** Within 15 business days after the city issues this permit, the permittee shall serve copies of California Public Utility Commission notification letters required by CPUC General Order No. 159A to the City Clerk, Director and City Manager.
- (5) **Build-Out Period.** This permit will automatically expire 12 months from the approval date (the “Build-Out Period”) unless the permittee obtains all other permits and approvals required to install, construct and/or operate the

approved small wireless facility, which includes without limitation any permits or approvals required by any federal, state or local public agencies with jurisdiction over the subject property, support structure or the small wireless facility and/or its use. The permittee may request in writing, and the city may grant in writing, one six-month extension if the permittee submits substantial and reliable written evidence demonstrating justifiable cause for such extension. If the Build-Out Period and any extension finally expire, this permit shall be automatically void but the permittee may resubmit a complete application, including all application fees, for the same or substantially similar project.

- (6) **Post-Installation Certification.** Within 60 calendar days after the permittee commences full, unattended operations of a small wireless facility approved under this policy or deemed-approved by law, the permittee shall provide the Director with documentation reasonably acceptable to the Director that the small wireless facility has been installed and/or constructed in strict compliance with the approved construction drawings and photo simulations. Such documentation shall include without limitation as-built drawings, GIS data and site photographs.
- (7) **Site Maintenance.** The permittee shall keep the site, which includes without limitation any and all improvements, equipment, structures, access routes, fences and landscape features, in a neat, clean and safe condition in accordance with the approved construction drawings and all conditions in this permit. At all times, the permittee shall keep the site area free from all litter and debris. The permittee shall regularly inspect the small wireless facility to determine whether any maintenance is needed. The permittee, at no cost to the city, shall remove and remediate any graffiti or other vandalism on the small wireless facility within 48 hours after the permittee receives notice or otherwise becomes aware that such graffiti or other vandalism occurred.
- (8) **Compliance with Laws.** The permittee shall maintain compliance at all times with all federal, state and local statutes, regulations, orders or other rules that carry the force of law ("Laws") applicable to the permittee, the subject property, the small wireless facility or any use or activities in connection with the use authorized in this permit, which includes without limitation any Laws applicable to human exposure to RF emissions and any standards, specifications or other requirements identified by the Director (such as, without limitation, those requirements affixed to an encroachment permit). The permittee expressly acknowledges and agrees that this obligation is intended to be broadly construed and that no other specific requirements in these conditions are intended to reduce, relieve or otherwise lessen the permittee's obligations to maintain compliance with all Laws. No failure or omission by the city to timely notice, prompt or enforce compliance with any applicable provision in the Madera Municipal Code, this policy any permit, any permit condition or any

applicable Laws, shall be deemed to relieve, waive or lessen the permittee's obligation to comply in all respects with same.

- (9) **Adverse Impacts on Other Properties.** The permittee shall use all reasonable efforts to avoid any and all unreasonable, undue or unnecessary adverse impacts on nearby properties that may arise from the permittee's or its authorized personnel's construction, installation, operation, modification, maintenance, repair, removal and/or other activities on or about the site and/or small wireless facility. The permittee shall not perform or cause others to perform any construction, installation, operation, modification, maintenance, repair, removal or other work that involves heavy equipment or machines except during normal construction work hours authorized by the Madera Municipal Code. The restricted work hours in this condition will not prohibit any work required to prevent an actual, immediate harm to property or persons, or any work during an emergency declared by the city or other state or federal government agency or official with authority to declare an emergency within the city. The Director may issue a stop work order for any activities that violates this condition in whole or in part. If the Director finds good cause to believe that ambient noise from the small wireless facility or related equipment violates applicable provisions in the Madera Municipal Code, the Director, in addition to any other actions or remedies authorized by the permit, the Madera Municipal Code or other applicable laws, may require the permittee to commission a noise study by a qualified professional to evaluate the small wireless facility's compliance.
- (10) **Inspections; Emergencies.** The permittee expressly acknowledges and agrees that, upon reasonable prior notice to the permittee, the city's officers, officials, staff, agents, contractors or other designees may enter onto the site and inspect the small wireless facility and related equipment and/or improvements to ensure compliance with this permit and all associated conditions. Notwithstanding the prior sentence, the city's officers, officials, staff, agents, contractors or other designees may, but will not be obligated to, enter onto the site area without prior notice to support, repair, disable or remove any improvements or equipment in emergencies or when such improvements or equipment threatens actual, imminent harm to property or persons. The permittee, if present, may observe the city's officers, officials, staff or other designees while any such inspection or emergency access occurs.
- (11) **Contact Information.** At all times relevant to this permit, the permittee shall keep on file with the Director basic contact and site information. This information shall include, but is not limited to, the following: (A) the name, physical address, notice address (if different), direct telephone number and email address for (i) the permittee and, if different from the permittee, the (ii) site operator, (ii) equipment owner, (iii) site manager and (iv) agent for service of process; (B) the small wireless facility's site identification number and/or name used by the permittee and, to the extent applicable, site operator,

equipment owner and site manager; and (C) a toll-free telephone number to the small wireless facility's network operations center where a live person with power-down control over the small wireless facility is available 24 hours-per-day, seven days-per-week. Within 10 business days after a written request by the city, the permittee shall furnish the Director with an updated form that includes all the most-current information described in this condition.

- (12) **Indemnification.** The permittee and, if applicable, the property owner upon which the small wireless facility is installed shall defend, indemnify and hold harmless the city, City Council and the city's boards, commissions, agents, officers, officials, employees and volunteers (collectively, the "indemnitees") from any and all (A) damages, liabilities, injuries, losses, costs and expenses and from any and all claims, demands, law suits, writs and other actions or proceedings ("claims") brought against the indemnitees to challenge, attack, seek to modify, set aside, void or annul the city's approval of this permit, and (B) other claims of any kind or form, whether for personal injury, death or property damage, that arise from or in connection with the permittee's or its agents', directors', officers', employees', contractors', subcontractors', licensees' or customers' acts or omissions in connection with this permit or the small wireless facility. In the event the city becomes aware of any claims, the city will use best efforts to promptly notify the permittee and the private property owner (if applicable) and shall reasonably cooperate in the defense. The permittee expressly acknowledges and agrees that the city shall have the right to approve, which approval shall not be unreasonably withheld, the legal counsel providing the city's defense, and the property owner and/or permittee (as applicable) shall promptly reimburse the city for any costs and expenses directly and necessarily incurred by the city in the course of the defense. The permittee expressly acknowledges and agrees that the permittee's indemnification obligations under this condition are a material consideration that motivates the city to approve this permit, and that such indemnification obligations will survive the expiration, revocation or other termination of this permit.
- (13) **Removal Bond.** Before the city issues any permits required to commence construction in connection with this permit, the permittee shall post a bond issued by a surety and in a form acceptable to the Director in an amount reasonably necessary to cover the cost to remove the improvements and restore all affected areas based on a written estimate from a qualified contractor with experience in wireless facilities or similar infrastructure removal. The written estimate must include the cost to remove all equipment and other improvements, which includes without limitation all antennas, radios, batteries, generators, utilities, cabinets, mounts, brackets, hardware, cables, wires, conduits, structures, shelters, towers, poles, footings and foundations, whether above ground or below ground, constructed or installed in connection with the small wireless facility, plus the cost to completely restore any areas affected by the removal work to a standard compliant with applicable laws. In establishing

or adjusting the bond amount required under this condition, the Director shall take into consideration any information provided by the permittee regarding the cost to remove the small wireless facility to a standard compliant with applicable laws. The performance bond shall expressly survive the duration of the permit term to the extent required to effectuate a complete removal of the subject small wireless facility in accordance with this condition.

- (14) **Permit Revocation.** Any permit granted under this policy or deemed approved by the operation of law may be revoked in accordance with the provisions and procedures in this condition. The Director may initiate revocation proceedings when the Director has information that the small wireless facility may not be in compliance with all applicable laws, which includes without limitation, any permit in connection with the small wireless facility and any associated conditions with such permit(s). A permit granted under this policy or deemed approved by the operation of law may be revoked only by the City Council after a duly notice public hearing. Before any public hearing to revoke a permit granted under this policy or deemed approved by the operation of law, the Director must issue a written notice to the permittee that specifies (A) the small wireless facility; (B) the violation(s) to be corrected; (C) the timeframe in which the permittee must correct such violation(s); and (D) that, in addition to all other rights and remedies the city may pursue, the city may initiate revocation proceedings for failure to correct such violation(s). The City Council may revoke a permit when it finds substantial evidence in the written record to show that the small wireless facility is not in compliance with any applicable laws, which includes without limitation, any permit in connection with the small wireless facility and any associated conditions with such permit(s). Any decision by the City Council to revoke or not revoke a permit shall be final and not subject to any further appeals. Within five business days after the City Council adopts a resolution to revoke a permit, the Director shall provide the permittee with a written notice that specifies the revocation and the reasons for such revocation.
- (15) **Record Retention.** Throughout the permit term, the permittee must maintain a complete and accurate copy of the written administrative record, which includes without limitation the permit application, this permit, the Approved Plans and photo simulations incorporated into this approval, all conditions associated with this approval, any ministerial permits or approvals issued in connection with this approval and any records, memoranda, documents, papers and other correspondence entered into the public record in connection with the permit (collectively, "Records"). If the permittee does not maintain such Records as required in this condition, any ambiguities or uncertainties that would be resolved by inspecting the missing Records will be construed against the permittee. The permittee shall protect all Records from damage from fires, floods and other hazards that may cause deterioration. The permittee may keep Records in an electronic format; provided, however, that hard copies or electronic Records kept in the city's regular files will control over any conflicts between such city-controlled copies or Records and the permittee's electronic

copies, and complete originals will control over all other copies in any form. The requirements in this condition shall not be construed to create any obligation to create or prepare any Records not otherwise required to be created or prepared by other applicable laws. Compliance with the requirements in this condition shall not excuse the permittee from any other similar record-retention obligations under applicable law.

- (16) **Abandoned Facilities.** The small wireless facility authorized under this permit shall be deemed abandoned if not operated for any continuous 12-month period. Within 90 days after a small wireless facility is abandoned or deemed abandoned, the permittee and/or property owner shall completely remove the small wireless facility and all related improvements and shall restore all affected areas to a condition compliant with all applicable laws, which includes without limitation the Madera Municipal Code. In the event that neither the permittee nor the property owner complies with the removal and restoration obligations under this condition within said 90-day period, the city shall have the right (but not the obligation) to perform such removal and restoration with or without notice, and the permittee and property owner shall be jointly and severally liable for all costs and expenses incurred by the city in connection with such removal and/or restoration activities and shall reimburse the city for all such costs 30 calendar days after a written demand for reimbursement and reasonable documentation to support such costs.
- (17) **Landscaping.** The permittee shall replace any landscape features damaged or displaced by the construction, installation, operation, maintenance or other work performed by the permittee or at the permittee's direction on or about the site. If any trees are damaged or displaced, the permittee shall hire and pay for a licensed arborist to select plant and maintain replacement landscaping in an appropriate location for the species. Any replacement tree must be substantially the same size as the damaged tree or as otherwise approved by the city. The permittee shall be responsible to maintain any replacement landscape features for a three-year period after such landscaping has been installed. Notwithstanding anything in this condition to the contrary, the Director may agree in a written agreement signed by the permittee to accept an annual in-lieu fee to perform the maintenance work on the permittee's behalf.
- (18) **Cost Reimbursement.** The permittee acknowledges and agrees that (A) the permittee's request for authorization to construct, install and/or operate the small wireless facility will cause the city to incur costs and expenses; (B) the permittee shall be responsible to reimburse the city for all costs incurred in connection with the permit, which includes without limitation costs related to application review, permit issuance, site inspection and any other costs reasonably related to or caused by the request for authorization to construct, install and/or operate the small wireless facility; (C) any application fees required for the application may not cover all such reimbursable costs and that the permittee shall have the obligation to reimburse the city for all such costs

30 calendar days after a written demand for reimbursement and reasonable documentation to support such costs; and (D) the city shall have the right to withhold any permits or other approvals in connection with the small wireless facility until and unless any outstanding costs have been reimbursed to the city by the permittee.

- (19) **Future Undergrounding Programs.** Notwithstanding any term remaining on this permit, if other utilities or communications providers in the public rights-of-way underground their facilities in the segment of the public rights-of-way where the permittee's small wireless facility is located, the permittee must also underground its equipment, except the antennas and any approved electric meter or related electric-service equipment required by the electric service provider to remain above ground, at approximately the same time. Accessory equipment such as radios and computers that require an environmentally controlled underground vault to function shall not be exempt from this condition; provided, however, that the Director may approve an alternative concealment plan for such equipment that complies with the city's then current design regulations. Small wireless facilities installed on wood utility poles that will be removed pursuant to the undergrounding program may be reinstalled on a streetlight that complies with the city's standards and specifications. Such undergrounding shall occur at the permittee's sole cost and expense except as may be reimbursed through tariffs approved by the state public utilities commission for undergrounding costs.
- (20) **Electric Meter Upgrades.** If the small wireless facility includes a separate or ground-mounted electric meter pedestal and the commercial electric utility provider adopts or changes its rules obviating the need for a separate or ground-mounted electric meter and enclosure, the permittee on its own initiative and at its sole cost and expense shall remove the separate or ground-mounted electric meter and enclosure. Prior to removing the electric meter, the permittee shall apply for any encroachment and/or other ministerial permit(s) required to perform the removal. Upon removal, the permittee shall restore the affected area to its original condition that existed prior to installation of the equipment.
- (21) **Rearrangement and Relocation.** The permittee acknowledges that the city, in its sole discretion and at any time, may: (A) change any street grade, width or location; (B) add, remove or otherwise change any improvements in, on, under or along any street owned by the city or any other public agency, which includes without limitation any sewers, storm drains, conduits, pipes, vaults, boxes, cabinets, poles and utility systems for gas, water, electric or telecommunications; and/or (C) perform any other work deemed necessary, useful or desirable by the city (collectively, "City Work"). The city reserves the rights to do any and all City Work without any admission on its part that the city would not have such rights without the express reservation in this permit. If the City Engineer determines that any City Work will require the permittee's small

wireless facility located in the public rights-of-way to be rearranged and/or relocated, the permittee shall, at its sole cost and expense, do or cause to be done all things necessary to accomplish such rearrangement and/or relocation. If the permittee fails or refuses to either permanently or temporarily rearrange and/or relocate the permittee's small wireless facility within a reasonable time after the City Engineer's notice, the city may (but will not be obligated to) cause the rearrangement or relocation to be performed at the permittee's sole cost and expense. The city may exercise its rights to rearrange or relocate the permittee's small wireless facility without prior notice to permittee when the City Engineer determines that City Work is immediately necessary to protect public health or safety. The permittee shall reimburse the city for all costs and expenses in connection with such work within 30 calendar days after a written demand for reimbursement and reasonable documentation to support such costs.

- (22) **Successors and Assigns.** The conditions, covenants, promises and terms contained in this permit will bind and inure to the benefit of the city and permittee and their respective successors and assigns.
 - (23) **Truthful and Accurate Statements.** The permittee acknowledges that the city's approval relies on the written and/or oral statements by permittee and/or persons authorized to act on permittee's behalf. In any matter before the city in connection with this permit or the small wireless facility approved under the this permit, neither the permittee nor any person authorized to act on permittee's behalf shall, in any written or oral statement, intentionally provide material factual information that is incorrect or misleading or intentionally omit any material information necessary to prevent any material factual statement from being incorrect or misleading.
 - (24) **City's Standing Reserved.** The city's grant or grant by operation of law of a permit pursuant to this policy does not waive, and shall not be construed to waive, any standing by the city to challenge any (A) FCC rules or regulations that interpret the Telecommunications Act and/or Section 6409 of the Spectrum Act or (B) any permit issued pursuant to this policy.
 - (25) **Severable Conditions.** If any provision in these conditions or such provision's application to any person, entity or circumstances is or held by any court with competent jurisdiction to be invalid or unenforceable: (A) such provision or its application to such person, entity or circumstance will be deemed severed from this permit; (B) all other provisions in this permit or their application to any person, entity or circumstance will not be affected; and (C) all other provisions in this permit or their application to any person, entity or circumstance will be valid and enforceable to the fullest extent permitted by law.
- (b) **Modified Conditions.** The City Council authorizes the Director to modify, add or remove conditions to any site plan approval as the Director deems necessary or

appropriate to: (1) protect and/or promote the public health, safety and welfare; (2) tailor the standard conditions in section 12(a) to the particular facts and circumstances associated with the deployment; and/or (3) memorialize any changes to the proposed deployment needed for compliance with the Madera Municipal Code, this policy, generally applicable health and safety requirements and/or any other applicable laws.

13. EXCEPTIONS

- (a) **Preface.** The provisions in this section establish a procedure by which the city may grant an exception to the standards in this policy but only to the extent necessary to avoid conflict with applicable federal or state law. When the applicant requests an exception, the approval authority shall consider the findings in section 13(b) in addition to the findings required under section 8(b). Each exception is specific to the facts and circumstances in connection with each application. An exception granted in one instance does not create a presumption or expectation that an exception will be granted in any other instance.
- (b) **Findings for an Exception.** The approval authority may grant an exception to any provision or requirement in this policy only if the approval authority finds that:
 - (1) a denial based on the application's noncompliance with a specific provision or requirement would violate federal law, state law or both; or
 - (2) a provision in this policy, as applied to the applicant, would violate any rights or privileges conferred on the applicant by federal or state law.
- (c) **Scope of Exception.** If the approval authority finds that an exception should be granted, the exception shall be narrowly tailored so that the exception deviates from this policy to least extent necessary for compliance with federal or state law.
- (d) **Burden of Proof.** The applicant shall have the burden to prove to the approval authority that an exception should be granted pursuant to this section. The standard of evidence shall be the same as required by applicable federal or state law for the issue raised in the applicant's request for an exception.

14. PEER REVIEW AND INDEPENDENT CONSULTANTS

- (a) **Authorization.** The City Council authorizes the Director to, in the Director's discretion, select and retain an independent consultant with specialized training, experience and/or expertise in telecommunications issues satisfactory to the Director in connection any permit application. The Director may request an independent consultant review on any issue that involves specialized or expert knowledge in connection with wireless facilities deployment or permit applications for wireless facilities, which include, without limitation: (1) permit application completeness and/or accuracy; (2) pre-construction planned compliance with

applicable regulations for human exposure to RF emissions; (3) post-construction actual compliance with applicable regulations for human exposure to RF emissions; (4) whether and to what extent a proposed project will comply with applicable laws; (5) the applicability, reliability and/or sufficiency of any information, analyses or methodologies used by the applicant to reach any conclusions about any issue with the city's discretion to review; and (6) any other issue identified by the Director that requires expert or specialized knowledge. The Director may request that the independent consultant prepare written report, testify at public meetings, hearings and/or appeals and attend meetings with city staff and/or the applicant.

- (b) **Cost Reimbursement.** Subject to applicable laws, the applicant shall be responsible for the reasonable costs actually incurred by the city in connection with a consultant's review, which may include, without limitation, costs incurred by the consultant to attend and participate in any meetings or hearings related to the application. Within a reasonable time after notice from the Director, the applicant shall deposit funds in an amount equal to the estimated costs for the consultant's services, as determined by the Director. The funds shall be applied to the consultant's invoices as such invoices are approved by the Director. If the deposit exceeds the total costs for the consultant's services, the Director shall promptly return any unused funds to the applicant after the small wireless facility has been installed and passes a final inspection. If the reasonable costs for the consultant's services exceed the deposit, the Director shall invoice the applicant for the balance. The city shall not issue any building permit or encroachment permit to any applicant with any unpaid invoices.

15. VIOLATIONS

Any use or condition caused or permitted to exist in violation of any provision of this policy shall be and hereby is declared a public nuisance and may be subject to administrative citations as set forth in Madera Municipal Code Title I, Chapter 9, abatement pursuant to Madera Municipal Code §§ 10-3.1601 *et seq.*, California Code of Civil Procedure section 731, or any other remedy available to the city.

APPENDIX A – FEDERAL STATUTES

This Appendix contains relevant federal statutes cited or referred to in the city's policy for informational and reference purposes only. These authorities are current as of the date on which the city adopted the policy. However, the reader should be cautioned that these authorities may be amended or superseded from time-to-time and those amended or superseded versions will control over the reproduced text in this Appendix.

47 U.S.C. § 253 — Removal of barriers to entry.

(A) In General

No State or local statute or regulation, or other State or local legal requirement, may prohibit or have the effect of prohibiting the ability of any entity to provide any interstate or intrastate telecommunications service.

(B) State Regulatory Authority

Nothing in this section shall affect the ability of a State to impose on a competitively neutral basis and consistent with section 254 of this title, requirements necessary to preserve and advance universal service, protect the public safety and welfare, ensure the continued quality of telecommunications services, and safeguard the rights of consumers.

(C) State and Local Government Authority

Nothing in this section affects the authority of a State or local government to manage the public rights-of-way or to require fair and reasonable compensation from telecommunications providers, on a competitively neutral and nondiscriminatory basis, for use of public rights-of-way on a nondiscriminatory basis, if the compensation required is publicly disclosed by such government.

(D) Preemption

If, after notice and an opportunity for public comment, the Commission determines that a State or local government has permitted or imposed any statute, regulation, or legal requirement that violates subsection (a) or (b), the Commission shall preempt the enforcement of such statute, regulation, or legal requirement to the extent necessary to correct such violation or inconsistency.

47 U.S.C. § 332(c)(7) — Preservation of local zoning authority.

(A) General Authority

Except as provided in this paragraph, nothing in this chapter shall limit or affect the authority of a State or local government or instrumentality thereof over decisions regarding the placement, construction, and modification of personal wireless service facilities.

(B) Limitations

- (i) The regulation of the placement, construction, and modification of personal wireless service facilities by any State or local government or instrumentality thereof--
 - (I) shall not unreasonably discriminate among providers of functionally equivalent services; and
 - (II) shall not prohibit or have the effect of prohibiting the provision of personal wireless services.
- (ii) A State or local government or instrumentality thereof shall act on any request for authorization to place, construct, or modify personal wireless service facilities within a reasonable period of time after the request is duly filed with such government or instrumentality, taking into account the nature and scope of such request.
- (iii) Any decision by a State or local government or instrumentality thereof to deny a request to place, construct, or modify personal wireless service facilities shall be in writing and supported by substantial evidence contained in a written record.
- (iv) No State or local government or instrumentality thereof may regulate the placement, construction, and modification of personal wireless service facilities on the basis of the environmental effects of radio frequency emissions to the extent that such facilities comply with the Commission's regulations concerning such emissions.
- (v) Any person adversely affected by any final action or failure to act by a State or local government or any instrumentality thereof that is inconsistent with this subparagraph may, within 30 days after such action or failure to act, commence an action in any court of competent jurisdiction. The court shall hear and decide such action on an expedited basis. Any person adversely affected by an act or failure to act by a State or local government or any instrumentality thereof that is inconsistent with clause (iv) may petition the Commission for relief.

(C) Definitions

For purposes of this paragraph--

- (i) the term “personal wireless services” means commercial mobile services, unlicensed wireless services, and common carrier wireless exchange access services;
- (ii) the term “personal wireless service facilities” means facilities for the provision of personal wireless services; and
- (iii) the term “unlicensed wireless service” means the offering of telecommunications services using duly authorized devices which do not require individual licenses but does not mean the provision of direct-to-home satellite services (as defined in section 303(v) of this title).

47 U.S.C. § 1455(a) — Wireless facilities deployment.

(A) Facility modifications

(1) In general

Notwithstanding section 704 of the Telecommunications Act of 1996 (Public Law 104-104) or any other provision of law, a State or local government may not deny, and shall approve, any eligible facilities request for a modification of an existing wireless tower or base station that does not substantially change the physical dimensions of such tower or base station.

(2) Eligible facilities request

For purposes of this subsection, the term “eligible facilities request” means any request for modification of an existing wireless tower or base station that involves--

- (A) collocation of new transmission equipment.
- (B) removal of transmission equipment; or
- (C) replacement of transmission equipment.

(3) Applicability of environmental laws

Nothing in paragraph (1) shall be construed to relieve the Commission from the requirements of the National Historic Preservation Act or the National Environmental Policy Act of 1969.

APPENDIX B – FCC REGULATIONS

This Appendix contains relevant FCC regulations cited or referred to in the city's policy for informational and reference purposes only. These authorities are current as of the date on which the city adopted the policy. However, the reader should be cautioned that these authorities may be amended or superseded from time-to-time and those amended or superseded versions will control over the reproduced text in this Appendix.

Some additional background on how the FCC organizes its regulations may help the reader check for subsequent changes to these rules. The FCC's codified regulations appear in the Code of Federal Regulations (abbreviated as "C.F.R."). The C.F.R. is organized in titles. The FCC's codified regulations appear in Title 47—Telecommunication, and are further organized in chapters, subchapters, parts and subparts. All the provisions reproduced below appear in Part 1, and most appear in Subpart U to Part 1.

47 C.F.R. § 97.3 — Definitions.

(A) The definitions of terms used in part 97 are:

- (1) Amateur operator. A person named in an amateur operator/primary license station grant on the [Universal Licensing System] consolidated licensee database to be the control operator of an amateur station.
- (2) Amateur radio services. The amateur service, the amateur-satellite service and the radio amateur civil emergency service.
- (3) Amateur-satellite service. A radiocommunication service using stations on Earth satellites for the same purpose as those of the amateur service.
- (4) Amateur service. A radiocommunication service for the purpose of self-training, intercommunication and technical investigations carried out by amateurs, that is, duly authorized persons interested in radio technique solely with a personal aim and without pecuniary interest.
- (5) Amateur station. A station in an amateur radio service consisting of the apparatus necessary for carrying on radiocommunications.

47 C.F.R. § 1.4000 — Restrictions impairing reception of television broadcast signals, direct broadcast satellite services or multichannel multipoint distribution services.

(A)(1) [This FCC regulation defines an “OTARD” antenna as follows]:

(i) An antenna that is:

(A) Used to receive direct broadcast satellite service, including direct-to-home satellite service, or to receive or transmit fixed wireless signals via satellite, and

(B) One meter or less in diameter or is located in Alaska.

(ii) An antenna that is:

(A) Used to receive video programming services via multipoint distribution services, including multichannel multipoint distribution services, instructional television fixed services, and local multipoint distribution services, or to receive or transmit fixed wireless signals other than via satellite, and

(B) That is one meter or less in diameter or diagonal measurement.

(iii) An antenna that is used to receive television broadcast signals; or

(iv) A mast supporting an antenna described in paragraphs (a)(1)(i), (a)(1)(ii), or (a)(1)(iii) of this section;

47 C.F.R. § 1.6002 — Definitions.

Terms not specifically defined in this section or elsewhere in this subpart have the meanings defined in this part and the Communications Act of 1934, 47 U.S.C. 151 *et seq.* Terms used in this subpart have the following meanings:

(A) Action or to act on a siting application means a siting authority's grant of a siting application or issuance of a written decision denying a siting application.

(B) Antenna, consistent with § 1.1320(d), means an apparatus designed for the purpose of emitting radiofrequency (RF) radiation, to be operated or operating from a fixed location pursuant to Commission authorization, for the provision of personal wireless service and any commingled information services. For purposes of this definition, the

term antenna does not include an unintentional radiator, mobile station, or device authorized under part 15 of this chapter.

- (C) Antenna equipment, consistent with § 1.1320(d), means equipment, switches, wiring, cabling, power sources, shelters or cabinets associated with an antenna, located at the same fixed location as the antenna, and, when collocated on a structure, is mounted or installed at the same time as such antenna.
- (D) Antenna facility means an antenna and associated antenna equipment.
- (E) Applicant means a person or entity that submits a siting application and the agents, employees, and contractors of such person or entity.
- (F) Authorization means any approval that a siting authority must issue under applicable law prior to the deployment of personal wireless service facilities, including, but not limited to, zoning approval and building permit.
- (G) Collocation, consistent with § 1.1320(d) and the Nationwide Programmatic Agreement (NPA) for the Collocation of Wireless Antennas, appendix B of this part, section I.B, means—
 - (1) Mounting or installing an antenna facility on a pre-existing structure; and/or
 - (2) Modifying a structure for the purpose of mounting or installing an antenna facility on that structure.
 - (3) The definition of “collocation” in § 1.6100(b)(2) applies to the term as used in that section.
- (H) Deployment means placement, construction, or modification of a personal wireless service facility.
- (I) Facility or personal wireless service facility means an antenna facility or a structure that is used for the provision of personal wireless service, whether such service is provided on a stand-alone basis or commingled with other wireless communications services.
- (J) Siting application or application means a written submission to a siting authority requesting authorization for the deployment of a personal wireless service facility at a specified location.
- (K) Siting authority means a State government, local government, or instrumentality of a State government or local government, including any official or organizational unit thereof, whose authorization is necessary prior to the deployment of personal wireless service facilities.

(L) Small wireless facilities are facilities that meet each of the following conditions:

(1) The facilities—

- (i) Are mounted on structures 50 feet or less in height including their antennas as defined in § 1.1320(d); or
- (ii) Are mounted on structures no more than 10 percent taller than other adjacent structures; or
- (iii) Do not extend existing structures on which they are located to a height of more than 50 feet or by more than 10 percent, whichever is greater;

(2) Each antenna associated with the deployment, excluding associated antenna equipment (as defined in the definition of antenna in § 1.1320(d)), is no more than three cubic feet in volume;

(3) All other wireless equipment associated with the structure, including the wireless equipment associated with the antenna and any pre-existing associated equipment on the structure, is no more than 28 cubic feet in volume;

(4) The facilities do not require antenna structure registration under part 17 of this chapter;

(5) The facilities are not located on Tribal lands, as defined under 36 CFR 800.16(x); and

(6) The facilities do not result in human exposure to radiofrequency radiation in excess of the applicable safety standards specified in § 1.1307(b).

(M) Structure means a pole, tower, base station, or other building, whether or not it has an existing antenna facility, that is used or to be used for the provision of personal wireless service (whether on its own or comingled with other types of services).

47 C.F.R. § 1.6003 — Reasonable periods of time to act on siting applications.

(A) Timely action required. A siting authority that fails to act on a siting application on or before the shot clock date for the application, as defined in paragraph (e) of this section, is presumed not to have acted within a reasonable period of time.

(B) Shot clock period. The shot clock period for a siting application is the sum of—

- (1) The number of days of the presumptively reasonable period of time for the pertinent type of application, pursuant to paragraph (c) of this section; plus

- (2) The number of days of the tolling period, if any, pursuant to paragraph (d) of this section.

(C) Presumptively reasonable periods of time—

- (1) Review periods for individual applications. The following are the presumptively reasonable periods of time for action on applications seeking authorization for deployments in the categories set forth in paragraphs (c)(1)(i) through (iv) of this section:
 - (2) Review of an application to collocate a Small Wireless Facility using an existing structure: 60 days.
 - (ii) Review of an application to collocate a facility other than a Small Wireless Facility using an existing structure: 90 days.
 - (iii) Review of an application to deploy a Small Wireless Facility using a new structure: 90 days.
 - (iv) Review of an application to deploy a facility other than a Small Wireless Facility using a new structure: 150 days.

(2) Batching.

- (i) If a single application seeks authorization for multiple deployments, all of which fall within a category set forth in either paragraph (c)(1)(i) or (iii) of this section, then the presumptively reasonable period of time for the application as a whole is equal to that for a single deployment within that category.
- (ii) If a single application seeks authorization for multiple deployments, the components of which are a mix of deployments that fall within paragraph (c)(1)(i) of this section and deployments that fall within paragraph (c)(1)(iii) of this section, then the presumptively reasonable period of time for the application as a whole is 90 days.
- (iii) Siting authorities may not refuse to accept applications under paragraphs (c)(2)(i) and (ii) of this section.

(D) Tolling period. Unless a written agreement between the applicant and the siting authority provides otherwise, the tolling period for an application (if any) is as set forth in paragraphs (d)(1) through (3) of this section.

- (1) For an initial application to deploy Small Wireless Facilities, if the siting authority notifies the applicant on or before the 10th day after submission that the application is materially incomplete, and clearly and specifically identifies the

missing documents or information and the specific rule or regulation creating the obligation to submit such documents or information, the shot clock date calculation shall restart at zero on the date on which the applicant submits all the documents and information identified by the siting authority to render the application complete.

(2) For all other initial applications, the tolling period shall be the number of days from—

- (i) The day after the date when the siting authority notifies the applicant in writing that the application is materially incomplete and clearly and specifically identifies the missing documents or information that the applicant must submit to render the application complete and the specific rule or regulation creating this obligation; until
- (ii) The date when the applicant submits all the documents and information identified by the siting authority to render the application complete;
- (iii) But only if the notice pursuant to paragraph (d)(2)(i) of this section is effectuated on or before the 30th day after the date when the application was submitted; or

(3) For resubmitted applications following a notice of deficiency, the tolling period shall be the number of days from—

- (i) The day after the date when the siting authority notifies the applicant in writing that the applicant's supplemental submission was not sufficient to render the application complete and clearly and specifically identifies the missing documents or information that need to be submitted based on the siting authority's original request under paragraph (d)(1) or (2) of this section; until
- (ii) The date when the applicant submits all the documents and information identified by the siting authority to render the application complete;
- (iii) But only if the notice pursuant to paragraph (d)(3)(i) of this section is effectuated on or before the 10th day after the date when the applicant makes a supplemental submission in response to the siting authority's request under paragraph (d)(1) or (2) of this section.

(E) Shot clock date. The shot clock date for a siting application is determined by counting forward, beginning on the day after the date when the application was submitted, by the number of calendar days of the shot clock period identified pursuant to paragraph (b) of this section and including any pre-application period asserted by the siting authority; provided, that if the date calculated in this manner is a "holiday" as defined in § 1.4(e)(1) or a legal holiday within the relevant State or local jurisdiction, the shot clock date is the next business day after such date. The

term “business day” means any day as defined in § 1.4(e)(2) and any day that is not a legal holiday as defined by the State or local jurisdiction.

47 C.F.R. § 1.6100 — Wireless Facility Modifications.¹

(A) [Reserved by 83 FR 51886]

(B) Definitions. Terms used in this section have the following meanings.

- (1) Base station. A structure or equipment at a fixed location that enables Commission-licensed or authorized wireless communications between user equipment and a communications network. The term does not encompass a tower as defined in this subpart or any equipment associated with a tower.
 - (i) The term includes, but is not limited to, equipment associated with wireless communications services such as private, broadcast, and public safety services, as well as unlicensed wireless services and fixed wireless services such as microwave backhaul.
 - (ii) The term includes, but is not limited to, radio transceivers, antennas, coaxial or fiber-optic cable, regular and backup power supplies, and comparable equipment, regardless of technological configuration (including Distributed Antenna Systems and small-cell networks).
 - (iii) The term includes any structure other than a tower that, at the time the relevant application is filed with the State or local government under this section, supports or houses equipment described in paragraphs (b)(1)(i) through (ii) of this section that has been reviewed and approved under the applicable zoning or siting process, or under another State or local regulatory review process, even if the structure was not built for the sole or primary purpose of providing such support.
 - (iv) The term does not include any structure that, at the time the relevant application is filed with the State or local government under this section, does not support or house equipment described in paragraphs (b)(1)(i)-(ii) of this section.

¹ In 2018, the FCC reorganized its regulations and recodified Section 1.40001 as Section 1.6100. See *In re Accelerating Wireless Broadband*, Erratum, 33 FCC Rcd. 9088 at ¶ 2 (Nov. 29, 2018). However, the FCC did not correct all internal cross references and so some provisions in Section 1.6100 still refer to the old subsections within Section 1.40001. This reproduction corrects those typographical errors with the correct cross references, denoted by bracketed text. All other provisions remain consistent with the published FCC regulation.

- (2) Collocation. The mounting or installation of transmission equipment on an eligible support structure for the purpose of transmitting and/or receiving radio frequency signals for communications purposes.
- (3) Eligible facilities request. Any request for modification of an existing tower or base station that does not substantially change the physical dimensions of such tower or base station, involving:
 - (i) Collocation of new transmission equipment;
 - (ii) Removal of transmission equipment; or
 - (iii) Replacement of transmission equipment.
- (4) Eligible support structure. Any tower or base station as defined in this section, provided that it is existing at the time the relevant application is filed with the State or local government under this section.
- (5) Existing. A constructed tower or base station is existing for purposes of this section if it has been reviewed and approved under the applicable zoning or siting process, or under another State or local regulatory review process, provided that a tower that has not been reviewed and approved because it was not in a zoned area when it was built, but was lawfully constructed, is existing for purposes of this definition.
- (6) Site. For towers other than towers in the public rights-of-way, the current boundaries of the leased or owned property surrounding the tower and any access or utility easements currently related to the site, and, for other eligible support structures, further restricted to that area in proximity to the structure and to other transmission equipment already deployed on the ground. The current boundaries of a site are the boundaries that existed as of the date that the original support structure or a modification to that structure was last reviewed and approved by a State or local government, if the approval of the modification occurred prior to the Spectrum Act or otherwise outside of the Section 6409(a) process.
- (7) Substantial change. A modification substantially changes the physical dimensions of an eligible support structure if it meets any of the following criteria:
 - (i) For towers other than towers in the public rights-of-way, it increases the height of the tower by more than 10% or by the height of one additional antenna array with separation from the nearest existing antenna not to exceed twenty feet, whichever is greater; for other eligible support structures, it increases the height of the structure by more than 10% or more than ten feet, whichever is greater.

- (A) Changes in height should be measured from the original support structure in cases where deployments are or will be separated horizontally, such as on buildings' rooftops; in other circumstances, changes in height should be measured from the dimensions of the tower or base station, inclusive of originally approved appurtenances and any modifications that were approved prior to the passage of the Spectrum Act.
- (ii) For towers other than towers in the public rights-of-way, it involves adding an appurtenance to the body of the tower that would protrude from the edge of the tower more than twenty feet, or more than the width of the tower structure at the level of the appurtenance, whichever is greater; for other eligible support structures, it involves adding an appurtenance to the body of the structure that would protrude from the edge of the structure by more than six feet;
- (iii) For any eligible support structure, it involves installation of more than the standard number of new equipment cabinets for the technology involved, but not to exceed four cabinets; or, for towers in the public rights-of-way and base stations, it involves installation of any new equipment cabinets on the ground if there are no pre-existing ground cabinets associated with the structure, or else involves installation of ground cabinets that are more than 10% larger in height or overall volume than any other ground cabinets associated with the structure;
- (iv) It entails any excavation or deployment outside the current site, except that, for towers other than towers in the public rights-of-way, it entails any excavation or deployment of transmission equipment outside of the current site by more than 30 feet in any direction. The site boundary from which the 30 feet is measured excludes any access or utility easements currently related to the site.
- (v) It would defeat the concealment elements of the eligible support structure; or
- (vi) It does not comply with conditions associated with the siting approval of the construction or modification of the eligible support structure or base station equipment, provided however that this limitation does not apply to any modification that is non-compliant only in a manner that would not exceed the thresholds identified in § 1.6100(b)(7)(i) through (iv).
- (8) Transmission equipment. Equipment that facilitates transmission for any Commission-licensed or authorized wireless communication service, including, but not limited to, radio transceivers, antennas, coaxial or fiber-optic cable, and regular and backup power supply. The term includes equipment associated with wireless communications services including, but not limited to, private, broadcast, and public safety services, as well as unlicensed wireless services and fixed wireless services such as microwave backhaul.

- (9) Tower. Any structure built for the sole or primary purpose of supporting any Commission-licensed or authorized antennas and their associated facilities, including structures that are constructed for wireless communications services including, but not limited to, private, broadcast, and public safety services, as well as unlicensed wireless services and fixed wireless services such as microwave backhaul, and the associated site.

(C) Review of applications. A State or local government may not deny and shall approve any eligible facilities request for modification of an eligible support structure that does not substantially change the physical dimensions of such structure.

- (1) Documentation requirement for review. When an applicant asserts in writing that a request for modification is covered by this section, a State or local government may require the applicant to provide documentation or information only to the extent reasonably related to determining whether the request meets the requirements of this section. A State or local government may not require an applicant to submit any other documentation, including but not limited to documentation intended to illustrate the need for such wireless facilities or to justify the business decision to modify such wireless facilities.
- (2) Timeframe for review. Within 60 days of the date on which an applicant submits a request seeking approval under this section, the State or local government shall approve the application unless it determines that the application is not covered by this section.
- (3) Tolling of the timeframe for review. The 60-day period begins to run when the application is filed and may be tolled only by mutual agreement or in cases where the reviewing State or local government determines that the application is incomplete. The timeframe for review is not tolled by a moratorium on the review of applications.
- (i) To toll the timeframe for incompleteness, the reviewing State or local government must provide written notice to the applicant within 30 days of receipt of the application, clearly and specifically delineating all missing documents or information. Such delineated information is limited to documents or information meeting the standard under paragraph (c)(1) of this section.
- (ii) The timeframe for review begins running again when the applicant makes a supplemental submission in response to the State or local government's notice of incompleteness.
- (iii) Following a supplemental submission, the State or local government will have 10 days to notify the applicant that the supplemental submission did not provide the information identified in the original notice delineating missing

information. The timeframe is tolled in the case of second or subsequent notices pursuant to the procedures identified in this paragraph (c)(3). Second or subsequent notices of incompleteness may not specify missing documents or information that were not delineated in the original notice of incompleteness.

- (4) Failure to act. In the event the reviewing State or local government fails to approve or deny a request seeking approval under this section within the timeframe for review (accounting for any tolling), the request shall be deemed granted. The deemed grant does not become effective until the applicant notifies the applicable reviewing authority in writing after the review period has expired (accounting for any tolling) that the application has been deemed granted.
 - (5) Remedies. Applicants and reviewing authorities may bring claims related to Section 6409(a) to any court of competent jurisdiction.
-

APPENDIX C – STATE STATUTES

This Appendix contains relevant California statutes cited or referred to in the city's policy for informational and reference purposes only. These authorities are current as of the date on which the city adopted the policy. However, the reader should be cautioned that these authorities may be amended or superseded from time-to-time and those amended or superseded versions will control over the reproduced text in this Appendix.

California Public Utilities Code § 7901

Telegraph or telephone corporations may construct lines of telegraph or telephone lines² along and upon any public road or highway, along or across any of the waters or lands within this State, and may erect poles, posts, piers, or abutments for supporting the insulators, wires, and other necessary fixtures of their lines, in such manner and at such points as not to incommode the public use of the road or highway or interrupt the navigation of the waters.

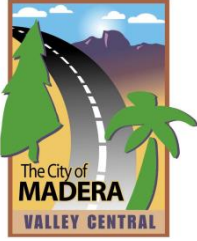
California Public Utilities Code § 7901.1

(a) It is the intent of the Legislature, consistent with Section 7901, that municipalities shall have the right to exercise reasonable control as to the time, place, and manner in which roads, highways, and waterways are accessed.

(b) The control, to be reasonable, shall, at a minimum, be applied to all entities in an equivalent manner.

(c) Nothing in this section shall add to or subtract from any existing authority with respect to the imposition of fees by municipalities.

² "Telephone line" includes all conduits, ducts, poles, wires, cables, instruments, and appliances, and all other real estate, fixtures, and personal property owned, controlled, operated, or managed in connection with or to facilitate communication by telephone, whether such communication is had with or without the use of transmission wires. CAL. PUB. UTILS. CODE § 233.



REPORT TO CITY COUNCIL

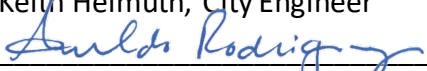
Approved by:

Council Meeting of: October 19, 2022



Keith Helmuth, City Engineer

Agenda Number: B-8



Arnoldo Rodriguez, City Manager

SUBJECT:

Pyrethroid Management Plan for the San Joaquin River Basin

RECOMMENDATION:

Adopt a resolution approving a Pyrethroid Management Plan (PMP) in accordance with California Regional Water Quality Control Board (CRWQCB) Water Quality Basin Plan Amendment (BPA) for the San Joaquin River Basin

SUMMARY:

In 2017, the CRWQCB amended the existing Water Quality Control Basin Plan, establishing a Pyrethroid Pesticide Control Program (PMP) to reduce the discharge of pyrethroid pesticides to surface waters. As a municipality regulated pursuant to the Phase II Municipal Separate Storm Sewer System (MS4) permit, the City of Madera (City) is subject to this requirement by way of stormwater discharges to the Fresno River. Adoption and establishment of a PMP plan will allow the City to follow State regulations.

BACKGROUND:

Pyrethroids are a class of synthetic insecticides found in household pesticides sold in common retail locations and are approved for use by the California Department of Pesticide Regulation. Pyrethroids remain in the environment significantly longer than naturally derived pyrethrin, which, means they are susceptible to being transported by surface runoff into surrounding river systems. A recent report has found that pyrethroids concentrations in urban storm drain discharges frequently exceeded water quality standards, and these elevated concentrations were determined to be toxic to aquatic life.

To be in compliance with the BPA requires the City to develop and implement a PMP to manage pesticide use and to control water discharges to water bodies of the State. This PMP will be submitted to the State as a part of the existing State required storm water management plan

reporting requirements, which are submitted to the State annually. The PMP must identify a set of management practices that will control urban pesticides discharges, assign staff to coordinate discharger activities, adopt an Integrated Pest Management (IPM), provide resident outreach and education materials, and ensure that the IPM policy is implemented.

On June 8, 2017, the CRWQCB adopted Resolution R5-2017-0057, the BPA for the Control of Pyrethroid Pesticide Discharges throughout the Sacramento and San Joaquin River Basins to protect aquatic life. The BPA was subsequently approved by the State Water Resources Control Board on July 10, 2018, and the Office of Administrative Law (OAL) on February 19, 2019. The BPA established a Pyrethroid Control Program that subjected the City to a variety of actions including:

- Monitoring requirements to assess baseline pesticide discharges, as well as continued trend monitoring.
- A conditional prohibition for pyrethroid discharges in exceedance of numeric triggers for water bodies within the San Joaquin River Basin to protect aquatic life.
- If the numeric triggers are exceeded, the conditional prohibition requires the development and submittal of a Pyrethroid Management Plan to reduce pyrethroid levels in discharges to the maximum extent practicable.

The City is subject to the conditional prohibition. As a municipality regulated pursuant to the Phase II Municipal Separate Storm Sewer System permit, the City may, as an alternative, acknowledge that the existing data are representative of the discharges from the City, forego baseline monitoring, and develop a Management Plan. The City has communicated to the Regional Water Board that the existing data used for the development of the BPA and TMDL are representative of the City's urban discharges and, thus, has decided to forego the baseline monitoring and move forward with the development of a PMP.

On July 13, 2020, The CVRWQCB ordered the City to submit technical and monitoring reports and to establish a Pyrethroid Pesticide Control Program. The PMP also included a requirement for development of an Integrated Pest Management Plan (IPM) to control the use of pesticides. This IPM is included in the PMP as Attachment A. The order stipulated the City must comply with this order by August 19, 2021, or face fines of \$1,000/day. Due to staffing shortages, the City requested time extensions in compliance with the provisions of the order.

The City developed a PMP policy in compliance with the order. The PMP was developed with input from both Parks and Community Services and Public Works Departments, who are the main users of pesticide products and will be the primary departments required to implement this program.

Key elements of the proposed PMP include:

1. Public Education and Outreach Activities;
2. Pesticide Pollution and Prevention Activities;

3. Progress Reporting and Documentation; and
4. Implementation of Integrated Pest Management Policies and Practices.

The City will implement targeted outreach programs that convey messages to residents specific to the proper use and application of pesticides in an urban context, as well as encouraging the use of less toxic options to help reduce reliance on pesticides that threaten water quality. The residential outreach activities implemented by the City that specifically support this messaging includes Residential Outreach, Point-of-Purchase Outreach, Outreach to Landscape Professionals and Development of a IPM policy for Landscape and Irrigation Practices.

Staff developed an auxiliary page for the City website that will provide an overview of the PMP policy and a link to the PMP document. The website will also be used to share information about the PMP implementation schedule (public notice, annual reporting, etc.). Information flyers will be developed and will be distributed at local retail businesses and community events.

The BPA includes a range of pollution prevention activities that reduce reliance on pesticides which adversely impact water quality. Through the stormwater management program, the City implements several activities that address pesticide management via pollution prevention. Consistent with the BPA, the City will build on the existing stormwater program activities to implement the following pollution prevention BMPs:

- Practices to Reduce Pesticide Use
- Implementation of Integrated Pest Management Policies and Practices
- Participation in Pesticide Regulatory Processes

The PMP identifies natural and organic pest control methods that can be used by the City to address insect, rodent and weed pest issues. Allowed products include physical barriers such as caulking agents and cracksealants; use of borates, silicates, and diatomaceous earth; soap-based products; and biological controls, such as parasites and predators. Natural (non-synthetic) products that include only active ingredients are allowed, as well as cruelty-free baits and traps for rodents and other mammals.

The Policy identifies the following categories of high health-risk pest management products to be discontinued from use on City property:

- Pesticides on the California Proposition 65 list (materials known to the State to cause cancer or reproductive or development toxicity) including mutagens and teratogens,
- Pesticides that are known, probable or possible carcinogen identified by USEPA,
- Known endocrine disruptors listed by the USEPA Endocrine Disruptor website,
- Organophosphate; and
- Organochlorines, such as DDT (Dichlorodiphenyltrichloroethane)

The IPM Policy calls for designating an IPM Manager, who will oversee and coordinate implementation of the Policy with each City department and all pesticide applicator contractors. To achieve this goal, the IPM Manager will coordinate the development of pesticide Best Management Practices and standard operating procedures. The IPM Manager will also oversee the tracking and reporting of the quantity of pesticides used and annual use reductions.

FINANCIAL IMPACT:

Implementation of the Policy will have fiscal impacts related to additional costs incurred to maintain park and street landscape areas. Park staff and contractors anticipate the need for additional resources for increased mulching and more frequent manual weeding and mowing. Using other specified organic pesticide products will also require a larger volume of product and more frequent application to achieve desirable results.

CONSISTENCY WITH THE VISION MADERA 2025 PLAN:

Action 101.6 - This entire effort supports this strategy to ensure infrastructure can sustain population growth in the development of the General Plan.

ALTERNATIVES:

No alternative is provided. The City discharges stormwater to the Fresno River which is regulated by the State.

ATTACHMENTS:

1. Resolution
2. PMP Policy

ATTACHMENT 1

Resolution

RESOLUTION NO. _____

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MADERA
APPROVING AN PYRETHROID MANAGEMENT PLAN IN ACCORDANCE
WITH THE CENTRAL VALLEY REGIONAL WATER QUALITY CONTROL
BOARD WATER QUALITY BASIN PLAN AMENDMENT FOR THE SAN
JOAQUIN RIVER BASIN**

WHEREAS, the use of chemical pesticides can be reduced by using integrated pest management principles that rely primarily on mechanical, physical, cultural, and biological measures to control pests and the application of the lowest risk pesticide products when needed; and

WHEREAS, the California Regional Water Control Board (RWQCB) adopted National Pollution Discharge Elimination System (NPDES) Permit and Waste Discharge Requirements for Discharge Elimination System from Municipal Separate Storm Sewer Systems to water bodies of the State; and

WHEREAS, RWQCB Resolution R5-2017-0057 established a Pyrethroid Pesticide Control Program Basin Plan Amendment (BPA) to control discharges of pyrethroid pesticides to water bodies of the State; and

WHEREAS, the City of Madera is a permitted Municipal Separate Storm Sewer Systems (MS4s) municipality that regularly discharges stormwater to the Fresno River, is subject to these requirements; and

WHEREAS, the BPA requires development, adoption and implementation of a Pyrethroid Management Plan and a jurisdiction-wide Integrated Pest Management (IPM) program to reduce pesticide use in landscape, parks, and recreation facilities management; and

WHEREAS, adequate funds are available in the project budget for additional costs related to the Pyrethroid Management Plan.

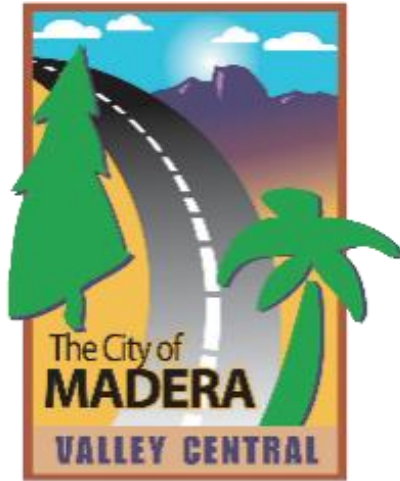
NOW, THEREFORE, THE COUNCIL OF THE CITY OF MADERA hereby resolves, finds, determines and orders as follows:

1. The above recitals are true and correct.
2. The City Council hereby approves the City of Madera Pyrethroid Management Plan, a copy of which attached hereto as Attachment 2; and
3. This Resolution is effective immediately upon adoption.

* * * * *

ATTACHMENT 2

PMP Policy



CITY OF MADERA PYRETHROID MANAGEMENT PLAN

October 2022

Prepared by:
City of Madera
Engineering Department
428 East Yosemite Avenue
Madera, CA 93637

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- Appendix D. Summary of City Events
- Appendix E. Professional IPM Pamphlet
- Appendix F. Landscape Design & Maintenance Program
- Appendix G. Integrated Pest Management Policy

List of Acronyms

IPM	Integrated Pest Management
BMP	Best Management Practice
MEP	Maximum Extent Practicable
LID	Low Impact Development
CVRWQCB	Regional Water Quality Control Board
OWOW	Our Water our World
UC IPM	University of California Integrated Pest Management
MS4	Municipal Separate Storm Sewer System
NPDES	National Pollutant Discharge Elimination System
BPA	Basin Plan Amendment
DPR	Department of Pesticide Regulation
ECI	Environmental Compliance Inspector
CASQA	California Stormwater Quality Association
EPA	Environmental Protection Agency
UCANR	University of California Agricultural and Natural Resources
PMP	Pyrethroid Management Plan
PAPA	Pesticide Applicators Professional Association
SMARTS	Storm Water Multiple Application Tracking System

1 Introduction

On June 8, 2017, the Central Valley Regional Water Quality Control Board (Regional Water Board) adopted Resolution R5-2017-0057, the Basin Plan Amendment (BPA) for the Control of Pyrethroid Pesticide Discharges throughout the Sacramento and San Joaquin River Basins to protect aquatic life beneficial uses. The BPA was subsequently approved by the State Water Resources Control Board on July 10, 2018, and the Office of Administrative Law (OAL) on February 19, 2019. The BPA established a Pyrethroid Control Program that includes a variety of actions including, but not limited to:

- Monitoring requirements to assess baseline conditions, as well as continued trend monitoring.
- A conditional prohibition for pyrethroid discharges in exceedance of numeric triggers for the San Joaquin River Basin water bodies with the aquatic life beneficial uses.
- If the numeric triggers are exceeded, the conditional prohibition requires the development and submittal of a Pyrethroid Management Plan (Management Plan) to reduce pyrethroid levels in discharges to the maximum extent practicable.

The City of Madera (City) is subject to the conditional prohibition. As a municipality regulated pursuant to the Phase II Municipal Separate Storm Sewer System (MS4) permit (Phase II Permit), the City may, as an alternative, acknowledge that the existing data are representative of the discharges from the City, forego baseline monitoring, and develop a Management Plan. The City has communicated to the Regional Water Board that the existing data used for the development of the BPA and TMDL are representative of the City's urban discharges and, thus, has decided to forego the baseline monitoring and move forward with the development of a Pyrethroid Management Plan (Management Plan).

1.1 MANAGEMENT PLAN APPROACH

The City has developed this Management Plan to meet the requirements of the BPA and specifically, the conditional prohibition. As part of the Phase II Permit requirements, the City currently implements a stormwater program with several components that address pesticide management and reduction. These components include, but are not limited to, public education and outreach; the implementation of a stormwater pollution prevention plan (SWPPP) and best management practices (BMPs) for operations and maintenance activities. The Management Plan builds on these efforts so that it leverages the currently implemented activities, while comprehensively addressing the requirements of the BPA.

The Management Plan includes a set of management practices that, could effectively

reduce pyrethroid levels in the municipal stormwater discharges.

The Management Plan is organized as follows:

- Section 1 - Introduction
- Section 2 – Education and Outreach Activities
- Section 3 – Pesticide Pollution Prevention Activities
- Section 4 – Progress Reports and Adaptive Management

An implementation schedule for the activities outlined in this Management Plan is provided as Appendix A.

2 Education and Outreach Activities

The BPA includes a range of education and outreach activities for the public that encourage management practices that minimize pesticide runoff. Through the stormwater management program, the City will implement several activities that address pesticide management. Consistent with the BPA, the City will build on the existing stormwater program activities to implement the following education and outreach activities:

- Residential Outreach
- Point-of-Purchase Outreach
- Outreach Regarding Pest Control and Landscape Professionals
- Outreach for Landscape and Irrigation Practices

2.1 RESIDENTIAL OUTREACH

The BPA requires the following Education and outreach activity (Order E.1.i.1):

Undertake targeted outreach programs to encourage communities within a discharger's authority to reduce their reliance on pesticides that threaten water quality, focusing efforts on those most likely to use pesticides that threaten water quality, potentially by working with CDPR, County Agricultural Commissioners, and the University of California Statewide Integrated Pest Management Program, or other entities as appropriate.

The City has developed and will implement targeted outreach programs that convey messages to residents specific to the proper use and application of pesticides in an urban context, as well as encouraging the use of less toxic options to help reduce reliance on pesticides that threaten water quality. The residential outreach activities implemented by the City that specifically support this messaging includes the following:

- Website – <https://www.madera.gov/home/city-services/stormwater/> The City will provide pesticide-specific outreach on the *Residents: Gardening & Pesticides* section of its stormwater website. The section will include an overview of IPM and tips for a healthy garden, home, and environment, as well as the following:
 - A discussion of beneficial insect's links to an OWOW webpage on "Pesticides and Water Quality". A typical flyer is shown in Appendix B.

- The City will include a flyer containing pest control-related information. The flyer will list the following:
 - Tips on Using Pesticides
 - How to Purchase Less Toxic Pesticides
 - Choosing to Go Less Toxic In Your Yard
 - Less Toxic Ways to Handle Aphids
 - Where to properly dispose of unused Pesticides
- The City’s website will include a link to the “Our Water – Our World” website <http://ourwaterourworld.org>, a statewide program specifically designed to address water quality impacts of urban use pesticides. The website provides information regarding the potentially adverse impacts of pesticides on water quality, proper pesticide uses and disposal, and less toxic methods of pest control.
- The City’s website will include a link to the UC Master Gardeners website <http://mg.ucanr.edu> to help inform the community about organic gardening, substitutes for chemical pesticides, and other pesticide-related topics. Madera County also has a Master Gardener program. City staff will provide outreach to this group concerning Pest use information.
- A Household Hazardous Waste Flyer showing the location where residents can safely dispose of excess/unused pesticides is listed in Appendix C. This flyer is currently distributed by mail yearly to all residents.
- Community Events – When COVID-19 restrictions are lifted and public events are allowed, the City will provide pesticide-related outreach to residents at local and regional community events (e.g., Relay for Life, Madera County Fair, Madera Parade). These events will be advertised on the City’s website <https://www.madera.gov/home/departments/parks-community-services/activity-guide>. A listing of planned events is listed in Appendix D.

2.2 POINT-OF-PURCHASE OUTREACH

The BPA requires the following point-of-purchase outreach activity (Order E.1.i 2):

Make available point-of-purchase outreach materials to pesticide retailer(s) in or near the Permittee’s authority. These materials shall provide targeted information on proper pesticide use and disposal, potential adverse impacts on water quality, and less toxic methods of pest prevention and control.

The City will develop and implement an approach to provide point-of-purchase

outreach materials to local retailer(s) that convey messages to the residents specific to the proper use and disposal of pesticides, potential adverse effects on water quality, and less toxic methods of pest control. The point-of-purchase outreach activities that will be implemented by the City include the following:

- City staff will visit the Madera Home Depot and Lowe's semi-annually to provide public outreach. Activities at the store visits will include the following:
 - Interacting with customers and store employees to answer questions regarding less toxic and stormwater-friendly methods of pest control for a variety of pests.
 - Replenishing the literature rack with materials, including "shelf-talkers" fact sheets in English and Spanish that address specific pests, gardening and pesticide-related topics, and pocket guides.

2.3 OUTREACH REGARDING PEST CONTROL AND LANDSCAPE PROFESSIONALS

The BPA requires the following outreach activity regarding pest control and landscape professionals (Order E.1.i.3):

Conduct outreach to Permittee's residents and businesses who may hire structural pest control and landscape professionals that contains messages that (a) explain the links between pesticide usage and water quality; and (b) provides information about structural pest control IPM certification programs and IPM for landscape professionals.

The City will provide pesticide-related outreach to residents and businesses who may use structural pest control and/or landscape professionals. The outreach to pest control and landscape professionals that is implemented by the City includes the following:

- Website – The City will provide outreach on its website and as shown in Appendix E, regarding “How to Choose a Pest Control Operator,” helping residents and businesses ensure that whoever is hired utilizes IPM and has the required licenses, registration, certificate, and insurance at <https://www.madera.gov/home/city-services/stormwater>
- Community Events – When COVID-19 restrictions are lifted and public events are allowed, the City will provide pesticide-related outreach to residents at local and regional community events (e.g., Love Madera, Relay for Life, Movies in the Park, July 4th Event, Madera Parade). The City will host a table at these events and be available to provide recommendations regarding hiring pest control, landscape professionals who use IPM and understand the connection between pesticide usage and water quality. These events will be advertised on the City's website <https://www.madera.gov/home/departments/parks-community-services/activity-guide>.

2.4 OUTREACH FOR LANDSCAPE AND IRRIGATION PRACTICES

The BPA requires the following outreach activity for landscape and irrigation practices (Order E.1.i.4):

Encourage public and private management practices (e.g., landscape design, irrigation management, etc.) that minimize pesticide runoff.

The City will develop and convey messages specific to landscape design and irrigation management that minimize pesticide runoff, including the following:

- City staff will visit the Madera Home Depot and Lowe's and provide public outreach semi-annually concerning landscape design and pesticide best practice use. Activities at the store visits will include the following:

- Interacting with customers and store employees to answer questions regarding proper landscape design practices to control runoff and stormwater-friendly methods of pest control for a variety of pests.
- Replenishing the literature rack with materials, including “shelf-talkers,” fact sheets in English and Spanish that address specific pests, gardening and pesticide-related topics, and pocket guides.

- Website – The City’s website will encourage public and private management practices to minimize pesticide runoff:
- Residents can find water conservation tips, management practices regarding irrigation and landscape design specifically to reduce runoff, and a linkage between water conservation and reduction of irrigation runoff that may contain pesticides at <https://www.madera.gov/home/departments/engineering/IPM-policy>.
 - Information will also be provided to residents regarding "Be Water Wise" <https://www.bewaterwise.com> and "UC Master Gardeners" <http://mg.ucanr.edu>.
 - In addition, the City's website will provide targeted outreach to landscape contractors regarding pesticide application practices, and IPM use at: <https://www.madera.gov/home/city-services/stormwater>
- Community Events – When COVID-19 restrictions are lifted and public events are allowed, the City intends to provide pesticide-related outreach to residents at local and regional community events (e.g., Love Madera, Relay for Life, Movies in the Park, July 4th Event, Madera Parade). The City will host a table at these events and be available to answer questions and provide advice regarding pesticide management. These events will be advertised on the City’s stormwater website <https://www.madera.gov/home/departments/parks-community-services/activity-guide>

3 Pesticide Pollution Prevention Activities

The BPA includes a range of pollution prevention activities for public agencies that reduce reliance on pesticides that adversely impact water quality. Through the stormwater management program, the City implements several activities that address pesticide management via pollution prevention. Consistent with the BPA, the City will build on the existing stormwater program activities to implement the following pollution prevention BMPs:

- Practices to Reduce Pesticide Use
- Implementation of Integrated Pest Management Policies and Practices
- Participation in Pesticide Regulatory Processes

3.1 PRACTICES TO REDUCE PESTICIDE USE

The BPA requires the following practices to reduce pesticide use (Order E.1.ii.1):

Reduce reliance on pyrethroids and other pesticides that threaten water quality by adopting and implementing policies or procedures that minimize the use of pesticides that threaten water quality in the discharger's operations and on the discharger's property.

The activities to reduce pesticide use that will be developed and implemented by the City include the following:

- Pesticide-Related Policies and Procedures – The City will implement pesticide-related policies and procedures, including the following:
 - The City's *Landscape Design and Maintenance Program* (Appendix F) specifies (practices to reduce the amount of water, pesticides, herbicides, and fertilizers used during operations on City-owned or operated facilities, including park sites, athletic fields, golf courses, landscaped medians, and other landscaped areas.
 - The City's *Stormwater Pollution Prevention Plan (SWPPP)* (April 2015) includes practices to prevent spills or leaks during chemical use, including pesticides.
- Staff Training – The City will train its staff on pesticide-related policies and procedures using existing, internal training modules or external training resources. University of California Statewide IPM Program <http://ipm.ucanr.edu/training> is one such resource for training modules and materials (e.g., *Urban Pesticide Runoff and Mitigation*).

3.2 IMPLEMENTATION OF INTEGRATED PEST MANAGEMENT POLICIES AND PRACTICES

The BPA requires the implementation of IPM policies and practices, as follows (Order E.1.ii.2):

Develop and implement an Integrated Pest Management policy that:

- *Is consistent with IPM as defined by the University of California Statewide IPM or the California Structural Pest Control Board definition.*
- *Applies to all Permittee staff who conduct or contract for pest management and to pest management vendors under contract to the Permittee.*
- *Assigns responsibilities to a designated staff position and/or department to coordinate Permittee activities and ensure that the IPM policy is implemented.*

The IPM policies and practices developed and implemented by the City include the following:

- The City's IPM Policy is located in Appendix G. The City will implement and

Pyrethroid Management Plan

enforce the policy to promote the use of IPM and minimize the use of pesticides within its authority. The IPM Policy is:

- Consistent with IPM as defined by the University of California Statewide IPM Program (UC-IPM) or the California Structural Pest Control Board definition.
- Apply to all City staff who conduct or contract for pest management and to pest management vendors under contract to the City.
- Assign responsibilities to a designated staff position and/or department to coordinate the City's activities and ensure that the IPM policy is implemented.
- Other IPM-related policies and practices to be developed and implemented, either as standalone documents or included in the IPM Policy, will include items such as contracting requirements for pesticide applicators and purchasing specifications that include consideration of less-toxic options.

3.3 PARTICIPATION IN PESTICIDE REGULATORY PROCESSES

The BPA requires support of pollution prevention through participation in pesticide regulatory processes, as follows (Order E.1.iii.1):

Track USEPA and CDPR pesticide evaluation and registration activities as they relate to surface water quality and encourage these agencies to accommodate urban water quality

concerns within their pesticide registration processes. This may include assembling and submitting available information (such as monitoring data) to USEPA and CDPR during public comment periods to assist in their pesticide evaluation and registration activities. This best management practice would be implemented most effectively through a cooperative regional or statewide approach.

The City is a member of the California Stormwater Quality Association (CASQA). One of CASQA's subcommittees, the Pesticides Subcommittee (PSC) currently conducts several activities that assist in tracking and reporting on the USEPA and DPR pesticide evaluation and registration activities. These have generally included the following:

- Regulatory-Related Activities – The PSC addresses pesticide uses that impact stormwater discharges, provides input to EPA and DPR to improve regulations, compiles relevant information, assists members with compliance strategies, and coordinates its activities with other agencies statewide. The types of activities include:

- Support for the development of the Urban Pesticides Amendment.
- Support for the formation of the Urban Pesticides Coordinated Monitoring Program (potential statewide monitoring program).
- Review of scientific literature to update and prioritize the Pesticide Watch List.
- Prepared written comments to EPA on its Endangered Species Act Pesticides Risk Assessment proposed procedures and other pesticide evaluations and re-registrations.
- Annual Report – This report provides a summary of the CASQA efforts that were conducted on behalf of the membership during that reporting year to prevent pesticide pollution in urban waterways. In addition, the report has provided an effectiveness assessment regarding the activities that were conducted.

On an annual basis, CASQA identifies the highest priority activities and implements these activities based on available funding and membership needs. As such, implementation of past practices, such as those described above, is not a guarantee of continued implementation of similar activities in the future.

In addition, the State Water Resources Control Board (State Water Board) is developing Urban Pesticide Amendments (UPAs) to the Inland Surface Waters, Enclosed Bays, and Estuaries Plan and the Ocean Plan. This work effort is a part of the STORMS projects. The UPAs is expected to contain proactive regulation of pesticides by the Department of Regulation (DPR) and identify cost effective activities that can be implemented or supported by the regulated entities. The City will continue to track the development of the UPAs and modify this Management Plan if efficiencies can be realized by including activities that are identified as a part of the UPAs.

4 Progress Reports and Adaptive Management

4.1 REPORTING REQUIREMENTS

The BPA requires an annual progress report to be developed to document the management practices that have been implemented, evaluate pyrethroid concentrations with respect to the pyrethroid triggers, and identify effective actions to be taken in the future. Accordingly, the City will prepare and submit a progress report by October 15 each year in conjunction with the Phase II Permit annual report submitted via Stormwater Multiple Application and Report Track System (SMARTS). Pending approval of this Management Plan, the first progress report is anticipated to be submitted in 2023, after a full year of Management Plan implementation.

4.2 REPORT APPROACH AND CONTENT

The BPA requires an annual progress report, as follows:

A progress report shall be provided to the Board annually or at a frequency consistent with the discharger's permit requirements to document the management practices that have been implemented, to evaluate pyrethroid concentrations with respect to the pyrethroid triggers, and to identify effective actions to be taken in the future. The progress report can be included in other reports submitted to the Board, as appropriate.

The City will evaluate the implementation of the required management practices and present the results in narrative, tabular, and/or graphical form, as appropriate. The City anticipates that the annual progress report may include, but not be limited to, the following:

1. Documentation of the management practices that have been implemented:
 - A narrative summary of BMP implementation, by category (i.e., Education and Outreach Activities and Pesticide Pollution Prevention Activities).
 - Tabular and/or graphical presentations of BMP implementation, as well as summary statistics or other general descriptors to present the implementation results most usefully.
 - Evaluation of pyrethroid concentrations with respect to the pyrethroid triggers and identification of effective actions to be taken in the future.

4.3 ADAPTIVE MANAGEMENT

The BPA acknowledges that during Management Plan implementation, if the numeric triggers are not being met, adaptive management may be necessary:

If the management practices do not result in discharge concentrations at or below the pyrethroid numeric triggers, then the MS4 discharger shall either identify any available, reasonable, and feasible additional/alternative practices for implementation, or provide justification for why current practices are expected to result in achieving the triggers within a reasonable timeframe. This justification may include actions required by state and federal regulations.

As a part of the reporting process, and on approximately a five-year timeframe the City will qualitatively evaluate the effectiveness of the Management Plan, as well as the experience that staff has had in implementing the Management Plan, to identify potential modifications and refine the Management Plan approach, as needed.

The Management Plan may be reviewed and revised in the future based on the following:

1. Analysis of trend monitoring results (5-year period of record).

2. Completion of the UPAs expected to formalize proactive regulation of pesticides management and identify cost-effective activities that can be implemented or supported by the regulated entities, including the City. Identification by the City of changes to improve the effectiveness of specific management plan activities, based on its experiences in implementing the stormwater program and the activities.

Appendix A
PMP Implementation Schedule

City Council approves PMP – October 19, 2022

City Implements PMP Program within 30 days of Central Valley Water
Board approval.

Appendix B

Pesticides and Water Quality Pamphlet



Commonly used pesticides can be harmful to people and pets. They also pollute our water, air, and soil. While pesticides are used heavily in agriculture, more than half of California pesticide use is in urban and suburban areas—in and around our homes, schools, and businesses.

THREATS TO WILDLIFE AND WATER QUALITY

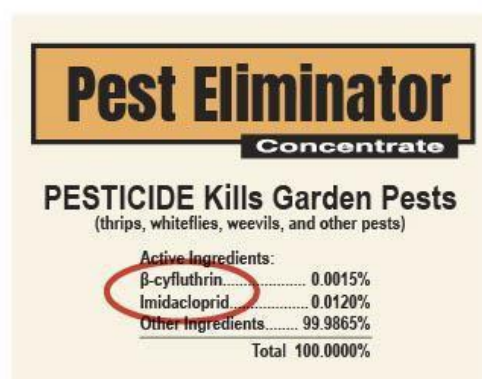
Commonly used pesticides have been detected in urban creeks and waterways throughout California and around the country. In our waters they poison birds, fish, and sensitive aquatic wildlife. In some locations, water contaminated with pesticides can migrate from creeks and surface waters into drinking water wells. We all need to do what we can to keep pesticides out of our creeks, streams, rivers, bays, and lakes.

Chlorpyrifos and **diazinon**, organophosphate pesticides, have been banned for residential use because they are so toxic to humans and the environment. These pesticides were either replaced or reformulated using other chemicals ("active ingredients"), that also cause water quality problems, including:

- **Pyrethroids**

Pyrethroids are long-lived, synthetic pesticides that interfere with the function of an organism's nervous system. They kill a wide variety of insect pests, including ants, cockroaches, and lawn grubs, but also earthworms and beneficial insects such as ladybugs and lacewings. When pyrethroids end up in our waters, they can kill crustaceans, aquatic insects, and fish.

Products containing pyrethroids have active ingredient names typically ending in **"-thrin,"** including permethrin, bifenthrin, cyfluthrin, beta-cyfluthrin, cypermethrin, deltamethrin, lambda-cyhalothrin, and tralomethrin. An exception is **esfenvalerate**.



Check the label for active ingredients.



PYRETHRINS — DIFFERENT FROM PYRETHROIDS

Pyrethrins are short-lived pesticides made from pyrethrum chrysanthemum flowers. They are toxic to birds, fish, and beneficial insects until they break down after a few hours in sunlight. If you use a pesticide or insecticidal soap containing pyrethrin, use it on a dry day when you're not planning to water for the next few hours. Prevent pyrethrins from running off to a street, gutter, or storm drain.



Choose eco-friendly products for your home and garden. Look for this symbol before you buy.

Fipronil

This is another widely used insecticide for controlling ants, beetles, cockroaches, fleas, ticks, termites, mole crickets, thrips, rootworms, weevils, and other insects. It is associated with bee colony collapse disorder. Fipronil is toxic to aquatic life, and to rabbits and ground-feeding birds such as chickens and turkeys.



Beneficial insects are often far more sensitive to pesticides than the pests you might be trying to kill.

Once pesticides eliminate the beneficial insects, pests multiply without a natural check.

Imidacloprid



One of the most widely used pesticide in the world, imidacloprid is a neonicotinoid pesticide also linked to honey-bee colony collapse disorder. In Jan 2013, the European Food Safety Authority

stated that neonicotinoids pose an unacceptably high

risk to bees. Many local garden centers have taken neonicotinoid pesticides off their shelves voluntarily because of the current honeybee crisis.

Malathion and Carbaryl (Sevin)

These pesticides are water-soluble-which means that rain and over-watering can easily cause them to run off lawns and gardens, into storm drains and on to local creeks, bays, and the ocean. They are twice as toxic in salt water as in fresh water. Both are toxic to honeybees and other pollinators.

DISPOSING OF EXTRA PESTICIDES

In California, it's illegal to dispose of any amount of unused pesticide (or any hazardous waste) in the trash, despite what the label may say. Take pesticides you won't be using to a local household hazardous waste collection facility or event. For a list of county household hazardous waste programs, visit www.calrecycle.ca.gov/HomeHazWaste/Directory/.

Never dispose of pesticide rinse water in any indoor or outdoor drain or in the gutter. Water used to rinse out a sprayer or applicator should be applied like the pesticide

MANAGING PESTS WHILE PROTECTING PEOPLE, PETS, AND THE ENVIRONMENT

1. When you apply pesticides, you're treating the symptom, rather than the cause of pest problems. Barriers (window screens and caulking to keep pests out), biological controls (encouraging beneficial insects), and cultural controls (keeping a clean house and a healthy garden that attracts beneficial insects) are always preferable to pesticide use. In situations where a pesticide is necessary, the best products for the environment are less toxic, less persistent, and target pests - not beneficial insects.



2. Follow the suggestions on pest prevention and less-toxic pest control in the Our WaterOur World fact sheet series, online at www.ourwaterourworld.org/FactSheets.aspx and in participating stores.

3. Find detailed information on pests and integrated pest management (IPM) approaches at ipm.ucanr.edu.



Bee photo: Paul Stein, licensed under the Creative Commons Attribution-Share Alike 2.0 Generic license; Storm drain photo: SCVURPPP

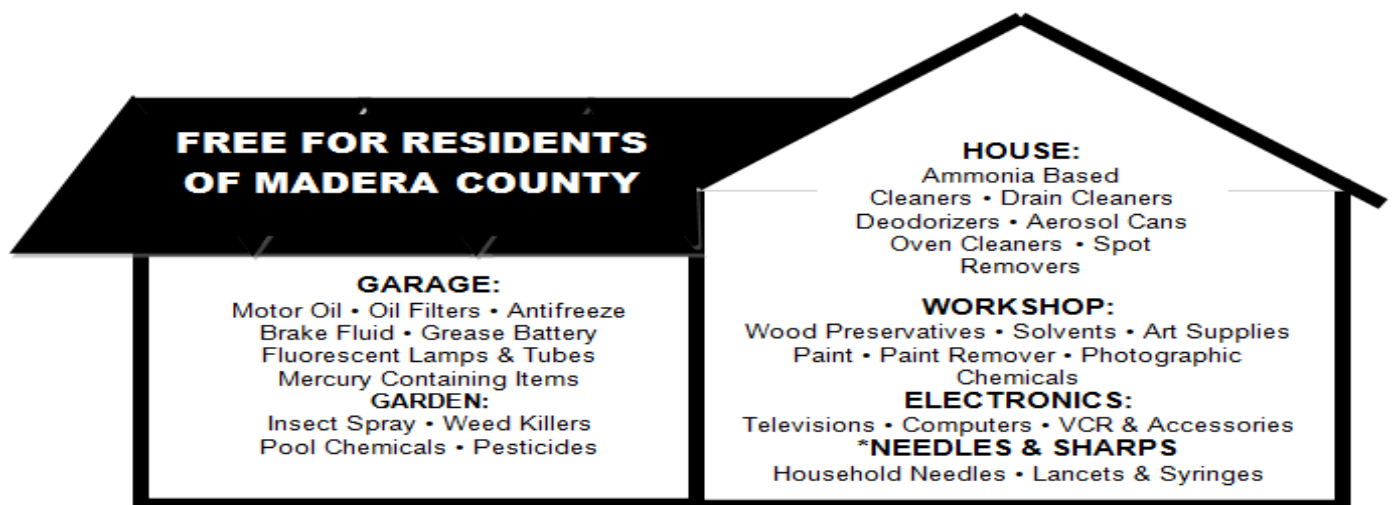
WWW.OURWATEROURWORLD.ORG

Appendix C
Pesticide Disposal
Poster

HOUSEHOLD HAZARDOUS WASTE EVENT

At the Madera County Household Hazardous Waste
Collection Facility (Located at the Fairmead Landfill) • 21739
Road 19 • Chowchilla, CA FOR MORE INFORMATION CALL:
(559) 665-7300

Facility Open
Saturdays 9 AM to 1
PM
(Except on Major Holidays)



Quantities Limited to 15 gallons
liquid or 125 pounds solids per

trip

NOT ACCEPTED:
*MEDICAL WASTE, RADIOACTIVE
MATERIAL, LARGE COMPRESSED GAS
CYLINDERS

Appendix D
Projected Summary of City Events

City Events				
Name	Date	Host/location	Contact	Website
Relay for Life	First week of May	Lions Town and Country Park	559-661-5418	https://www.madera.gov
Love Madera	Mid-April	Court house Park	559-661-5418	https://www.madera.gov
Senior Celebrate	3 rd week of September	Rotary Park	559-661-5418	https://www.madera.gov

Appendix E

Professional IPM Pamphlet



Sometimes a pest problem is so bad that you don't want to tackle it yourself. Or sometimes, as with bed bugs or a yellowjacket nest, it's more efficient to get professional help.

Just as *Our Water Our World* promotes products that are eco-friendly and effective, we also believe that the best pest control services use **integrated pest management** practices (IPM).

FINDING A PEST CONTROL COMPANY THAT USES IPM

Most pest control companies recognize that IPM solves pest problems more permanently than repeated spraying, because IPM emphasizes keeping pests out of buildings and working with residents on prevention. It's still very important, though, to ask specifically for IPM services when you interview or hire a pest management company, or discuss services with your regular provider. In California, three programs certify and list pest control companies that provide IPM services.

- **EcoWise Certified** (www.ecowisecertified.org), based in California, administers a rigorous test to make sure licensed pest management professionals understand and can provide prevention-based pest control practices. They certify both companies and individuals.
- **GreenPro** (www.whatisgreenpro.org), a program of the National Pest Management Association, certifies companies and IPM services that are "reduced risk, comprehensive, and effective."

WHAT IS IPM?

Integrated Pest Management (IPM) relies on (1) locating and identifying pests, (2) getting rid of pests using traps, vacuuming, or other physical or mechanical means, (3) keeping pests out by blocking entry points such as cracks and holes, and (4) when necessary, using eco-friendly pesticides such as cockroach gel baits.

- **Green Shield Certified** (www.greenshieldcertified.org), operated by the nonprofit IPM Institute of North America, certifies companies and services.

Even when you call a certified business, insist on IPM! Many certified companies offer both conventional spray programs and IPM services. Many companies that aren't certified have their own green service options.

QUESTIONS TO ASK A PEST CONTROL COMPANY

- Is your company certified by EcoWise, Green Pro, or Green Shield?
- Can I count on you to deliver IPM services?
- Will you send a person who specializes in IPM?
- Do you try other steps before using a pesticide?
- Will the services you provide keep pests from coming back?

WHAT'S WRONG WITH ROUTINE SPRAYING?

Conventional pest control often relies on routine spraying of pesticides inside and around buildings, and along walkways. This may give temporary relief from visible pests, but pests that are hiding behind appliances or in wall spaces will survive and keep breeding. Pests can also become resistant to the pesticides. This means the non-IPM service provider will have to come back and spray again—treating the symptoms of a pest infestation, but not curing the problem. You may be both paying for services that are less effective than IPM, and living with pests.



Choose eco-friendly products for your home and garden. Look for this symbol before you buy.

Can I see a typical service ticket? Make sure the ticket shows specific kinds of pests and where they were found on your property; structural conditions that should be corrected to keep pests away; and the recommended length of time before the next visit.

WHAT TO EXPECT FROM PM SERVICES?

The first visit will usually include inspection of your home or building, inside and out, to find out what kinds of pests are there; where they find food, water, and shelter; and how they get inside. The service person may leave sticky traps behind to confirm you have pests and learn where they're hiding.

The technician should give you a list of structural issues with the building that may provide places for pests to live and breed. IPM companies will often make simple structural repairs ("pest exclusion repairs") as a service. You and the service provider should make an agreement about who is going to fix what, and when.

The service person may suggest that you clear up clutter so that pests have fewer hiding places and are easy to

spot. Don't take it personally! IPM is a team effort.

With clutter reduced and pest exclusion repairs complete, future IPM services are likely to be brief and limited to monitoring for pests (checking sticky traps). But if you see pests, be sure to call the IPM service company!



DOES IPM COST MORE?

IPM may cost more than conventional spray treatments at first, because of the time it takes to make a thorough inspection and the cost of repairs to keep pests out. Over time, IPM services should happen less often, take less time, and cost less. Studies show that IPM saves money in the long run.

WHAT ABOUT BED BUGS?



Bed bugs are tiny brown or red crawling insects. They can be hard to see unless you're looking for them. The first sign of bed bugs may be people getting bitten at night. Bites can cause an itchy red rash... or not show up at all. Bed bugs or the brown or reddish stains they leave behind are usually found in mattress seams, furniture, upholstery, or cracks around baseboards close to where people sleep.

Providers may use heat treatment to end an infestation. This requires moving items that may be damaged by heat out of the living space, doing laundry, and staying away for several hours while heaters are brought in to raise the temperature up to 150° F. Bed bugs in clothes are generally killed after 20 minutes in a hot clothes dryer.

California state law requires that landlords must treat units infested with bed bugs. The landlord must pay for pest control services and cannot raise the rent or cause problems for a tenant who complains. The tenant must follow the pest control professional's instructions on how to get ready for treatment. Nearby units may also be inspected and treated if bed bugs are found.



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Appendix F

Landscape Design & Maintenance Program

INTRODUCTION:

The Phase II Permit requires the implementation of a Landscape Design and Maintenance Program to reduce the amount of water, pesticides, herbicides, and fertilizers used during City of Madera (City) operations and activities. This Landscape Design and Maintenance Program was prepared to meet the requirements of Provision E.11.j and summarizes the City's practices to implement the tasks of this permit provision within the area of the City governed by the Phase II Permit.

The objective of the Landscape Design and Maintenance Program is to provide a summary of the City's practices to reduce the amount of water, pesticides, herbicides, and fertilizers in a single document to facilitate communication of the compliance activities within the City and to the public and interested regulators.

GOALS:

1. The requirements in the Phase II Permit are intended to discourage conventional landscaping practices, particularly the application of pesticides, herbicides, and fertilizers. To this end, the Phase II Permit requires the City to do the following within the area of the City governed by the Phase II Permit:
 - a. Evaluate pesticides, herbicides and fertilizers used and application activities performed and identify pollution prevention and source control opportunities.
 - b. Implement practices that reduce the discharge of pesticides, herbicides, and fertilizers.
 - c. Record the types and amounts of pesticides, herbicides and fertilizers used in the permit area.

PERMIT REQUIREMENTS:

Program Category	Related Permit Requirement E.11.j(ii)
Soil Health	(b) 2.a – Create drought-resistant soils by amending soils with compost.
	(b) 2.b – Create soil microbial community using compost, compost tea, or inoculation.
	(b) 2.d – Practice grass-cycling on decorative turf landscapes to reduce water use and the need for fertilizers.
Plantings and Landscaping	(b) 2.c – Use native and/or climate appropriate plants to reduce the amount of water, pesticides, herbicides, and fertilizers used.
	(b) 2.e – Keeping grass clippings and leaves away from waterways and out of the street using mulching, composting, or landfilling.
	(b) 2.i – Reducing mowing of grass to allow for greater pollutant removal, but not jeopardizing public safety.
Pesticide, Herbicide, Fertilizer Use	(a) – Evaluate pesticides, herbicides and fertilizers used and application activities performed and identify pollution prevention and source control opportunities.
	(b) 2.f – Preventing application of pesticides, herbicides, and fertilizers during irrigation or within 48 hours of predicted rainfall with greater than 50% probability as predicted by National Oceanic and Atmospheric Administration (NOAA).
	(b) 2.g – Limiting or replacing herbicide and pesticide use (e.g., conducting manual weed and insect removal).
	(b) 2.h – Prohibiting application of pesticides, herbicides and fertilizers as required by the regulations DPR 11-004 Prevention of Surface Water Contamination by Pesticides enacted by the Department of Pesticide Regulation.
	(b) 3 – Collect and properly dispose of unused pesticides, herbicides, and fertilizers.
	(c) – Record the types and amounts of pesticides, herbicides and fertilizers used in the permit area
Irrigation Management	(b) 4 – Minimize irrigation run-off by using an evapotranspiration-based irrigation schedule and rain sensors.
Staff Education	(b) 1 – Implement educational activities for municipal applicators and distributors.

SOIL HEALTH

GOAL:

3. Establish healthy soils where possible on City properties. Healthy soils are better able to absorb runoff and to help in the reduction of pollutant levels in runoff.
 - Reduce the need for fertilizers, pesticides, and herbicides on City properties, as healthy soils foster populations of beneficial insects and microbiota which deter problem pests and provide needed nutrients to vegetation without supplement.
 - Reduce the need for irrigation, as healthy soils are better able to retain irrigation water and thus reduce the need for additional watering, also reducing mid-irrigation runoff and associated pollutant transport.

PERMIT REQUIREMENTS:

4. (b) 2.a – Create drought-resistant soils by amending soils with compost.
5. (b) 2.b – Create a soil microbial community using compost, compost tea, or inoculation.

CITY PRACTICES AND ACTIONS:

6. Mowers are equipped with mulching blades and decks.
7. Heavily used turf areas are aerated and/or de-thatched to increase water absorption and retention.
8. Vehicle traffic on turf is avoided or reduced to reduce compaction.
9. Shrub and ground cover areas at key City facilities are mulched as needed to help retain soil moisture, improve the soil profile, and aid in weed suppression. The use of mulch reduces water use. Improving the soil profile increases plant health and minimizes the need for fertilization. Mulch also creates a weed barrier which helps to minimize herbicide use.
10. Grass-cycling and aeration is routinely performed in turf areas (i.e., primarily in parks) to reduce the need for fertilization and improve the soil profile.

PLANNED ACTIONS:

11. When the necessary equipment becomes available, top dressing will be applied as needed to amend soil, flatten uneven surfaces, fill in bare spots and to hold air, water, and nutrients in the root zone.
12. As funds become available, the City will increase mulching at shrub and ground cover areas.

PLANTINGS AND LANDSCAPING

GOAL:

Foster the alteration of City landscaping practices to reduce irrigation needs and chemical supplements.

13. Increase the use of native plants, as they are adapted to local conditions and thus more likely to thrive, reducing their susceptibility to pests and disease, as well as their need for fertilizers and pesticides.
14. Increase grass-cycling or leaving the clippings on the lawn after mowing.

PERMIT REQUIREMENT:

15. (b) 2.c – Use native and/or climate appropriate plants to reduce the amount of water, pesticides, herbicides, and fertilizers used.
16. (b) 2.e – Keeping grass clippings and leaves away from waterways and out of the street using mulching, composting, or landfilling.
17. (b) 2.i – Reducing mowing of grass to allow for greater pollutant removal, but not jeopardizing public safety.
18. (b) 2.d – Practice grass-cycling on decorative turf landscapes to reduce water use and the need for fertilizers.

CITY PRACTICES AND ACTIONS:

19. New landscaping incorporates the use of drought tolerant or California native plants and trees whenever possible to reduce water and fertilizer use. Plantings are designed and spaced appropriately to discourage weed growth thereby reducing herbicide use.
20. Climate and soil appropriate turf varieties are installed.
21. New landscapes are installed with climate and soil appropriate plant material.
22. Adjust mowing height of turf to accommodate season and use.

PESTICIDE, HERBICIDE, FERTILIZER USE

GOAL:

23. Reduce the quantity of pesticides, herbicides, and fertilizers used by the City in its operations and activities.

24. Establish new practices that reduce the reliance on pesticides, herbicides, and fertilizers for landscaping success and foster sustainable landscapes that are healthier, more resistant to pests, and use less water.

PERMIT REQUIREMENT:

25. ii)(a) – Evaluate pesticides, herbicides and fertilizers used and application activities performed and identify pollution prevention and source control opportunities.
26. (b) 2.f – Preventing application of pesticides, herbicides, and fertilizers during irrigation or within 48 hours of predicted rainfall with greater than 50% probability as predicted by National Oceanic and Atmospheric Administration (NOAA).
27. (b) 2.g – Limiting or replacing herbicide and pesticide use (e.g., conducting manual weed and insect removal).
28. (b) 2.h – Prohibiting application of pesticides, herbicides and fertilizers as required by the regulations DPR 11-004 Prevention of Surface Water Contamination by Pesticides enacted by the Department of Pesticide Regulation.
29. (b) 3 – Collect and properly dispose of un-used pesticides, herbicides, and fertilizers.
30. (c) – Record the types and amounts of pesticides, herbicides and fertilizers used in the permit area

CITY PRACTICES AND ACTIONS:

31. Municipal staff and/or contractors responsible for landscape chemical applications routinely monitor NOAA for weather conditions and schedule applications accordingly. All pesticides, herbicides, and fertilizers are applied according to the label requirements and in compliance with federal, state, and local regulations.
32. Municipal staff and/or contractors assigned to apply herbicides and pesticides are required to record type, amount, applicator and that they have reviewed the “NOAA” weather report before applying pesticides or herbicides. All usage is reported to Madera County.
33. The staff follow the Integrated Pest Management model for all herbicide and pesticide use. Applications are made only when warranted and when manual weed, or insect removal is impractical.

PLANNED ACTIONS:

None shown.

IRRIGATION MANAGEMENT

GOAL:

- 34. Foster practices that will result in the conservation of water resources.
- 35. Foster practices that will result in less irrigation run-off from City properties and reductions in water discharges from City activities into local water bodies.

PERMIT REQUIREMENT:

- 36. (b) 4 – Minimize irrigation run-off by using an evapotranspiration-based irrigation schedule and rain sensors.

CITY PRACTICES AND ACTIONS:

- 37. Irrigation requirements are outlined in the water efficient landscaping ordinance for the City.
- 38. Rain sensors shut down irrigation if measurable rain is detected.
- 39. Irrigation is done using cycle soak to reduce run off.
- 40. Conventional spray nozzles are upgraded to rotatory nozzles at key City facilities to reduce runoff.
- 41. Flow sensors are utilized to detect leaks or line failures.
- 42. All new construction is designed to utilize smart controllers that use evapo-transpiration (ET) and rain sensors.

PLANNED ACTIONS:

- 43. A centralized City weather station will be used to irrigate based on daily ET information.

STAFF EDUCATION

GOAL:

- 44. Develop practices to ensure that City staff responsible for conducting landscaping activities are sufficiently trained to conduct these activities in full compliance with permit requirements and with the intent of protecting water quality.

PERMIT REQUIREMENT:

45. (b) 1 – Implement educational activities for municipal applicators and distributors.

CITY PRACTICES AND ACTIONS:

46. Staff and contractors engaged in the use of pesticides and/or herbicides hold a valid Pesticide Applicator's Certificate issued by the California Department of Pesticide Regulation and attend a minimum of 20 hours of pesticide education classes every two (2) years.
47. Annual pesticide, herbicide and fertilizer training is provided to staff responsible for landscape chemical applications. Training topics include proper protective gear, storing, mixing, application, and the requirements of all federal, state, and local laws.
48. Staff attend the appropriate stormwater training sessions hosted by the stormwater coordinator.
49. Staff receive annual pesticide training covering all chemicals, pesticides, and herbicides that are used in the City by a Pest Control Adviser.
50. Staff attend external training and meetings related to the stormwater permitting requirements.

Appendix G

City of Madera Integrated Pest Management Policy

PREAMBLE

The City of Madera (City) is committed to implementing an Integrated Pest Management (IPM) approach to guide the management of its facilities, landscaped areas, and rights-of-way. The IPM approach promotes the protection of the residents and visitors, as well as the local waterways, and utilizes a pest management strategy that promotes the long-term suppression of pest problems with minimum impact on non-target organisms and the environment as well as a reduction in use of pesticides. Least toxic pesticides are used only after an assessment indicates such a need, consistent with the provisions of this IPM Policy.

The adoption of this IPM Policy facilitates compliance with the Phase II Municipal Separate Storm Sewer System (MS4) National Pollutant Discharge Elimination System (NPDES) Permit and the Basin Plan Amendment (BPA) for the Control of Pyrethroid Pesticide Discharges (Resolution R5-2017-0057).

APPROACH

For the purposes of its IPM policy, the CITY adopts the following University of California Statewide Integrated Pest Management¹ (UC-IPM) definition:

IPM is an ecosystem-based strategy that focuses on long-term prevention of pests or their damage through a combination of techniques such as biological control, habitat manipulation, modification of cultural practices, and use of resistant varieties. Pesticides are used only after monitoring indicates they are needed according to established guidelines, and treatments are made with the goal of removing only the target organism. Pest control materials are selected and applied in a manner that minimizes risks to human health, beneficial and non-target organisms, and the environment.

PURPOSE

It is the purpose and intent of this IPM Policy to:

- a) Reduce reliance on and minimize the use of pesticides² as a part of CITY operations and on CITY property and rights-of-way that may adversely impact water quality; and
- b) Outline how CITY departments are to perform pest management so that it is consistent with this IPM Policy.

SCOPE

The IPM Policy governs CITY employees and contractors hired by CITY departments and persons acting under the authority of the CITY in the care and maintenance of CITY facilities, landscaped areas, and rights-of-way.

The term “pesticides” is a general term that includes herbicides, insecticides, fungicides, and rodenticides.

¹ <https://www2.ipm.ucanr.edu/what-is-IPM/>

² As defined in Section 12753 of Chapter 2 of Division 7 of the California Food and Agricultural Code.

POLICY

It is the policy of the CITY that:

1. Departments performing pest management will conform with the CITY's IPM Policy.
2. The CITY's IPM approach will include the following:
 - a) Educate and train CITY staff in the IPM program, practices, and policy.
 - b) Require CITY staff and pesticide application contractors to implement the IPM Policy on all CITY facilities, landscaped areas, and rights-of-way and to maintain records on and report the types and amounts of pesticides used, as well as IPM methods considered and used to prevent and control pests.
 - c) Reduce to the maximum extent practicable the use of pesticides.
 - d) Consider taking a "no-action" approach in addressing certain pest control issues.
 - e) Review and consider available non-chemical options before using a chemical pesticide.
 - f) Identify pests and least toxic methods to control pests.
 - g) Identify, evaluate, and minimize or eliminate conditions that encourage pest problems.
 - h) Conduct careful and efficient inspection, monitoring, and assessment of pest problems by designated personnel or contractor knowledgeable of IPM methods.
 - i) Maintain records on IPM methods considered and used to prevent and control pests.
 - j) Comply with all applicable local, state, and federal regulations, including pesticide use and reporting.
 - k) Conduct decision-making based on the best available science and data.
 - l) Refer residents and pest control operators to the CITY's stormwater program and Madera County Department of Agricultural Weights and Measures for information on less toxic methods of pest control.
 - m) Provide public access to the CITY's IPM Policy.
3. IPM Policy General Requirements
 - a) Eliminate the use of Category I pesticides.
 - b) Minimize the use of Category II, III, and IV pesticides.
 - c) Eliminate the use of pesticides that are classified by government agencies as known carcinogens, reproductive toxicants (teratogens, mutagens), endocrine disruptors, carbamates, organophosphates, or ground water contaminants.
 - d) Use pesticides only when necessary and select a pesticide that is both effective and least toxic.
 - e) Designate playgrounds on CITY property as pesticide-free.
 - f) Develop pest-specific plans to prevent or reduce the incidence of pest problems.
 - g) Require CITY staff and pesticide application contractors to comply with the Phase II Permit requirements to reduce the number of pesticides and herbicides used during municipal operations and activities by implementing the CITY's Landscape Design and Maintenance and Program.

IMPLEMENTATION

This IPM Policy shall be implemented by CITY departments and through an IPM Coordinator. Several areas important to the implementation of the IPM Policy are outlined below, including a description of the IPM Coordinator role.

IPM Coordinator

The Parks Maintenance Supervisor is designated as the CITY's IPM Coordinator and is responsible for coordinating with the departments involved in pest management to ensure that the IPM Policy is implemented. The IPM Coordinator is assisted by the CITY's Deputy City Engineer /Stormwater Coordinator.

The primary responsibilities include the following:

1. Education and Training:
 - a) Communicate the goals and requirements of the IPM Policy to CITY departments.
 - b) Request and maintain information regarding the CITY's IPM trainings offered or attended.
 - c) Provide information to CITY staff performing pest management as needed to ensure that the requisite IPM practices are implemented.
2. IPM Applications and Guidelines:
 - a) Ensure CITY staff and pesticide application contractors are authorized as Pesticide Applicators and are complying with the CITY's IPM Policy.
3. Product Selection and Product Use Approval:
 - a) Work with CITY staff performing pest management to develop a form for exemption requests.
 - b) Ensure that no products on the prohibited use product list are applied unless CITY approves an exemption request.
4. Notification of Pesticide Applications:
 - a) Use a standardized design for a pesticide application notification sign that includes the date of application, the name and type of product used, the signal word, and a contact telephone number where the public may call for information about the proposed application on all school sites as required by the Healthy Schools Act.
5. Pesticide Application Contracts:
 - a) Ensure that contracted pesticide applicators are appropriately trained and certified, implement IPM, and follow the CITY's pesticide and herbicide standard operating procedures.
6. Record Keeping:
 - a) Work with CITY staff performing pest management to develop forms summarizing pesticide use.
 - b) Provide direction regarding the pesticide application recordkeeping and reporting of the methods and pesticides used/applied on the CITY's facilities, landscaped areas, and rights-of-way.
 - c) Review the pesticide application records (Pesticide Use Reports (PURs)) and follow-up reports to ensure that the activities are consistent with the IPM Policy.
 - d) Provide information to the CITY's Deputy City Engineer/Stormwater Coordinator for the stormwater Annual Report or other required reporting, as needed.

Education and Training

Education and training of appointed personnel is critical to the success of the IPM Program. Key staff and contractors involved in pest management or application will be educated in IPM policies and procedures. Education may include classroom training, on-site training, or informal meetings and will typically be held once a year. IPM topics discussed may include, but not be limited to, pest control action thresholds; pest management decisions; pest monitoring and identification; prevention; control; and effectiveness evaluations.

IPM Applications and Guidelines

Only persons specifically authorized by the IPM Coordinator as Pesticide Applicators will be permitted to bring or use pesticides on CITY property. Pesticide applicators must follow regulations and label precautions. Applicators will have training in IPM and must comply with the CITY's IPM Policy.

Product Selection and Product Use Approval

Except for pesticides granted an emergency exemption, the CITY will not use any products on the prohibited use product list below. If it is determined that an EPA registered pesticide must be used, then the least-toxic material will be chosen.

1. Prohibited Use Products: Pesticides used by the CITY shall not contain the following ingredients:
 - a) Organophosphates, or organochlorines, or carbamates listed by the United States Environmental Protection Agency (Office of Pesticides Programs, Document 735-F-99-14, May 1999), or California Department of Pesticide Regulation Chemical Inquiries Database.
 - b) Glyphosate or glyphosate containing products.
2. Banned Use Areas: Except in the case of an emergency, no pesticides will be applied on CITY playground properties.

Notification of Pesticide Applications

The CITY shall provide the public and its employees with notification of pesticide applications through the use of signs at all school sites as required by the Healthy Schools Act.

Pesticide Application Contracts

Where pesticide management and/or applications are provided by contractors, the CITY will contract with IPM-trained and/or IPM-certified pest control applicators. A clause will be included within the contract to ensure that pesticide applicators implement IPM and follow the CITY's pesticide and herbicide standard operating procedures.

As detailed in the CITY's pesticide and herbicide standard operating procedures, contractors are responsible for the filing of all required records and reports, including, but not limited to, Notice of Intent to Apply and PURs, as specified by all county, state, and federal agencies.

Record Keeping

The CITY shall maintain records of the IPM methods used and pesticide applications for a period consistent with the CITY's record retention policy. This information may also be reported within CITY stormwater Annual Reports or other required reporting. The information reported shall include the following:

1. All the information listed below will be documented on an official Pest Control recommendation form to be supplied by a Pest Control Adviser (PCA) annually prior to any pest control operation. The form will include:
 - a) Name of the entity responsible.
 - b) Specific site of the application.
 - c) The target pest.
 - d) The date the pesticide was used and re-entry period if applicable.
 - e) Date of expiration of the PCA recommendation.
 - f) Schedule, timing, and conditions.
 - g) The name and active ingredient of the pesticide to be applied and EPA registration number.

- h) The pesticide signal word.
2. The IPM Coordinator or PCA will prepare a follow-up record to include:
 - a) Prevention and other non-chemical methods of control used.
 - b) Chemical methods used.
 - c) The effectiveness of the pesticide or management action.
 - d) If application was undertaken in a pest control emergency, provide explanation of circumstances of the emergency.

RECOMMENDED PEST CONTROL PRODUCTS

The CITY recommends that the pesticides purchased for use on CITY facilities, landscaping, or rights-of-way follow the guidelines of the IPM Policy such that they are the most effective and present the lowest risk to the environment. Pesticide application should only be used when needed and in combination with other approaches to ensure effective, long-term control.

Our Water, Our World (OWOW), a program that partners with cities and counties to promote less-toxic, eco-friendly pest solutions and products, has developed lists of less-toxic pesticides that are organized by:

- Brand,
- Pest, and
- Active ingredients.

The products lists are intended to capture less-toxic products that are compatible with IPM policies and can be found on the “Active Ingredients” page of the OWOW website:

<https://ourwaterourworld.org/pesticide-ingredients/>.

Those purchasing pesticides on behalf of CITY should consult these lists prior to selecting a pesticide for purchase. Contracted pesticide applicators should also be encouraged to utilize the lists when purchasing materials for application on CITY property.

PRACTICES

Pest control chemicals are stored in a secure building at the CITY Public Works and Parks Department Warehouses.

CHEMICAL APPLICATION PRACTICES	
User Qualifications	■ Chemical application and advice on pest management problems will be made by the IPM Coordinator or a licensed pest control company, particularly in the creation of customized IPM problems, which may require detailed knowledge of the biology and ecology of a particular species. ■ If pesticides are required, CITY staff will determine, or coordinate with a licensed pest control company to determine, the best product and application in accordance with the approval requirements. ■ Only trained personnel can prepare and use all chemicals.
Species Considerations	■ Time the treatment to coincide with the presence of the pest. ■ Use a selective chemical that has the least effect on non-target species and treat only the area affected.

User Safety	■ Users must wear protective clothing appropriate to the pest chemical application used. ■ Ensure that anyone handling toxic chemicals never works alone and that the work area is well-ventilated. ■ Wear a respirator for outdoor spraying or dusting of organic phosphorus compounds. ■ Eating, drinking, and smoking must be prohibited when using or handling chemicals. ■ Users must be familiar with the chemicals they are likely to be using, the effects the chemicals may have on the body, and how the chemicals may enter the body. ■ Users must be aware of the signs and symptoms of acute poisoning related to chemicals they are using. They must stop work if they are feeling ill and seek medical advice.
Equipment	■ Equipment must be frequently checked and properly maintained, both for health and safety reasons and to minimize spray drift.
Weather/Time Restrictions	■ Spraying must not be carried out in unsuitable weather. Anyone operating sprayers must have access to a wind-speed meter, and only spray when the wind speed is negligible. ■ Spraying must not take place within 48 hours of a rain event. ■ Hours of work must be controlled so that building occupants are not exposed.

BASIC PLANT AND FUNGI CONTROL PRACTICES	
Maintenance	■ Keep the building grounds well-maintained. Clear plant debris, especially from fruit-bearing trees. ■ Maintenance personnel shall use mulch and other landscaping best practices, warding off weeds and other pests. ■ Keep vegetation trimmed at least 18 inches from the building.
Plantings	■ Maintain and plan landscape features to eliminate safe havens for pests. ■ Avoid monocultures by mixing plant species in planters and gardens.

Manual Controls	■ Landscaping shall be hand weeded and chemical control shall be kept to a minimum. This measure prevents human and environmental exposure to hazardous chemicals.
Chemical Controls	■ When chemical use is necessary, replace hazardous substances with least-toxic chemicals as defined by Our Water, Our World Reduced-Risk Pesticide List.
Inspection Schedule and Location	■ Responsible parties will inspect the site at regular intervals to monitor and apply pest controls operations.

BASIC ANIMAL PEST CONTROL PRACTICES	
Site/Building Cleanliness	■ Keep garbage containers clean, free of odors, and covered. Sanitation measures reduce habitat and food sources for pests. ■ Keep areas around garbage containers free of spillage or garbage to prevent the collection of trash or debris on the ground around or underneath the containers. ■ Keep grounds free of high weeds, trash, old equipment, and debris, as these conditions create ideal harborage for rodents.
Structural Integrity	■ Maintain the building exterior in good condition with no holes or openings larger than ¼ inch including, but not limited to, windows, doors, fans, vents, etc. to keep pests from entering the building. ■ Address any deficiencies in the building exterior with corrective measures, i.e., cementing, screening, caulking, installing stripping on door bases, etc. ■ Maintain door sweeps on all applicable doors to produce a good seal to the ground.
Inspection Schedule and Location	■ Visual inspections shall be performed monthly to identify problem areas.

SPECIFIC ANIMAL CONTROL STRATEGIES	
Ants	■ Always keep food items in sealed containers or store them in the refrigerator or freezer. Clean surfaces and storage areas to remove crumbs and stains. Keep sinks and worktops clean and dry. ■ Prune branches close to the building or anything that might create a bridge for the ants to cross. ■ In areas where ants are present, wipe the areas down with soapy water to prevent the formation of major scent trails. If there already is an established trail, wipe backwards from the food source to the entrance of the trail. ■ Treat only areas that have active pest infestations. Temporary blockades can be made using chili powder, cinnamon, boric acid, or sticky substances such as petroleum jelly. ■ Baits are best put in the path of an ant trail and then removed after the ant activity stops. ■ Identify the ant species for most relevant measures.
Aphids	■ Prune out infested leaves. ■ Knock off aphids by spraying with a strong stream of water. ■ Wait for hot weather; most aphids are gone by mid-June. ■ Release ladybugs on heavily infested plants. ■ Spray with insecticidal oil or soap (Safer soap).
Bed Bugs	■ Call professional pest management to inspect and treat for the presence of bed bugs indicated by the initial inspection.
Caterpillars	■ Obtain a correct identification of the caterpillar to prescribe the most appropriate form of control. ■ Bacterial insecticides derived from natural ingredients are available to control caterpillars.
Cockroaches	■ There are five main species of cockroaches and effective control depends on identifying them correctly. ■ All food handling areas should be cleaned frequently. ■ IPM measures for controlling cockroaches include effective hygiene and exclusion practices, sticky traps lined with pheromones, boric acid, and insect growth regulators.
Dust Mites	■ Fabrics, bedding, and carpets attract and generate dust and dust mites. To keep dust mites at bay, keep building well-ventilated and dry.

Scales (hard and soft)	■ Provide plant with proper irrigation. ■ Encourage natural enemies (ladybugs, lacewings).

SPECIFIC ANIMAL CONTROL STRATEGIES CONTINUED	
Flies	■ Collection of waste and residues should be carried out at least twice a week. ■ Keep refuse areas clean to avoid providing flies with breeding grounds. ■ Ensure bin lids fit tightly and the bins are cleaned regularly. ■ Use fine mesh window and door screens as a barrier against entry by any flying insect. ■ Ultra-violet (UV) fly killing equipment is very effective so long as it is situated correctly. In food preparation areas, UV equipment should only be used once all possible precautions have been taken to keep flying insects out. Position the UV equipment close to an entry point, at right angles to the nearest competing light source such as a window. In many catering establishments, poorly situated UV equipment poses a greater food hygiene hazard than lacking pest repellants altogether. This is because when placed next to the food preparation area, they draw flies to the food, which they are likely to contaminate before being killed. ■ Natural chemical treatments include pyrethrum extracted from the <i>Chrysanthemum cineraria folium</i> plant that can be used in kitchens and restaurants.
Mosquitoes	■ Find and eliminate their habitat. ■ Do not allow flowerpots, buckets, plastic sheeting, or other open containers outside to collect water. ■ Drain unused pools or fountains so that the water cannot become stagnant. ■ Drain or fill depressions, mud flats, and other areas that might hold water. ■ Repair leaking taps and air-conditioning units so that puddles cannot form and ensure that septic tanks and sewage systems are properly maintained and in good working order. ■ Avoid over-irrigating lawns and gardens, and keep weeds and grass well-clipped. ■ To prevent mosquitoes from coming indoors, fit fine-mesh screens to porches, doors, and windows.

Fabric/Clothing Moths	■ Fabrics should be washed and then put in bags and placed in a freezer. When taken out to thaw, shake the fabrics vigorously to remove dead larvae. ■ Clean the areas where fabrics have been stored with vinegar and water. ■ Store fabrics in cedar chests or closets. Place cedar chips or blocks or lavender sachets in drawers. ■ For acute moth problems, reusable traps can be baited with a controlled-release pheromone system to lure moths into the trap and disrupt their mating cycle. ■ Avoid mothballs and insect foggers.
Pantry Moths	■ Vacuum affected areas. ■ Scrub all surfaces with hot water and detergent, especially in corners and around the edges of removable shelves. White vinegar also works. ■ Food items and containers should be thoroughly cleaned with a detergent and water solution and wiped down with a vinegar rinse before being put back. Use air-tight containers made of hard plastic, glass, or metal and not plastic bags. ■ Kill any moths with a fly swatter or moth traps. ■ Peppermint gum, bay leaves, peppercorns, and cloves may also help deter pantry moths.

SPECIFIC ANIMAL CONTROL STRATEGIES CONTINUED	
Rodents	■ Rodent control should start with a survey to determine the source of the problem and the conditions that encourage the infestation. ■ Remove food sources. ■ Eliminate places of refuge. ■ Openings in building foundations and walls should be closed or screened with wire mesh that has holes not more than 1.25 cm (0.5 in) wide. Where pipes enter masonry, force heavy hardware cloth or steel wool into the opening, then fill it with concrete. ■ Continuous surveillance is necessary and places where rodents have been gnawing to gain entry to a building should be sealed with metal flashing. ■ Doors are particularly vulnerable to rodent entry so ensure that external doors and windows close tightly with no gaps at the bottom. ■ Materials stored in the open, in sheds or in building should be stacked at least 30 cm (1 ft.) above the ground. ■ Stringent waste disposal practices should be observed – secure all waste in closed containers and not just plastic bags. ■ Wash bins regularly. Make sure composting bins are designed to prevent rodents from entering. ■ Bait should be sticky to ensure that the mouse triggers the trap mechanism even if it only lightly touches the bait. Mice prefer peanut butter or chocolate. Bacon, oatmeal, or apples can also be used as bait. ■ An alternative to snap traps is a battery-operated trap that generates a high voltage once the rat or mouse is inside.
Slugs and Snails	■ There are various non-chemical solutions to eliminate slugs and snails, including putting salt or sharp shingle around vulnerable plants, drowning them in beer, or simply throwing them over a fence. Elemental copper bands also repel snails and slugs. Remove daytime hiding places (weeds, debris, etc.).
Wasps and Hornets	■ A simple trap can be made by putting beer or a solution of jam or honey and water in an open jar around the grounds. If this does not work, there are branded traps available containing specially formulated attractant baits.

DEFINITIONS FOR USE WITH THIS POLICY

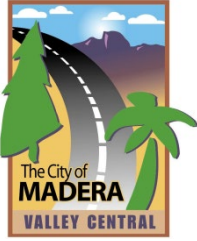
1. “Basin Plan Amendment” or “BPA” means the regulatory requirements for the Control of Pyrethroid Pesticide Discharges that was adopted by the Central Valley Water Board on June 8, 2017, with the adoption of Resolution R5-2017-0057. The BPA established measurable pyrethroid concentration goals and an implementation program for the control of pyrethroid pesticides that are or could potentially impact aquatic life in the Sacramento and San Joaquin River watersheds.
2. “Contractor” means a person, firm, or corporation or other entity, including a governmental

entity that enters into a contract with the CITY for pest management services.

3. "Integrated Pest Management" (IPM) means an ecosystem-based strategy that focuses on long-term prevention of pests or their damage through a combination of techniques such as biological control, habitat manipulation, modification of cultural practices, and use of resistant varieties. Pesticides are used only after monitoring indicates they are needed according to established guidelines, and treatments are made with the goal of removing only the target organism. Pest control materials are selected and applied in a manner that minimizes risks to human health, beneficial and non-target organisms, and the environment.³
4. "IPM Coordinator" means the designated agent or employee experienced in IPM field and office work and is responsible for IPM program coordination for the CITY.
5. "IPM Policy" means this Integrated Pest Management Policy.
6. "Pest" means any pest as defined in Section 12754.5 of Chapter 2 of Division 7 of the California Food and Agricultural Code. Pest includes any of the following that is or is liable to become, dangerous or detrimental to the public health or the agricultural or nonagricultural environment of the State:
 - a) Any insect, predatory animal, rodent, nematode or weed.
 - b) Any form of terrestrial, aquatic, or aerial plant or animal, virus, fungus, bacteria, or other microorganism (except viruses, fungi, bacteria, or other microorganisms on or in living man or other living animals).
 - c) Anything that the Secretary of the California Department of Food and Agriculture or the Director of Pesticide Regulation for the California Department of Food and Agriculture by regulation declares to be a pest.
7. "Pest Control Adviser" or "PCA" means any person possessing a current pest control adviser license issued by the California Department of Pesticide Regulation. The PCA license is required for making pest control recommendations in the landscape setting.
8. "Pest Control Operator" or "PCO" means any person possessing a current pest control operator license issued by the California Department of Pesticide Regulation. The PCO license is required when performing structural pest control.
9. "Pest-Specific Plan" means a written plan addressing the management and control of a particular pest. Components of Pest-Specific Plans should include pest biology, impacts, pest thresholds, recommended treatments, monitoring frequency, cultural practices, and site modifications to prevent or reduce the incidence of pest problems.
10. "Pesticide" means pesticide as defined in Section 12753 of Chapter 2 of Division 7 of the California Food and Agricultural Code. Pesticide includes any of the following:
 - a) Any substance or combination of substances which is intended to be used for defoliating plants, regulating plant growth, or for preventing, destroying, repelling, or mitigating any pest which may infest or be detrimental to vegetation, man, animals, or households or be present in any agricultural or nonagricultural environment whatsoever.
 - b) Any spray adjuvant.
11. "Pesticide Applicator" means any person or company hired by a CITY Department who applies pesticides, as defined in this section, to property owned, leased, or managed by the CITY.
12. "Phase II Permit" means the State Water Resources Control Board's Phase II Municipal Separate Storm Sewer System (MS4) National Pollutant Discharge Elimination System (NPDES) General Permit No. CAS000004, Order No. 2013-0001, adopted February 5, 2013, and subsequent re-issuances of this Order.

³ <https://www2.ipm.ucanr.edu/what-is-IPM/>

13. "Signal Word" means the toxicity category word on the pesticide label: Danger, Warning, Caution or None Required. See Toxicity Category I; II, III, IV product.
14. "Pesticide Use Report Form" or "PUR" means a document that records pesticide uses or other treatment practices within and associated with City owned, managed, or leased structures.
15. "Toxicity Category I; II, III, IV product" means any pesticide, as defined in 40 Code of Federal Regulations Section 156.10, meeting the appropriate toxicity categories, and bearing on the front label panel the signal word Danger, Warning, Caution or None Required.



REPORT TO CITY COUNCIL

Approved by:

Council Meeting of: October 19, 2022

Joseph Hebert

Agenda Number: C-1

Joseph Hebert, Parks & Community Services Director

Arnoldo Rodriguez

Arnoldo Rodriguez, City Manager

SUBJECT:

Public Hearing for the Naming of future Park at Olive Avenue and Knox Street

RECOMMENDATION:

Council conduct a public hearing, invite public input, and if Council determines to name the Park, adopt a Resolution approving the naming of the Olive Avenue/Knox Street Park Site

SUMMARY:

During the August 17, 2022, City Council (Council) meeting, community members recommended that the planned park located at the southwest intersection of Olive Avenue and Knox Street be named James Taubert Park. The public comments were to dedicate the park and have it named in recognition of Mr. James Taubert for his service and dedication to the community and its residents during his career. Subsequently, at the September 17, 2022 Council meeting, staff brought the item seeking direction from Council regarding the naming of the park. It was during the discussion of this item that additional public comments were made to have the park be named in recognition of Mr. Taubert. Council direction was to publicly notice the intention to name the park, seek public input, provide ample time for the public to do so, and then formally name the park after input has been received.

DISCUSSION:

Per City Policy, in order to have a park or recreation facility named after an individual/group, certain criteria must be met. The Parks and Community Services Department Naming Policy, Resolution No. 00-08, (Attachment 1) details this procedure. Per the Naming Policy, a suggestion for naming would be submitted to the Park and Recreation Advisory Board (Board) and then brought before Council for consideration. Since there is currently no active Board, the request for the recognition came directly to the Council.

It is to be noted the policy states the Park and Recreation Advisory Board shall provide ample public notice of its intent to select a park name, providing sufficient time for other individuals/groups to propose other names prior to the Board, in this case Council, making a decision. A public notice informing the community of the intentions to seek community input for the naming of the park and providing ample time to do so to those seeking to submit their recommendations was duly published:

- In the *Fresno Bee* newspaper on Friday, September 1, 2022.
- In the *Madera Tribune* newspaper on Wednesday, October 5, 2022

In addition, a social media post was also made to the City's Parks and Community Services Facebook page on Thursday, October 6, 2022, informing the community of the public hearing.

FINANCIAL IMPACT:

The City anticipates no financial impact to the General Fund for the naming of the future park to be located at Olive Avenue/Knox Street, as funding for the park design and construction is part of the Proposition 64 \$1.9M grant previously awarded to the City. In addition, staff anticipated a plaque at the park when preparing the grant, thus funds are available.

CONSISTENCY WITH THE VISION MADERA 2025 PLAN:

- *121.10 - Add facilities and amenities for the public.*
- *316.20 - Honor community service groups and volunteers at annual events.*
- *316.10 - Further develop existing volunteer recruitment programs.*

ALTERNATIVES:

1. Council may elect to revisit the Naming Policy, Resolution No. 00-08, to ensure it still captures intent and appropriate procedures for the naming of parks and recreation facilities. This would delay any naming of the park for now, until the policy is revised.
2. Council may elect to leave the new park site named "Olive Park" as has been the internal reference name of the park site.

ATTACHMENTS:

1. Parks and Community Services Department Naming Policy, Resolution No. 00-08
2. Resolution Naming the Park to Be Located at the Southwest Intersection of Olive Avenue and Knox Street

ATTACHMENT 1

Parks and Community Services Department Naming Policy, Resolution No. 00-08

RESOLUTION NO. ⁰⁰⁻⁰⁸ _____

**A RESOLUTION OF THE CITY COUNCIL
OF THE CITY OF MADERA, CALIFORNIA
ESTABLISHING A POLICY FOR THE NAMING OF
PARK AND RECREATION FACILITIES**

WHEREAS, the Parks and Recreation Advisory Board has recommended a policy describing the manner in which municipal park and recreation facilities are to be named,

And by definition as used herein, the term (Parks), includes "Park", "Recreation Facility", and "Fields and portions thereof,

NOW, THEREFORE, the City Council of the City of Madera does hereby adopt the following policy governing the naming of municipal Parks:

A. Objectives. The name shall address one or more of these objectives:

A1. To enhance the values and heritage of the City of Madera and be compatible with community interest.

A2. To be descriptive of the park's geographical location and/or function so that it will be easily identified.

A3. To encourage the dedication of land or funds for public use by individuals/groups in recognition of their achievements or community contribution.

B. If the park is to be named for a person in recognition of the public service the person has provided, the following criteria in addition to those in "A" must apply:

B1. The person shall have made a major contribution to the community, the County, the State, or the field of recreation and parks.

B2. Consideration of a person shall occur not less than 3 years following the date of the service for which the recognition is being made.

B3. The service the person made shall have occurred over a period not less than 2 years.

B4. Typically, the service shall have been rendered in a volunteer, non-paid status.

B5. The person may be living or deceased.

C. If the park is to be named in recognition of a gift of resources for the acquisition or building of the park, the following criteria in addition to those in "A" apply.

C1. The gift of resources for the park from the donor shall exceed fifty percent (50%) of the capital cost of the park.

C2. If being named for a person, the person must have a record of outstanding citizenship; that is, the person is of exemplary character and integrity.

C3. A donor may stipulate the name of the park if (a) the stipulated name is part of a written agreement approved by the City Council at the time the donation of resources is offered; and (b) the stipulated name is consistent with paragraphs C.1 and C.2 and Section A of this policy.

D. Procedures for naming Parks:

D1. The Park and Recreation Advisory Board shall recommend to the City Council the names for Park and Recreation facilities.

D2. The criteria used by the Park and Recreation Advisory Board, and subsequently the City Council, for considering a park name shall be the criteria set forth in this policy.

D3. Typically, parks shall be named immediately after acquisition of the site in order to be identified from the onset.

D4. The Park and Recreation Advisory Board shall provide ample public notice of its intent to select a park name, providing sufficient time for other individuals/groups to propose other names prior to the Park and Recreation Advisory Board making a decision.

E. Change of Name. A park name may be changed if any of the following conditions are met:

E1. When the current name appears to be inappropriate.

E2. When the current name is inconsistent with the objectives of the park naming policy.

E3. If a serious oversight would result because a particularly deserving person could not be appropriately recognized unless an existing PARK was renamed.

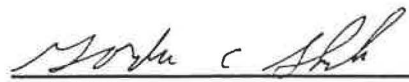
E5. Selecting a new name for a facility already named shall be subject to the same objectives, criteria, and procedures described in this policy.

F. Definitions:

F1. The term "person" includes the plural, people; it also includes informal groups or formally established organizations.

PASSED, APPROVED and ADOPTED by the City Council of the City of Madera this 5TH day of January, 2000, by the following vote:

AYES: Council Members Armentrout, Wells, Perez, Nabors, Skeels.
NOES: None.
ABSENT: None.
ABSTAIN: None.



MAYOR

ATTEST:



CITY CLERK



APPROVED AS TO FORM:



CITY ATTORNEY

ATTACHMENT 2

Resolution Naming the Park to Be Located at the Southwest Intersection of Olive Avenue and
Knox Street

Resolution No. _____

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MADERA,
CALIFORNIA NAMING THE PARK TO BE LOCATED AT THE SOUTHWEST
INTERSECTION OF OLIVE AVENUE AND KNOX STREET**

WHEREAS, on December 8, 2021, the City was awarded a grant from the Department of Parks and Recreation in the amount of \$1.9M for the construction of a neighborhood park; and

WHEREAS, during the August 17, 2022, City Council (Council) meeting, public comments from residents were made recommending to name the future park; and

WHEREAS, the public comments made on August 17, 2022, were to name the park after James Taubert for his service and dedication to the community and its residents during his career; and

WHEREAS, Resolution No. 00-08, adopted by Council on January 5, 2000, guides the naming of City parks; and

WHEREAS, during the September 17, 2022 regular meeting of the Council, staff brought the item seeking direction from Council regarding the naming of the park; and

WHEREAS, Council direction was to publicly notice the intention to name the park, seek public input, provide ample time for the public to do so, and then formally name the park after input has been received; and

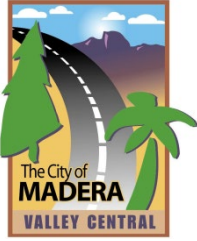
WHEREAS, a public notice informing the community of the intentions to seek community input for the naming of the park and providing ample time to do so to those seeking to submit their recommendations was duly published in the Fresno Bee newspaper on Friday, September 1, 2022; and

WHEREAS, an additional public notice was duly published in the Madera Tribune newspaper on Wednesday, October 5, 2022; and

WHEREAS, Council has considered public comments and testimony presented at the public hearing for the naming of the Park.

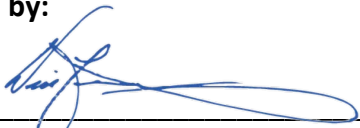
NOW THEREFORE, THE CITY COUNCIL OF THE CITY OF MADERA finds, orders and resolves as follows:

1. The above recitals are true and correct.
2. The Council hereby names the park to be located at the southwest intersection of Olive Avenue and Knox Street as _____.
3. The Director of Parks and Community Services is directed to incorporate the name as agreed upon by Council in the design and to install an appropriate plaque naming the park.
4. This Resolution is effective immediately upon adoption.

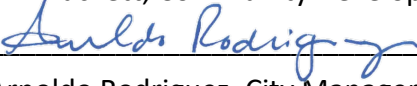


REPORT TO THE CITY COUNCIL

Approved by:



Will Tackett, Community Development Director



Arnoldo Rodriguez, City Manager

Council Meeting of: October 19, 2022

Agenda Number: C-2

SUBJECT:

Establishment of Appeal Hearing Fees for Cannabis Business Permit Appeal Hearings

RECOMMENDATION:

Conduct a Public Hearing and Adopt a Resolution to Establish an Appeal Fee of \$6,110 for Cannabis Business Permit Appeals Held Before a City Appointed Cannabis Hearing Officer and an Appeal Fee of \$1,305 for Cannabis Business Permit Applications Held Before the City Council

SUMMARY:

Per previous adopted ordinances staff has been working on the implementation of Madera's Cannabis Program. The following is an update of previous and future actions. The City Council established a previous goal of awarding (6) standard or microbusiness cannabis business permits and (2) social equity cannabis business permits. City staff kicked off the process by holding (2) informational Zoom meetings and notified over 100 interested parties on a City listserv to notify them of the meeting. The application filing period opened on April 15, 2022 and the informational Zoom meetings were held on April 19 and April 21, 2022. Dozens of interested parties joined both meetings. The deadline to submit applications was June 20, 2022

Phase I Application Process

Phase I of the process involved city staff issuing zoning verification letters and answering further questions by email or phone. The City received 26 standard and 2 social equity applications by the application deadline. The City's Cannabis Consultant, HdL, verified applications for completeness and the application guidelines gave applicants 5 days to "cure" incomplete applications. After the completeness review and chances to cure all 28 applications were deemed complete.

Phase II Application Process

All 28 applications were scored by HdL pursuant to evaluation criteria in the application procedures and guidelines. Applicants had to score 90 percent or higher to be able to continue in the process. All but 1 of the 26 standard applications scored over 90 percent. Both social equity applicants scored over 90 percent. The Application Guidelines state that the City will advance a minimum of 10 of the highest scored applications to a Phase III meeting. The guidelines further state the City has the option of advancing more than 10 applicants to the Phase III meeting. All applicants were notified by email of their scores and staff has continued to be available to answer any questions or concerns.

Hearing Officer RFP, Phase III Meeting and Appeal Fees

An RFP seeking proposals from Law Firms to provide Appeal Hearing Officer services has been released and an award of bid is expected in November 2022. The City will notify successful applicants to the next phase of the process which is the Phase III meeting. This meeting is a public meeting to explain the Cannabis Business Permit process and is open to cannabis applicants, businesses, community organizations and residents. Those not invited to the Phase III meeting have appeal rights before the City retained hearing officer. Those applicants that are denied before the hearing officer then have appeal rights before Council. The purpose of this report and resolution is to establish an appeal fee for appeals before the hearing officer and to establish an appeal fee charged to those applicants appealing to City Council.

Staff has estimated the following staff hours and cost of services for an appeal before the Hearing Officer as follows:

Table 1: Costs of services for an appeal before the Hearing Officer			
<i>Personnel</i>	<i>Approximate Hours</i>	<i>Rate per hour</i>	<i>Costs</i>
City Attorney	6	\$285	\$1,710
HdL Consultant	5	\$250	\$1,250
Hearing Officer	9	\$300	\$2,700
Senior Planner	6	\$75	\$450
Proposed appeal fee			\$6,110

City Council Cannabis Appeal Hearing

As previously mentioned, those applicants that are denied at the hearing officer appeal process have appeal rights to Council. The Council will be provided the administrative record that will be compiled by the Senior Planner. The Cannabis Consultant nor the Hearing Officer participate in the Council appeal hearing.

Staff has estimated the following staff hours and cost of services for an appeal before the City Council as follows:

Table 2: Costs of services for an appeal before City Council			
<i>Personnel</i>	<i>Approximate Hours</i>	<i>Rate per hour</i>	<i>Costs</i>
City Attorney	3	\$285	\$855
Senior Planner	6	\$75	\$450
Proposed appeal fee			\$1,305

The Cannabis program application fees and appeal fees were and are intended to offset administrative costs associated with the ultimate award of Cannabis Business Permits. The proposed City Council appeal fees merely help offset the costs of the Cannabis Appeals process of Cannabis Hearing Officer and City Council Appeals.

ALTERNATIVES:

The Council may direct staff to return with additional information and/or fee considerations.

ATTACHMENTS

1. City Resolution Adopting Cannabis Business Permit Appeal Fees

RESOLUTION NO. _____

**RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MADERA
ESTABLISHING FEES FOR COMMERCIAL CANNABIS BUSINESS PERMIT
APPEAL HEARINGS**

WHEREAS, on June 16, 2021, the City Council of the City of Madera adopted Ordinance No. 977 C.S. adding Chapter 5 to Title VI (Cannabis Businesses) to the Madera Municipal Code to permit commercial cannabis businesses within the City and establish a regulatory program requiring all commercial cannabis uses to obtain a commercial cannabis business permit issued by the City prior to commencing operation; and

WHEREAS, the Ordinance provides for various fees and charges to be paid by applicants for cannabis business permits and for operation of cannabis businesses; and

WHEREAS, Madera Municipal Code Section 6-5.37 provides that fees and charges for cannabis business operations shall be established by City Council resolution.

NOW, THEREFORE BE IT RESOLVED by the City Council of the City of Madera as follows:

SECTION 1. Findings. The City of Council finds that: (a) the facts set forth in the recitals in this Resolution are true and correct and incorporated by reference; (b) the recitals constitute findings in this matter and, together with the staff report, other written reports, public testimony and other information contained in the record, are an adequate and appropriate evidentiary basis for the actions taken in this Resolution; (c) the provisions in this Resolution are consistent with the General Plan, Municipal Code and applicable federal and state law; and (d) this Resolution will not be detrimental to the public interest, health, safety, convenience or welfare.

SECTION 2. Fee Schedule Adopted. The City Council hereby adopts a fee schedule for Cannabis Business Permit application appeals as herein referenced.

SECTION 3. Fees. The City Council establishes the following fees as authorized by Madera Municipal Code Section 6-5.37:

A. Appeal fees for all Cannabis Business Permit Applications are as follows:

- 1) Appeal hearing before Hearing Officer - \$6,110
- 2) Appeal hearing before City Council - \$1,305

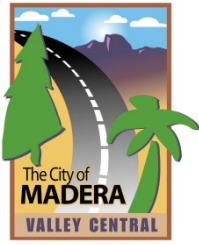
SECTION 4. Fee Schedule. The foregoing fees shall be deemed a part of the City's Master Fee Schedule

SECTION 5. Severability. If any section, subsection, paragraph, sentence, clause, phrase or term (each a “Provision”) in this Resolution, or any Provision’s application to any person or circumstance, is held illegal, invalid or unconstitutional by a court of competent jurisdiction, all other Provisions not held illegal, invalid or unconstitutional, or such Provision’s application to other persons or circumstances, shall not be affected. The City Council declares that it would have passed this Resolution, and each Provision therein, whether any one or more Provisions be declared illegal, invalid or unconstitutional.

SECTION 6. CEQA. If this Resolution qualifies as a “project” subject to California Environmental Quality Act (“CEQA”) Guidelines § 15378 and California Public Resources Code § 21065, the City Council finds that, pursuant to CEQA Guidelines § 15061(b)(3), there is no possibility that this project will have a significant impact on the physical environment. This Resolution adopts the Fee Schedule in a manner that complies with federal regulations. This Resolution does not directly or indirectly authorize or approve any actual changes in the physical environment. Accordingly, the City Council finds that this Resolution is exempt from CEQA under the general rule.

SECTION 7. Effective Date. This Resolution shall be effective upon adoption.

* * * * *



REPORT TO CITY COUNCIL

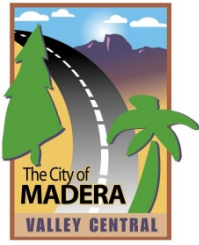
DATE: October 19, 2022
TO: Mayor and City Council Members
FROM: Will Tackett, Community Development Director
SUBJECT: Public Hearings, Item C-3: Vacation of a Portion of Clark Street Right-of-Way Between Owens Street and Taylor Street (ABN 2022-01)

Staff is requesting this item be “referred back to staff.”

The California Government Code (Section 65091) includes provisions requiring notice of public hearings be given pursuant to the requirements of said section. The City of Madera Municipal Code also contains provisions relevant to respective processes which may include noticing requirements in addition to the provision of the California Government Code, in any manner the local agency deems necessary or desirable.

Items scheduled for public hearings which do not fully comply with the provisions and requirement of either the Government Code or local ordinance may not be considered or heard by the governing body or appropriate review authority. Therefore, this item may not be continued to a date and time certain on the agenda; and rather, must be referred back to staff in order to afford proper and compliant noticing prior to being scheduled or heard by the governing body or review authority.

This item will be re-noticed in compliance with applicable law and scheduled on an agenda for a future regularly scheduled meeting of the City Council.



REPORT TO CITY COUNCIL

DATE: October 19, 2022

TO: Mayor and City Council Members

FROM: Will Tackett, Community Development Director

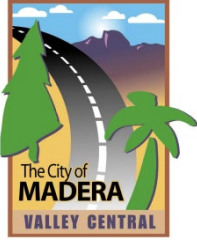
SUBJECT: Public Hearings, Item C-4: Vacation of Portion of an Alley Adjacent to and Paralleling Noble Street (ABN 2020-01), Grove Street South of Maple Street (ABN 2020-02) and a Portion of the Northeast Corner of the Intersection of Noble and Maple Streets (ABN 2021-01)

Staff is requesting this item be “referred back to staff.”

The California Government Code (Section 65091) includes provisions requiring notice of public hearings be given pursuant to the requirements of said section. The City of Madera Municipal Code also contains provisions relevant to respective processes which may include noticing requirements in addition to the provision of the California Government Code, in any manner the local agency deems necessary or desirable.

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This item will be re-noticed in compliance with applicable law and scheduled on an agenda for a future regularly scheduled meeting of the City Council.



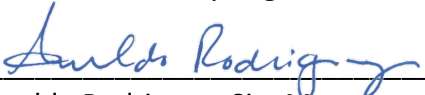
REPORT TO CITY COUNCIL

Approved by:


Keith Helmuth, City Engineer

Council Meeting of: October 19, 2022

Agenda Number: D-1


Arnoldo Rodriguez, City Manager

SUBJECT:

Agreements for Professional On-Call Engineering Services

RECOMMENDATION:

Adopt a Resolution approving Consultant Service Agreements for three years with AECOM, Yamabe & Horn Engineering, Blair, Church & Flynn Consulting Engineers, Provost & Pritchard Engineering Group, Peters Engineering Group, O'Dell Engineering, Quad-Knopf (QK), AM Consulting Engineers, AKEL Engineering Group and TJKM Consultants in the total amount of \$900,000 for each agreement for Professional On-Call Engineering Services.

SUMMARY:

The Engineering Department continues to experience a large volume of work in the Capital Improvement Program (CIP) and increased development activity in town. Concurrent work activity includes review of the Village D development, Southeast Madera Specific Plan, the Northeast Water Storage Tank, AHSC Grant efforts, and implementation of the Sewer and Water Condition Assessment programs. In addition, the City was fortunate to receive additional funding, including but not limited to the following, which allows the City to make much needed infrastructure improvements, albeit requires staff to manage:

1. \$23 Million in American Rescue Funds
2. \$3.5 Million for the Avenue 13 Trunk main rehabilitation (Congress)
3. \$5 Million for the Avenue 13 Trunk main rehabilitation (State of CA)

To alleviate the high volume of engineering work and to provide a better balance of staff time between design and construction oversight, staff is recommending retaining ten consulting firms to provide on-call engineering services. The consultants have diverse engineering expertise, providing the City with the flexibility to select the most appropriate proposal (price, timeframe, areas of expertise) from one of the 10 firms depending on the type of work proposed on a project-

by-project basis. On-Call engineering agreements are written to allow the City to use the consultants “as-needed” through Task Orders though the department does not expect to utilize the full, combined agreement capacity of all these contracts. Staff finds it beneficial to have a broad pool of consultants and a high enough agreement value to direct the work when it makes the most sense. Work is assigned based on the individual expertise of the consultants. The agreement duration is for three-years with the ability to add on two additional years, if needed. Staff requests Council adopt a resolution approving the attached agreements with the selected consultants.

Each agreement will be for a three -year term and will be based on a cost of \$300,000 per year for a total cost of \$900,000. Total value of all ten agreements would be \$9,000,000 over three years if each agreement is utilized to its maximum allowable limit.

BACKGROUND:

On-call agreements for consulting services are an effective way to retain engineering consultants to better ensure that engineering and public works projects are delivered in a timely and cost-effective way. The City can call on consultants when work is needed without incurring the additional costs and additional time associated with selecting consultants individually for each scope of work and project. The focused expertise of a consultant is particularly useful when the City must comply with statutory requirements, saving a great deal of time and reducing the risk to the City of costly mistakes. A consultant’s perspective is often crucial for spotting problems or opportunities, as well as providing independent third-party recommendations.

The City continues to experience an increase in CIP Projects, private development and other construction related demands. The construction of many of these projects requires professional engineering design services to complete. To date, when these services are required, the City has issued a separate Request for Proposal/Qualification (RFP/Q) for each project. After the RFP/Q’s are received, proposals are ranked to determine which firm will be selected to perform the work. This process may be repeated a number of times throughout any given year for the same basic services and generally takes at least three months each time.

In order to save time, money and staff resources, On-Call Consulting Services Agreements are established with various firms using the City’s normal RFQ solicitation, agreement approval and purchasing process. Each Agreement act as a “master agreement” for obtaining the needed professional services. For smaller, straightforward, specific projects, an individual Task Order, specified in the Agreement, will be prepared covering the scope of work, schedule, and cost for the identified project. The Task Order is a sub-agreement to the main or “master agreement”, allowing the City Engineer to sub-allocate work within the limits of the master agreement to smaller projects as these tasks develop. Once a project is identified, the consultant is provided a detail of the project, who in turn, provides a cost proposal and completion schedule for the specific work. Staff determine if the schedule is adequate, and verifies the fees proposed by the consultant fall within the guidelines of the master agreement. If so, then the City Engineer

executes the Task Order. The sum of all task orders allocated to each firm shall not exceed the \$300,000 yearly maximum limit specified in the On-Call Consulting Services Agreement.

The maximum contract value, if used, for all 10 consultants over 3 years would be \$9,000,000. While this appears to be a large expense, over the last 3 years the Engineering Department alone has requested approval of 12 separate consultant contracts for a total value of \$2,482,792. Engineering staff has projected the Capital Improvement Program will require engineering design services of \$3,885,000 over the next three years and \$5,751,000 over a five-year timeline. A list of the projects in the Five-year Capital Improvement Program that may utilize the on-call agreements is shown in Table 1.

Table 1: List of Capital Improvement Projects over the next five years (in US Dollars)						
<i>Department</i>	<i>Fiscal Year</i>					<i>Total</i>
	<i>22/'23</i>	<i>'23/'24</i>	<i>24/'25</i>	<i>'25/'26</i>	<i>26/'27</i>	
<i>Engineering</i>						
R-000046 Lake St Widening-4th to Cleveland			400,000	400,000	7,200,000	8,000,000
R-000050 Pine St Reconstr-Howard to 4th St	40,000	10,000	540,000			590,000
R-000081 2022-23 City Streets 3R & ADA Project	1,353,000					1,353,000
R-000082 Almond Ave Extension - Pine to Stadium	345,000	200,000	6,100,000			6,645,000
R-000087 Almond/Pine/Stadium Traffic Study	120,000					120,000
SS-00006 Fairgrounds Lift station-VFD	630,000					630,000
SS-00007 Airport Lift Station Force Main Study	24,000					24,000
SS-00008 2018 Sewer Manhole Project	150,000					150,000
SS-00009 2018 Sewer Repairs	1,245,000					1,245,000
SS-00010 Airport Lift Station Pumps Replacement	180,000					180,000
SS-00011 Mainberry Sewer - Howard to Sunset	450,000					450,000
SS-00013 Pecan Ave Parallel Sewer Main	1,351,061					1,351,061
SS-00015 Sewer Lift Station R&R	170,000					170,000
TS-00035 Lake & Sherwood Traffic Signal	50,000	500,000				550,000
W-000003 Water Main Upgrades - Locations 1-12	950,000					950,000

W-000004 Water Main Upgrades - Locations 13-23	1,515,000					1,515,000
W-000038 Well 27 Rehabilitation	30,000	289,107				319,107
W-000039 2022 Year 2 Pipeline Replacements		1,100,000				1,100,000
W-000040 2021 Year 1 Pipeline Replacements	725,000					725,000
W-000041 2021 Leak Detection CIP	135,000					135,000
W-GW-002 Water Well 35-Ellis w/o Chapin					2,500,000	2,500,000
W-GW-003 Water Well 36-SR145/Indigo	120,000		2,200,000			2,320,000
Public Works						
W-000029 Downtown Valve Replacement	340,000					340,000
W-000036 4th/Gateway Line and Valve	440,000	440,000				880,000
WWTP-0011 Plant Capacity Increase		200,000	3,560,000	2,340,000		6,100,000
(1) TOTAL	10,363,061	2,739,107	12,800,000	2,740,000	9,700,000	38,342,168
(1) Estimate of consultant costs @ 15% of Construction Project Costs	1,554,459	410,866	1,920,000	411,000	1,455,000	5,751,325

The on-call consultant contracts can also be utilized by other user departments including Public Works and Parks and Community Services, should the need arise. The maximum value of \$9,000,000, while not guaranteed to be utilized, allows the department some flexibility should the CIP program expand, and additional engineering services be required. The use of On-Call engineering agreements expedites delivery of projects, saves time and money for the City.

The City currently has 24 CIP Projects projected over the next 3 years, including complex and specialized projects such as civil design, water wells & pipeline replacement, wastewater treatment improvements, traffic signals, bridges, and others. All these projects, in large part, require specialized professional engineering disciplines and services to ensure timely and successful project deliveries. In addition, the City has a need for a consultant to provide City Surveyor and Plan Check services to review Private Development projects and to stamp engineering plans related to land surveying duties. In order to expedite the delivery of these CIP Projects the City needs consultants to provide specified services which are beyond the current capacity, expertise and/or capabilities of staff. Current staffing levels limit the number of CIP projects that can be designed and managed in a timely manner; therefore, these added services are critical to meeting the current project demands.

A Request for Qualification for Engineering and Land Surveying Consulting Services was solicited on May 17, 2022. The RFQ was solicited to consultants on the City's engineering consultant list,

posted on the City's website and published in the Madera Tribune. Twelve proposals were received and are listed in Table 2.

Table 2: List of Consultants who submitted proposals		
<i>No.</i>	<i>Consultant</i>	<i>Office Location</i>
1	Yamabe & Horn Engineering	Fresno, CA
2	AECOM	Fresno, CA
3	Peters Engineering Group	Clovis, CA
4	Blair Church & Flynn Consulting Engineers	Clovis, CA
5	AM Consulting Engineers	Fresno, CA
6	O'Dell Engineers	Modesto, CA
7	AKEL Engineering Group	Fresno, CA
8	Provost & Pritchard Engineering Group	Clovis, CA
9	TJKM	Pleasanton, CA
10	Quad Knopf (QK)	Clovis, CA
11	Lars Andersen and Associates	Fresno, CA
12	Precision Civil Engineering	Fresno, CA

A panel comprised of three staff members from the engineering department independently reviewed each proposal and then collaborated to determine the most qualified consultants using the following evaluation criteria:

- Merit of Proposal
- Knowledge and Expertise of Consultant (Firms Qualifications)
- Record of Past Performance
- Knowledge of Local Conditions

As a result, based on the large volume of work in the CIP program, the need for City Surveyor and Plan Checking services and certain specialized services, staff is recommending retaining ten consulting firms to provide on-call services for a three-year term with the option for extending the agreements two additional years. The consultants have diverse engineering expertise, providing the City with the flexibility to select the most appropriate proposal (price, timeframe, areas of expertise) from one of the firms depending on the type of work proposed on a project-by-project basis. Table 3 list the 10 consultants selected to provide engineering services. Eight of the firms were hired to provide general engineering services (water, wastewater, utility design, roadway, traffic engineering, surveying, and development plan checking services). AKEL Engineering Group was selected to provide engineering master planning and modeling services and TJKM was recommended specifically for traffic signal design and traffic studies.

Table 3: List of Consultants who were selected		
<i>No.</i>	<i>Consultant</i>	<i>Office Location</i>
1	AECOM	Fresno, CA

2	Yamabe & Horn Engineering	Fresno, CA
3	Blair Church & Flynn Consulting Engineers	Clovis, CA
4	Provost & Pritchard Engineering Group	Clovis, CA
5	Peters Engineering Group	Clovis, CA
6	O'Dell Engineers	Modesto, CA
7	Quad Knopf (QK)	Clovis, CA
8	AM Consulting Engineers	Fresno, CA
9	AKEL Engineering Group (Master Planning Only)	Fresno, CA
10	TJKM (Traffic Engineering Only)	Pleasanton, CA

Consultants shall be retained under the City's On-call Consulting Services Agreement, which does not actually obligate the City to hire the consultant for any future projects. The Agreement documents various agreement provisions such as definition of terms, payment process, use of documents, insurance requirements, suspension, or termination of agreement, controlling law, dispute resolution, indemnification and numerous other terms and conditions that were not project specific. All projects assigned will require a separate written Task Order which will identify specific project needs, scope of work, and consultant fees all in accordance with the existing Consulting Services Agreement.

FINANCIAL IMPACT:

There is no impact to the General Fund. The approval of Professional Service Agreements in and of themselves do not have a fiscal impact on the City's budget. The fiscal impact analysis for the projects and services to be performed by the selected consultants was presented on June 16, 2022, for approval and appropriation annually as part of the 5-year CIP budget and/or various components of the Operations budget.

CONSISTENCY WITH THE VISION MADERA 2025 PLAN:

Strategy 101.6, Neighborhood Connectivity: Ensure infrastructure can sustain population growth in the development of the General Plan.

ALTERNATIVES

As an alternative, Council may direct staff to not enter into an agreement with the consultants listed and solicit competitive proposals from other engineering firms for each individual project. This may result in the City continuing to issue Request for Proposals, which *may* delay some projects.

ATTACHMENTS:

1. Resolution Approving Consulting Services Agreements for On-Call Engineering and Surveying Services
2. On-Call Consultant Services Agreements
 - a. Agreement with AECOM for an amount not to exceed \$900,000

- b. Agreement with Yamabe & Horn Engineering for an amount not to exceed \$900,000
- c. Agreement with Blair, Church & Flynn Consulting Engineers for an amount not to exceed \$900,000
- d. Agreement with Provost and Pritchard Engineering Group for an amount not to exceed \$900,000
- e. Agreement with Peters Engineering Group for an amount not to exceed \$900,000
- f. Agreement with O'Dell Engineering for an amount not to exceed \$900,000
- g. Agreement with Quad Knopf (dba QK) for an amount not to exceed \$900,000
- h. Agreement with AM Consulting Engineers for an amount not to exceed \$900,000
- i. Agreement with AKEL Engineering Group for an amount not to exceed \$900,000
- j. Agreement with TJKM Consultants for an amount not to exceed \$900,000

ATTACHMENT 1

RESOLUTION NO. 22-_____

**A RESOLUTION APPROVING CONSULTANT SERVICE AGREEMENTS WITH
AECOM, YAMABE & HORN ENGINEERING, BLAIR, CHURCH AND FLYNN
CONSULTING ENGINEERS, PROVOST & PRITCHARD ENGINEERING GROUP,
PETERS ENGINEERING GROUP, ODELL ENGINEERING, QUAD-KNOPF (QK),
AM CONSULTING ENGINEERS, AKEL ENGINEERING GROUP AND TJKM
CONSULTANTS IN THE AMOUNT OF \$900,000 FOR EACH AGREEMENT FOR
PROFESSIONAL ON-CALL ENGINEERING SERVICES**

WHEREAS, the City has a need for Professional Engineering Services on an On-Call basis;
and

WHEREAS, engineering services by professional firms are required for various projects;
and

WHEREAS, on May 17, 2022, the Engineering Department advertised a Request for Qualification (RFQ) for Professional On-Call Engineering Services on the City's website and solicited firms to provide a proposal for the project; and

WHEREAS, On June 16, 2022, the City received twelve proposals in response to the RFQ;
and

WHEREAS, AECOM, Yamabe & Horn Engineering, Blair, Church and Flynn Consulting Engineers, Provost & Pritchard Engineering Group, Peters Engineering Group, O'DELL Engineering, Quad Knopf (QK), AM Consulting Engineers, Akel Engineering Group and TJKM Consultants were selected based on their experience and knowledge of the various proposed projects and have the professional skills to perform the necessary services and City desires to retain said consultants.

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

1. The above recitals are true and correct.
2. The approval of a Consultant Service Agreement, attached hereto as Attachment 2A, with AECOM in the amount of \$900,000.00 for On-Call Engineering Services.
3. The approval of a Consultant Service Agreement, attached hereto as Attachment 2B, with Yamabe & Horn Engineering, Inc. in the amount of \$900,000.00 for On-Call Engineering Services.
4. The approval of a Consultant Service Agreement, attached hereto as Attachment 2C, with Blair, Church, and Flynn Consulting Engineers, Inc. in the amount of \$900,000.00 for On-Call Engineering Services.

5. The approval of a Consultant Service Agreement, attached hereto as Attachment 2D, with Provost & Pritchard Engineering Group, Inc. in the amount of \$900,000.00 for On-Call Engineering Services.
6. The approval of a Consultant Service Agreement, attached hereto as Attachment 2E, with Peters Engineering Group, Inc. in the amount of \$900,000.00 for On-Call Engineering Services.
7. The approval of a Consultant Service Agreement, attached hereto as Attachment 2F, with O'DELL Engineering in the amount of \$900,000.00 for On-Call Engineering Services.
8. The approval of a Consultant Service Agreement, attached hereto as Attachment 2G, with Quad-Knopf (QK) in the amount of \$900,000.00 for On-Call Engineering Services.
9. The approval of a Consultant Service Agreement, attached hereto as Attachment 2H, with AM Consulting Engineers in the amount of \$900,000.00 for On-Call Engineering Services.
10. The approval of a Consultant Service Agreement, attached hereto as Attachment 2I, with Akel Engineering Group, Inc. in the amount of \$900,000.00 for On-Call Engineering Services.
11. The approval of a Consultant Service Agreement, attached hereto as Attachment 2J, with TJKM Consultants in the amount of \$900,000.00 for On-Call Engineering Services.
12. The City Engineer is authorized to execute the Task Orders associated with the approved agreements.
13. This resolution is effective immediately upon adoption.

* * * * *

ATTACHMENT 2A

On-Call Agreement with AECOM

ON-CALL CONSULTANT SERVICES AGREEMENT BETWEEN THE CITY OF MADERA AND AECOM

This Consultant Services Agreement ("Agreement") is entered into between the CITY OF MADERA, a California general law city ("City") and AECOM Technical Services, Inc ("Consultant"). This Agreement shall be effective on the date signed by City which shall occur after execution by Consultant ("Effective Date").

RECITALS

A. The City has determined that it requires on-call, as-needed professional engineering services in order to maintain a high level of service to the community.

B. City has sought, by a Request for Qualifications, to select consultants to provide On-Call Engineering and Land Surveying Consulting Services.

C. Consultant submitted a Statement of Qualifications for performing the requested Services and is engaged in the business of furnishing such services as a consultant and hereby warrants and represents that it is qualified, licensed, and professionally capable of performing the Services called for in the Request for Qualifications and this Agreement.

D. City has selected Consultant to perform the requested Services on the basis of Consultant's demonstrated competence and professional qualifications.

E. City desires to retain Consultant, and Consultant desires to provide City with the Services, on the terms and conditions as set forth in this Agreement.

NOW, THEREFORE, in consideration of the promises and mutual agreements herein, City and Consultant agree as follows:

AGREEMENT

1. Scope of Services. Consultant shall perform, to the satisfaction of City in accordance with this Agreement, the Services described in the "Scope of Services" attached hereto as **EXHIBIT A** and incorporated by herein by this reference. Consultant shall at all times faithfully, competently and to the best of its ability, experience, and talent, perform all services described herein.

At such time as services are needed by City from Consultant, City will discuss with Consultant the general parameters of the applicable scope of services. In response, Consultant shall deliver to City, a "Preliminary Task Order," which shall include a scope of work and cost

proposal for the services needed by City. Consultant's proposal shall include a breakdown of estimated hours and a work order schedule. No work shall be performed by Consultant until the Preliminary Task Order is accepted in writing by City as evidenced by City's issuance to Consultant of a final "Task Order," Consultant shall commence performance and complete all required services no later than the dates set forth and in accordance with the approved, final Task Order.

Consultant accepts full responsibility for the scope of services provided by sub-consultants necessary for delivery and completion of work under a Task Order. Consultant shall comply with applicable City of Madera design standards and requirements as directed by the City and applicable State and Federal requirements.

2. Term of Agreement; Commencement of Services. The term of this Agreement shall be three (3) years commencing on _____, 2022, and shall terminate on _____, 2025, unless terminated earlier as set forth herein. This Agreement may be mutually extended after the initial three (3) year term for up to two (2) additional one (1) year terms upon approval of an extended agreement by the City Council.

Consultant shall commence the Services for each final Task Order upon City's issuance of a written "Notice to Proceed" and shall continue with the Services until Consultant, as determined by City, has satisfactorily performed, and completed the Services for said Task Order, or until such time as the Agreement is terminated by either party in accordance with this Agreement, whichever is earlier.

3. Continuity of Personnel. Consultant shall make every reasonable effort to maintain the stability and continuity of Consultant's staff and subcontractors assigned to perform the Services under this Agreement. Consultant shall notify City of any changes in Consultant's staff and subcontractors assigned to perform the Services under this Agreement.

4. Compensation for Services. City shall compensate Consultant for rendering the Services as follows:

(a) Subject to any limitations set forth in this Agreement, City agrees to pay Consultant by the amounts specified in the Schedule of Compensation attached hereto as **EXHIBIT B** and incorporated herein by this reference. Both parties agree that Consultant's total compensation under this Agreement shall not exceed \$300,000 for Year 1, \$300,000 for Year 2, and \$300,000 for Year 3 of the Agreement and shall exceed a total contract amount of \$900,000. At the end of the three (3) year term, City may extend the term of this Agreement for up to two (2) additional one (1) year periods with a not-to-exceed compensation amount of \$300,000 per year by providing advance written notice to CONSULTANT and written confirmation by CONSULTANT thereof.

(b) City reserves the right to not request any services of Consultant during the entire duration of this Agreement. Consultant shall only be paid for services performed under this Agreement to the extent authorized by final Task Order approved by the City

Engineer. The City does not guarantee any specific amount of work, if any, or billable hours that will be preauthorized. No overhead or other expenses can be recovered for interim periods when Consultant's services are not utilized by City.

(c) City and Consultant agree on the rates shown in EXHIBIT B, "Hourly Rate Schedule", and agree that they will remain in effect for the first two years of Agreement. Thereafter, Consultant may submit a new Hourly Rate Schedule as an amendment to this agreement no more than one time per year. It is understood and agreed by both parties that all expenses incidental to Consultant's performance of services, including travel expenses, are included in the basic fee shown in **EXHIBIT B**.

(d) Each month Consultant shall invoice City for all work performed and expenses incurred during the preceding month. Consultant's invoice shall specify the billed hours and hourly rates for each employee classification. The sub-consultants work shall be included on Consultant's invoice with a copy of the sub-consultant's invoice attached. A report on summary of costs to date for each component of the work shall accompany the invoice. This summary shall also estimate the percentage of the work completed for each component and the balance remaining in each component.

(e) City shall independently review each invoice submitted by the Consultant to determine whether the work performed, and expenses incurred are in compliance with the provisions of this Agreement. The invoiced amount shall be paid within 30 calendar days unless City disputes any charges or expenses. If any charges or expenses are disputed, City shall pay the undisputed amount, and notify Consultant of the nature and amount of the disputed charge or expense. The parties shall seek to resolve the disputed items(s) by mutual agreement.

(f) Payment to Consultant for work performed under this Agreement shall not be deemed to waive any defects in work performed by Consultant.

(g) Extra Services. City agrees to pay Consultant for extra services not contemplated hereunder as set forth in the Scope of Work or for such services as may be specifically requested by City through City Engineer in writing and agreed to by Consultant for an agreed-to fixed fee or hourly rate of compensation or for necessary expenses over that listed in the Budget, provided, however, that the City Engineer's authority is limited to expenditures not to exceed the amount of \$2,000 (Two Thousand dollars and zero cents).

5. Time of Completion.

(a) Based on an agreed upon Notice to Proceed date for each Task Order, Consultant shall complete the work as shown in the standard Task Order Form set forth as **EXHIBIT C**.

(b) Consultant shall not be held responsible for delays caused by City review or by reasons beyond Consultant's control. Also, Consultant shall not stop its work, including work unrelated to any extra services request, unless it can be shown that the project work cannot proceed while a claim or request for extra services is being evaluated.

(c) Time is of the essence in the completion of the services covered by this Agreement. Failure of Consultant to comply with the above time schedule by more than fourteen (14) calendar days, unless the delay is not attributable to Consultant or is attributable to City, is sufficient cause to terminate this Agreement, at the option of City, in accordance with Section 18.

6. Independent Contractor Status. Consultant and its subcontractors shall perform the Services as independent contractors and not as officers, employees, agents, or volunteers of City. Nothing contained in this Agreement shall be deemed to create any contractual relationship between City and Consultant's employees or subcontractors, nor shall anything contained in this Agreement be deemed to give any third party, including but not limited to Consultant's employees or subcontractors, any claim or right of action against City. Neither the City nor any of its employees shall have any control over the manner, mode, or means by which Consultant or its agents or employees perform the services under this Agreement.

7. Qualifications, and Professional Standards. Consultant represents and warrants that it has the qualifications, experience, and facilities necessary to properly perform the services required under this Agreement in a thorough, competent, and professional manner. In meeting its obligations under this Agreement, Consultant shall employ, at a minimum, generally accepted standards and practices utilized by persons engaged in providing services similar to those required of Consultant under this Agreement. Consultant represents that to the extent Consultant utilizes subcontractors, such subcontractors are, and will be, qualified in their fields. Consultant also expressly represents that both Consultant and its subcontractors, if any, are now, and will be throughout their performance of the Services under this Agreement, properly licensed or otherwise qualified and authorized to perform the Services required and contemplated by this Agreement. Consultant and its subcontractors, if any, shall utilize the standard of care and skill customarily exercised by members of their profession, shall use reasonable diligence and best judgment while performing the Services, and shall comply with and keep themselves informed of all applicable laws and regulations.

8. Identity of Subcontractors and Sub-Consultants. Consultant shall before commencing any work under this Agreement provide to City in writing: (a) the identity of all subcontractors and sub-consultants (collectively referred to as "subcontractors"), if any, which Consultant intends to utilize in Consultant's performance of this Agreement; and (b) a detailed description of the full scope of work to be provided by such subcontractors. Consultant shall only employ subcontractors pre-approved by City and in no event shall Consultant replace an approved subcontractor without the advance written permission of City, with the understanding that City's permission will not be unreasonably withheld. Notwithstanding any other provisions in this Agreement, Consultant shall be liable to City for the performance of Consultant's

subcontractors.

9. Subcontractor Provisions. Consultant shall include in its written agreements with its subcontractors, if any, provisions which: (a) impose upon the subcontractors the obligation to provide to City the same insurance and indemnity obligations that Consultant owes to City; (b) make clear that City intends to rely upon the reports, opinions, conclusions, and other work product prepared and performed by subcontractors for Consultant; and (c) compliance with all laws and certifications as required under this Agreement.

10. Power to Act on Behalf of City. Consultant shall not have any right, power, or authority to create any obligation, express or implied, or make representations on behalf of City except as may be expressly authorized in advance in writing from time to time by City and then only to the extent of such authorization.

11. Record Keeping; Reports. Consultant shall keep complete records showing the type of Services performed. Consultant shall be responsible and shall require its subcontractors to keep similar records. City shall be given reasonable access to the records of Consultant and its subcontractors for inspection and audit purposes. Consultant shall provide City with a working draft of all reports and a copy of all final reports prepared by Consultant under this Agreement.

12. Ownership and Inspection of Documents. All data, tests, reports, documents, conclusions, opinions, recommendations, and other work product generated by or produced for Consultant or its subcontractors in connection with the Services, regardless of the medium, including physical drawings and materials recorded on computer discs ("Work Product"), shall be and remain the property of City. City shall have the right to use, copy, modify, and reuse the Work Product as it sees fit. Upon City's request, Consultant shall make available for inspection and copying all such Work Product and all Work Product shall be turned over to City promptly at City's request or upon termination of this Agreement, whichever occurs first. Consultant shall not release any Work Product to third parties without prior written approval of the City Manager. This obligation shall survive termination of this Agreement and shall survive for four (4) years from the date of expiration or termination of this Agreement.

13. Confidentiality. All data, reports, conclusions, opinions, recommendations, and other work product prepared and performed by and on behalf of Consultant in connection with the Services performed pursuant to this Agreement shall be kept confidential and shall be disclosed only to City, unless otherwise provided by law or expressly authorized by City. Consultant shall not disclose or permit the disclosure of any confidential information acquired during performance of the Services, except to its agents, employees, affiliates, and subcontractors who need such confidential information in order to properly perform their duties relative to this Agreement. Consultant shall also require its subcontractors to be bound to these confidentiality provisions.

14. City Name and Logo. Consultant shall not use City's name or insignia, photographs relating to the City projects for which Consultant's services are rendered, or any publicity

pertaining to the Consultant's services under this Agreement in any magazine, trade paper, newspaper, television or radio production or other similar medium without the prior written consent of City.

15. Conflicts of Interest. Consultant warrants that neither Consultant nor any of its employees have an interest, present or contemplated, which would conflict in any manner with the interests of the City, or which would in any way hinder Consultant's performance of services under this Agreement. Consultant covenants that no person having any such interest, whether an employee or subcontractor shall perform the Services under this Agreement. During the performance of the Services, Consultant shall not employ or retain the services of any person who is employed by the City or a member of any City Board or Commission. City understands and acknowledges that Consultant is, as of the date of execution of this Agreement, independently involved in the performance of non-related services for other governmental agencies and private parties. Consultant is unaware of any stated position of City relative to such projects. Any future position of City on such projects shall not be considered a conflict of interest for purposes of this section. City understands and acknowledges that Consultant will, perform non-related services for other governmental agencies and private parties following the completion of the Services under this Agreement, and any such future service shall not be considered a conflict of interest for purposes of this section.

16. Non-liability of Officers and Employees. No officer or employee of City shall be personally liable to Consultant, or any successors in interest, in the event of a default or breach by City for any amount which may become due Consultant or its successor, or for any breach of any obligation under the terms of this Agreement.

17. City Right to Employ Other Consultants. This Agreement is non-exclusive with Consultant. City reserves the right to employ other consultants in connection with the Services.

18. Termination of Agreement. This Agreement shall terminate upon completion of the Services, or earlier pursuant to the following.

(a) For Convenience of City. This Agreement may be terminated by City at its discretion upon thirty (30) days prior written notice to Consultant.

(b) For Breach of Either Party. If for any cause either party fails to fulfill in a timely and proper manner its obligations under this Agreement (the "breaching party"), the other party (the "terminating party") shall have the right to terminate the Agreement by giving not less than five (5) working days' written notice to the breaching party of the intent to terminate and specifying the effective date thereof. The terminating party shall, however, provide the breaching party with a detailed statement of the grounds for termination. This statement shall include, as appropriate, references to specific provisions of this Agreement, dates, dollar amounts and other information relevant to the decision to terminate for cause.

(c) Compensation to Consultant Upon Termination. In the event termination is not due to fault attributable to Consultant and provided all other conditions for payment have been met, Consultant shall be paid compensation for services performed prior to notice of termination. As to any phase partially performed but for which the applicable portion of Consultant's compensation has not become due, Consultant shall be paid the reasonable value of its services provided. However, in no event shall such payment when added to any other payment due under the applicable part of the work exceed the total compensation of such part as specified in Section 3 herein. In the event of termination due to Consultant's failure to perform in accordance with the terms of this Agreement through no fault of City, City may withhold an amount that would otherwise be payable as an offset to City's damages caused by such failure.

(d) Effect of Termination. Upon receipt of a termination notice (or completion of this Agreement), Consultant shall: (i) promptly discontinue all Services affected (unless the notice directs otherwise); and (ii) deliver or otherwise make available to the City, without additional compensation, all data, documents, procedures, reports, estimates, summaries, and such other information and materials as may have been accumulated by the Consultant in performing this Agreement, whether completed or in process. Following the termination of this Agreement for any reason whatsoever, City shall have the right to utilize such information and other documents, or any other works of authorship fixed in any tangible medium of expression, including but not limited to physical drawings, data magnetically or otherwise recorded on computer disks, or other writings prepared or caused to be prepared under this Agreement by Consultant. Consultant may not refuse to provide such writings or materials for any reason whatsoever.

19. Insurance. All insurance policies shall be subject to City approval as to form and content. Consultant shall provide City with copies of required certificates of insurance upon request. 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.

- \$2,000,000 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 proposal.

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. City reserves the right to require complete, certified copies of all required insurance policies, at any time.

Acceptable Insurers

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

Waiver of Subrogation

All insurance coverage maintained or procured pursuant to this agreement shall be endorsed to waive subrogation against the City, its elected or appointed officers, agents, officials, employees, and volunteers, or shall specifically allow 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 City 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 City 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.

20. Indemnification.

Indemnity for Professional Liability:

When the law establishes a professional standard of care for Consultant's Services, to the fullest extent permitted by law, Consultant shall indemnify, protect, defend, and hold harmless City and any and all of its officials, employees and agents from and against any and all losses, liabilities, damages, costs, and expenses, including legal counsel's fees and costs but only to the extent the Consultant (and its Subconsultants), are responsible for such damages, liabilities and costs on a comparative basis of fault between the Consultant (and its Subconsultants) and the City in the performance of professional services under this agreement.

Indemnity for Other Than Professional Liability:

Other than in the performance of professional services and to the full extent permitted by law, Consultant shall indemnify, defend, and hold harmless City, and any and all of its employees, officials and agents from and against any liability (including liability for claims, suits, actions, arbitration proceedings, administrative proceedings, regulatory proceedings, losses, expenses or costs of any kind, whether actual, alleged or threatened, including legal counsel's fees and costs, court costs, defense costs, and expert witness fees), where the same arise out of, are a consequence of, or are in any way attributable to, in whole or in part, the performance of this Agreement by Consultant or by any individual or City for which Consultant is legally liable, including, but not limited to officers, agents, employees, or subcontractors of Consultant, except when caused by the active negligence or willful misconduct of the City.

21. Responsibility For Others. Consultant shall be responsible to City for its services and the services of its sub consultants. Consultant shall not be responsible for the acts or omissions of other parties engaged by City nor for their construction means, methods, techniques, sequences, or procedures, or their health and safety precautions and programs.

22. Professional Responsibility. Consultant shall be obligated to comply with applicable standards of professional care in the performance of the Services by exercising the skill and ability ordinarily required of engineers performing the same or similar services, under the same or similar circumstances, in the State of California. Consultant recognizes that opinions relating to environmental, geologic, and geotechnical conditions are based on limited data and that actual conditions may vary from those encountered at the times and locations where the data are obtained, despite the use of due professional care.

In providing opinions of cost, financial analyses, economic feasibility projections, and schedules for potential projects, Consultant has no control over cost or price of labor and material; unknown or latent conditions of existing equipment or structures that may affect operation and maintenance costs; competitive bidding procedures and market conditions; time or quality of performance of third parties; quality, type, management, or direction of operating personnel; and other economic and operational factors that may materially affect the ultimate project cost or schedule. Therefore, Consultant makes no warranty that the City's actual project costs, financial aspects, economic feasibility, or schedules will not vary from Consultant's opinions, analyses, projections, or estimates

23. Compliance with All Laws. Consultant shall be familiar with and shall comply with all City, State, and Federal laws and regulations applicable to the work to be performed under this Agreement. In providing the services required under this Agreement, Consultant shall at all times comply with all applicable laws, regulations, and resolutions of the United States, the State of California, and the City of Madera now in force and as they may be enacted, issued, or amended during the term of this Agreement.

23.A. Federal Funded Task Orders: *Where the Task Order services provided pursuant to the Agreement are funded by a federal program, including but not limited to, Community Block Grant Funds, Consultant certifies and agrees that Consultant will be in:*

- *Compliance with Executive Order 11246 of September 24, 1965, entitled "Equal Employment Opportunity" as amended by Executive Order 11375 of October 13, 1967 and as supplemented in Department of Labor regulations (41 CFR chapter 60). (All construction contracts awarded in excess of \$10,000 by grantees and their contractors or sub grantees.)*
- *Compliance with the Copeland "Anti-Kickback" Act (18 U.S.C. 874) as supplemented in Department of Labor regulations (29 CFR part 3). (All contracts and sub grants or construction or repair).*
- *Compliance with the Davis-Bacon Act (40 U.S.C. 276a to 276a-7) as supplemented by Department of Labor regulations (29 CFR part 5). (Construction contracts in excess of \$2000 awarded by grantees and sub grantees required by Federal grant program legislation.)*

- *Compliance with Sections 103 and 107 of the Contract Work Hours and Safety Standards Act (40 U.S.C. 327-330) as supplemented by Department of Labor regulations (29 CFR part 5). (Construction contracts in excess of \$2000 and in excess of \$2500 for other contracts which involve the employment of mechanics or laborers.)*
- *(e) Compliance with the provisions of any notice of awarding agency requirements and regulations pertaining to reporting.*
- *Compliance with the provisions of any notice of awarding agency requirements and regulations pertaining to patent rights with respect to any discovery or invention which arises or is developed in the course of or under such contract.*
- *Compliance with any awarding agency requirements and regulations pertaining to copyrights and rights in data.*
- *Compliance with access requirements imposed by the grantee, the sub grantee, the Federal grantor agency, the Comptroller General of the United States, or any of their duly authorized representatives to any books, documents, papers, and records of the contractor which are directly pertinent to that specific contract for the purpose of making audit, examination, excerpts, and transcriptions.*
- *Compliance with applicable requirements for the retention of all required records for three years after grantees or sub grantees make final payments and all other pending matters are closed.*
- *Compliance with all applicable standards, orders, or requirements issued under section 306 of the Clean Air Act (42 U.S.C. 1857(h)), section 508 of the Clean Water Act (33 U.S.C. 1368), Executive Order 11738, and Environmental Protection Agency regulations \$100,000.)*
- *Compliance with mandatory standards and policies relating to energy efficiency which are contained in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act (Pub. L 97-163, 89 Stat. 871.) [53 FR 8068.8067. Mar. 11, 1988, as amended at 60 FR 19639, 19642, Apr. 19, 1995]]*

24. Assignment. Neither this Agreement nor any duties or obligations hereunder shall be assignable by Consultant without the prior written consent of City. In the event of an assignment to which City has consented, the assignee shall agree in writing to personally assume and perform the covenants, obligations, and agreements herein contained. In addition, Consultant shall not assign the payment of any monies due Consultant from City under the terms of this Agreement to any other individual, corporation or entity. City retains the right to pay any and all monies due Consultant directly to Consultant.

25. Form and Service of Notices. All notices required or permitted to be given under this Agreement shall be in writing and shall be personally delivered, or sent by certified mail, postage prepaid and return receipt requested, addressed as follows:

To City: CITY ENGINEER
City of Madera
428 E. Yosemite Avenue
Madera, CA 93638

To Consultant: AECOM
8050 N. Palm Avenue
Fresno, CA 93711

Notice shall be deemed effective on the date personally delivered or transmitted by facsimile, or if mailed, three (3) days after deposit of the same in the custody of the United States Postal Service.

26. Entire Agreement. This Agreement, including the attachments and exhibits, represents the entire Agreement between City and Consultant, and supersedes all prior negotiations, representations, or agreements, either written or oral with respect to the subject matter herein. This Agreement may be amended only by written instrument signed by both City and Consultant.

27. Authority. The signatories to this Agreement warrant and represent that they have the legal right, power, and authority to execute this Agreement and bind their respective entities.

28. Severability. In the event any term or provision of this Agreement is declared to be invalid or illegal for any reason, this Agreement will remain in full force and effect and will be interpreted as though such invalid or illegal provision were not a part of this Agreement. The remaining provisions will be construed to preserve the intent and purpose of this Agreement and the parties will negotiate in good faith to modify any invalidated provisions to preserve each party's anticipated benefits.

29. Applicable Law and Interpretation and Venue. This Agreement shall be interpreted in accordance with the laws of the State of California. The language of all parts of this Agreement shall, in all cases, be construed as a whole, according to its fair meaning, and not strictly for or against either party. Any controversy or claim arising out of, or relating to, this Agreement which cannot be amicably settled without court action shall be litigated either in the appropriate State court for Madera County, California, or as appropriate in the U. S. District Court for the Eastern District of California, located in Fresno County. The rights and obligations of the

parties and all interpretations and performance of this Agreement shall be governed in all respects by the laws of the State of California.

30. Attorney's Fees. If either party is required to commence any proceeding or legal action to enforce or interpret any term, covenant, or condition of this Agreement, the prevailing party in such proceeding or action shall be entitled to recover from the other party its reasonable attorneys' fees and legal expenses.

31. Amendments and Waiver. This Agreement shall not be modified or amended in any way, and no provision shall be waived, except in writing signed by the parties hereto. No waiver of any provision of this Agreement shall be deemed, or shall constitute, a waiver of any other provision, whether or not similar, nor shall any such waiver constitute a continuing or subsequent waiver of the same provision. Failure of either party to enforce any provision of this Agreement shall not constitute a waiver of the right to compel enforcement of the remaining provisions of this Agreement.

32. Third Party Beneficiaries. Nothing in this Agreement shall be construed to confer any rights upon any party not a signatory to this Agreement.

33. Execution in Counterparts. This Agreement may be executed in counterparts such that the signatures may appear on separate signature pages. A copy or an original, with all signatures appended together, shall be deemed a fully executed Agreement.

34. Non-Discrimination. Consultant shall not discriminate on the basis of any protected class under federal or State law in the provision of the Services or with respect to any Consultant employees or applicants for employment. Consultant shall ensure that any subcontractors are bound to this provision. A protected class includes, but is not necessarily limited to, race, color, national origin, ancestry, religion, age, sex, sexual orientation, marital status, and disability.

[SIGNATURES ON FOLLOWING PAGE]

IN WITNESS WHEREOF, the City and Consultant have executed this Agreement on the date(s) set forth below.

CONSULTANT NAME

CITY OF MADERA

By: _____
Ben Horn P.E., Area Manager

By: _____
Santos Garcia, Mayor

Taxpayer ID #: _____

Date: _____

Date: _____

APPROVED AS TO FORM:

Hilda Cantú Montoy, City Attorney

ATTEST:

By: _____
Alicia Gonzales, City Clerk

EXHIBIT A – Scope of Services

EXHIBIT B – Fee Schedule

EXHIBIT C – Task Order Work Schedule Form

EXHIBIT A

SCOPE OF SERVICES

The professional services may include, but not be limited to, the following: land surveying, civil engineering plan checking services, roadway design, drainage and flood control design, water and sewer pipeline design, water well design, wastewater treatment plant design, traffic studies, traffic signal design, master planning services, utility locating and conflict analysis or other similar engineering services. These services may result in the preparation of engineering reports, public presentations or the preparation of plans, specifications, and estimates suitable for the public bidding process.

The following is a list of the types of consulting services being considered. Each consultant is not required to have expertise in all of the items listed:

- Storm drain infrastructure analysis and design, including hydrology and hydraulic analysis.
- Street geometrics, striping and signage analysis and design.
- Street design, including repair/replacement of curb, gutter, sidewalk, driveways, ramps, street trees, signs, pavement, etc.
- Grading design.
- Traffic signal design and Traffic studies.
- Water well design, water, and sewer pipeline design.
- Wastewater Treatment Plant design
- Preparation of engineering plans, specifications and estimates in City-approved format.
- Construction Support services include attending construction meetings, responding to requests for information, reviewing agreement submittals, and evaluating design changes during construction.

Additional requirements are as follows:

1. The Consultant's Project Manager shall be available for periodic meetings to discuss issues related to task orders.
2. The Consultant must be adequately insured for liability and property damage pursuant to the conditions of the Agreement.
3. All work shall be performed and delivered in English Standard Units or as required by the City.
4. All survey work shall be performed on CCS/NAD 83 horizontal coordinates and use true NAVD 88 vertical controls.
5. Plans and Maps shall be submitted in the AutoCAD format in use by the City at the time of issuance of the task order, point files shall be submitted in ASCII format, and any estimates, schedules, or reports shall be submitted in Microsoft Office format.
6. Consultant may be required to provide topographic surveys to support their work product as necessary.

EXHIBIT B

AECOM FEE SCHEDULE FOR PROFESSIONAL SERVICES Effective July 1, 2022

Engineers, Planners, Architects, Scientists:

Technician	\$ 95.00 per hour
Engineer I/Specialist I	\$ 120.00 per hour
Engineer II/Specialist II	\$ 140.00 per hour
Engineer III/Specialist III	\$ 155.00 per hour
Engineer IV	\$ 175.00 per hour
Engineer V	\$ 195.00 per hour
Engineer VI	\$ 235.00 per hour
Engineer VII	\$ 255.00 per hour
Engineer VIII	\$ 275.00 per hour
Project Manager I	\$ 195.00 per hour
Project Manager II	\$ 220.00 per hour
Project Manager III	\$ 275.00 per hour
Principal I	\$ 295.00 per hour
Principal II	\$ 335.00 per hour

Construction Administration Personnel:

Resident Project Representative	\$ 145.00 per hour
Senior Resident Project Representative	\$ 165.00 per hour
Resident Engineer	\$ 205.00 per hour
Construction Services Manager	\$ 265.00 per hour

Technical Support Staff:

Clerical/General Office	\$ 90.00 per hour
Administrative Specialist	\$ 100.00 per hour
Drafter/GADD Technician	\$ 90.00 per hour
Assistant CADD Operator	\$ 110.00 per hour
Designer/GADD Operator	\$ 120.00 per hour
Senior Designer/Design CADD Operator	\$ 140.00 per hour
Design/GADD Supervisor	\$ 175.00 per hour

Direct Project Expenses

Other Reproduction (8 1/2 x11 / 11x17 Color)	\$1.15 / 1.50 per page
Plan Sheet Printing - In House Bond/Vellum/Mylar	\$3.00/4.00/7.00 per sheet
Subcontracted Services/Reproduction	Cost+ 15%
Subcontracted or Subconsultant Services	Cost+ 10%
Auto Mileage for Construction Phase Services	IRS rate per mile
Travel & Subsistence (other than mileage)	Cost
Miscellaneous Materials	Cost+ 15%

Fee schedule is subject to change annually.

This rate schedule shall be valid for the first two years of the contract. After two years, AECOM anticipates rate adjustments based on market conditions.

If authorized by the Client, an overtime premium multiplier of 1.5 may be applied to the billing rate of hourly personnel who work overtime in order to meet a deadline which cannot be met during normal business hours.

Invoices will be rendered monthly. Payment is due upon presentation. A late payment finance charge of 1.5% per month (but not exceeding the maximum rate allowable by law) will be applied to any unpaid balance commencing 30 days after the date of the original invoice.

EXHIBIT C

TASK ORDER WORK SCHEDULE FORM

CITY OF MADERA
TASK ORDER FORM No. ____
TO ENGINEERING SERVICES AGREEMENT FOR

PROJECT No. _____

This TASK ORDER NO. _____ to Engineering Services Agreement dated _____, hereinafter called Agreement, between the City of Madera, (CITY), and _____(ENGINEER).

1. DESCRIPTION OF PROJECT

2. SCOPE OF SERVICES

The City agrees to utilize the services of ENGINEER and ENGINEER agrees to perform _____ listed engineering services as requested by CITY as per the Engineering Services Agreement. ENGINEER shall confirm the scope, schedule, and anticipated compensation for such services in writing prior to starting work (see attached proposed Scope of Services).

3. CITY'S RESPONSIBILITIES

CITY to provide ENGINEER with the following information:

1. CITY shall assign appropriate reviewers to the project and compile and provide a single consolidated, coordinated, legible copy of written review comments to ENGINEER for all draft documents and work products, as appropriate.
2. CITY shall provide timely review of submitted products as appropriate.

4. COMPENSATION

1. CITY shall pay ENGINEER according to the fee schedule set forth in Exhibit A to the Engineering Services Agreement dated _____.
2. Services provided under this Task Order shall not exceed (dollar value) _____ (\$_____).

5. MISCELLANEOUS

All terms and conditions of the Engineering Services Agreement apply to this Task Order as though fully set forth therein. In the event of a conflict between this Task Order and the Engineering Services Agreement, the terms of this Task Order shall apply.

The parties do mutually agree to all mutual covenants and agreements contained within this Task Order No. ____.

CITY OF MADERA

By: _____

Title: _____

Date: _____

(ENGINEER) _____

By: _____

Title: _____

Date: _____

STANDARD ADDENDUM FORM

TASK ORDER NO. ____ - ADDENDUM NO. ____

(PROJECT) _____

This Addendum to Task Order No. ____ to the Engineering Services Agreement dated _____, hereinafter called Agreement, between the City of Madera (CITY), and _____(ENGINEER).

____ Change in Schedule:

____ Change in Fee: An Increase/Decrease of \$_____ to Task Order No. ____ for a total contract amount of \$_____. These changes are in accordance with the (Project description) _____, scope of services dated _____.

____ Modifies the Agreement in the following manner:

CITY OF MADERA

By: _____

Title: _____

Date: _____

ENGINEER _____

By: _____

Title: _____

Date: _____

ATTACHMENT 2B

On-Call Agreement with Yamabe & Horn Engineering

**ON-CALL CONSULTANT SERVICES AGREEMENT BETWEEN THE CITY OF MADERA AND
YAMABE & HORN ENGINEERING INC.**

This Consultant Services Agreement ("Agreement") is entered into between the CITY OF MADERA, a California general law city ("City") and Yamabe & Horn Engineering Inc. ("Consultant"). This Agreement shall be effective on the date signed by City which shall occur after execution by Consultant ("Effective Date").

RECITALS

- A. The City has determined that it requires on-call, as-needed professional engineering services in order to maintain a high level of service to the community.
- B. City has sought, by a Request for Qualifications, to select consultants to provide On-Call Engineering and Land Surveying Consulting Services.
- C. Consultant submitted a Statement of Qualifications for performing the requested Services and is engaged in the business of furnishing such services as a consultant and hereby warrants and represents that it is qualified, licensed, and professionally capable of performing the Services called for in the Request for Qualifications and this Agreement.
- D. City has selected Consultant to perform the requested Services on the basis of Consultant's demonstrated competence and professional qualifications.
- E. City desires to retain Consultant, and Consultant desires to provide City with the Services, on the terms and conditions as set forth in this Agreement.

NOW, THEREFORE, in consideration of the promises and mutual agreements herein, City and Consultant agree as follows:

AGREEMENT

1. Scope of Services. Consultant shall perform, to the satisfaction of City in accordance with this Agreement, the Services described in the "Scope of Services" attached hereto as **EXHIBIT A** and incorporated by herein by this reference. Consultant shall at all times faithfully, competently and to the best of its ability, experience, and talent, perform all services described herein.

At such time as services are needed by City from Consultant, City will discuss with Consultant the general parameters of the applicable scope of services. In response, Consultant shall deliver to City, a "Preliminary Task Order," which shall include a scope of work and cost

proposal for the services needed by City. Consultant's proposal shall include a breakdown of estimated hours and a work order schedule. No work shall be performed by Consultant until the Preliminary Task Order is accepted in writing by City as evidenced by City's issuance to Consultant of a final "Task Order," Consultant shall commence performance and complete all required services no later than the dates set forth and in accordance with the approved, final Task Order.

Consultant accepts full responsibility for the scope of services provided by sub-consultants necessary for delivery and completion of work under a Task Order. Consultant shall comply with applicable City of Madera design standards and requirements as directed by the City and applicable State and Federal requirements.

2. Term of Agreement; Commencement of Services. The term of this Agreement shall be three (3) years commencing on _____, 2022, and shall terminate on _____, 2025, unless terminated earlier as set forth herein. This Agreement may be mutually extended after the initial three (3) year term for up to two (2) additional one (1) year terms upon approval of an extended agreement by the City Council.

Consultant shall commence the Services for each final Task Order upon City's issuance of a written "Notice to Proceed" and shall continue with the Services until Consultant, as determined by City, has satisfactorily performed, and completed the Services for said Task Order, or until such time as the Agreement is terminated by either party in accordance with this Agreement, whichever is earlier.

3. Continuity of Personnel. Consultant shall make every reasonable effort to maintain the stability and continuity of Consultant's staff and subcontractors assigned to perform the Services under this Agreement. Consultant shall notify City of any changes in Consultant's staff and subcontractors assigned to perform the Services under this Agreement.

4. Compensation for Services. City shall compensate Consultant for rendering the Services as follows:

(a) Subject to any limitations set forth in this Agreement, City agrees to pay Consultant by the amounts specified in the Schedule of Compensation attached hereto as **EXHIBIT B** and incorporated herein by this reference. Both parties agree that Consultant's total compensation under this Agreement shall not exceed \$300,000 for Year 1, \$300,000 for Year 2, and \$300,000 for Year 3 of the Agreement and shall not exceed a total contract amount of \$900,000. At the end of the three (3) year term, City may extend the term of this Agreement for up to two (2) additional one (1) year periods with a not-to-exceed compensation amount of \$300,000 per year by providing advance written notice to CONSULTANT and written confirmation by CONSULTANT thereof.

(b) City reserves the right to not request any services of Consultant during the entire duration of this Agreement. Consultant shall only be paid for services performed under this Agreement to the extent authorized by final Task Order approved by the City

Engineer. The City does not guarantee any specific amount of work, if any, or billable hours that will be preauthorized. No overhead or other expenses can be recovered for interim periods when Consultant's services are not utilized by City.

(c) City and Consultant agree on the rates shown in EXHIBIT B, "Hourly Rate Schedule", and agree that they will remain in effect for the first two years of Agreement. Thereafter, Consultant may submit a new Hourly Rate Schedule as an amendment to this agreement no more than one time per year. It is understood and agreed by both parties that all expenses incidental to Consultant's performance of services, including travel expenses, are included in the basic fee shown in **EXHIBIT B**.

(d) Each month Consultant shall invoice City for all work performed and expenses incurred during the preceding month. Consultant's invoice shall specify the billed hours and hourly rates for each employee classification. The sub-consultants work shall be included on Consultant's invoice with a copy of the sub-consultant's invoice attached. A report on summary of costs to date for each component of the work shall accompany the invoice. This summary shall also estimate the percentage of the work completed for each component and the balance remaining in each component.

(e) City shall independently review each invoice submitted by the Consultant to determine whether the work performed, and expenses incurred are in compliance with the provisions of this Agreement. The invoiced amount shall be paid within 30 calendar days unless City disputes any charges or expenses. If any charges or expenses are disputed, City shall pay the undisputed amount, and notify Consultant of the nature and amount of the disputed charge or expense. The parties shall seek to resolve the disputed items(s) by mutual agreement.

(f) Payment to Consultant for work performed under this Agreement shall not be deemed to waive any defects in work performed by Consultant.

(g) Extra Services. City agrees to pay Consultant for extra services not contemplated hereunder as set forth in the Scope of Work or for such services as may be specifically requested by City through City Engineer in writing and agreed to by Consultant for an agreed-to fixed fee or hourly rate of compensation or for necessary expenses over that listed in the Budget, provided, however, that the City Engineer's authority is limited to expenditures not to exceed the amount of \$2,000 (Two Thousand dollars and zero cents).

5. Time of Completion.

(a) Based on an agreed upon Notice to Proceed date for each Task Order, Consultant shall complete the work as shown in the standard Task Order Form set forth as **EXHIBIT C**.

(b) Consultant shall not be held responsible for delays caused by City review or by reasons beyond Consultant's control. Also, Consultant shall not stop its work, including work unrelated to any extra services request, unless it can be shown that the project work cannot proceed while a claim or request for extra services is being evaluated.

(c) Time is of the essence in the completion of the services covered by this Agreement. Failure of Consultant to comply with the above time schedule by more than fourteen (14) calendar days, unless the delay is not attributable to Consultant or is attributable to City, is sufficient cause to terminate this Agreement, at the option of City, in accordance with Section 18.

6. Independent Contractor Status. Consultant and its subcontractors shall perform the Services as independent contractors and not as officers, employees, agents, or volunteers of City. Nothing contained in this Agreement shall be deemed to create any contractual relationship between City and Consultant's employees or subcontractors, nor shall anything contained in this Agreement be deemed to give any third party, including but not limited to Consultant's employees or subcontractors, any claim or right of action against City. Neither the City nor any of its employees shall have any control over the manner, mode, or means by which Consultant or its agents or employees perform the services under this Agreement.

7. Qualifications, and Professional Standards. Consultant represents and warrants that it has the qualifications, experience, and facilities necessary to properly perform the services required under this Agreement in a thorough, competent, and professional manner. In meeting its obligations under this Agreement, Consultant shall employ, at a minimum, generally accepted standards and practices utilized by persons engaged in providing services similar to those required of Consultant under this Agreement. Consultant represents that to the extent Consultant utilizes subcontractors, such subcontractors are, and will be, qualified in their fields. Consultant also expressly represents that both Consultant and its subcontractors, if any, are now, and will be throughout their performance of the Services under this Agreement, properly licensed or otherwise qualified and authorized to perform the Services required and contemplated by this Agreement. Consultant and its subcontractors, if any, shall utilize the standard of care and skill customarily exercised by members of their profession, shall use reasonable diligence and best judgment while performing the Services, and shall comply with and keep themselves informed of all applicable laws and regulations.

8. Identity of Subcontractors and Sub-Consultants. Consultant shall before commencing any work under this Agreement provide to City in writing: (a) the identity of all subcontractors and sub-consultants (collectively referred to as "subcontractors"), if any, which Consultant intends to utilize in Consultant's performance of this Agreement; and (b) a detailed description of the full scope of work to be provided by such subcontractors. Consultant shall only employ subcontractors pre-approved by City and in no event shall Consultant replace an approved subcontractor without the advance written permission of City, with the understanding that City's permission will not be unreasonably withheld. Notwithstanding any other provisions in this Agreement, Consultant shall be liable to City for the performance of Consultant's

subcontractors.

9. Subcontractor Provisions. Consultant shall include in its written agreements with its subcontractors, if any, provisions which: (a) impose upon the subcontractors the obligation to provide to City the same insurance and indemnity obligations that Consultant owes to City; (b) make clear that City intends to rely upon the reports, opinions, conclusions, and other work product prepared and performed by subcontractors for Consultant; and (c) compliance with all laws and certifications as required under this Agreement.

10. Power to Act on Behalf of City. Consultant shall not have any right, power, or authority to create any obligation, express or implied, or make representations on behalf of City except as may be expressly authorized in advance in writing from time to time by City and then only to the extent of such authorization.

11. Record Keeping; Reports. Consultant shall keep complete records showing the type of Services performed. Consultant shall be responsible and shall require its subcontractors to keep similar records. City shall be given reasonable access to the records of Consultant and its subcontractors for inspection and audit purposes. Consultant shall provide City with a working draft of all reports and a copy of all final reports prepared by Consultant under this Agreement.

12. Ownership and Inspection of Documents. All data, tests, reports, documents, conclusions, opinions, recommendations, and other work product generated by or produced for Consultant or its subcontractors in connection with the Services, regardless of the medium, including physical drawings and materials recorded on computer discs ("Work Product"), shall be and remain the property of City. City shall have the right to use, copy, modify, and reuse the Work Product as it sees fit. Upon City's request, Consultant shall make available for inspection and copying all such Work Product and all Work Product shall be turned over to City promptly at City's request or upon termination of this Agreement, whichever occurs first. Consultant shall not release any Work Product to third parties without prior written approval of the City Manager. This obligation shall survive termination of this Agreement and shall survive for four (4) years from the date of expiration or termination of this Agreement.

13. Confidentiality. All data, reports, conclusions, opinions, recommendations, and other work product prepared and performed by and on behalf of Consultant in connection with the Services performed pursuant to this Agreement shall be kept confidential and shall be disclosed only to City, unless otherwise provided by law or expressly authorized by City. Consultant shall not disclose or permit the disclosure of any confidential information acquired during performance of the Services, except to its agents, employees, affiliates, and subcontractors who need such confidential information in order to properly perform their duties relative to this Agreement. Consultant shall also require its subcontractors to be bound to these confidentiality provisions.

14. City Name and Logo. Consultant shall not use City's name or insignia, photographs relating to the City projects for which Consultant's services are rendered, or any publicity

pertaining to the Consultant's services under this Agreement in any magazine, trade paper, newspaper, television or radio production or other similar medium without the prior written consent of City.

15. Conflicts of Interest. Consultant warrants that neither Consultant nor any of its employees have an interest, present or contemplated, which would conflict in any manner with the interests of the City, or which would in any way hinder Consultant's performance of services under this Agreement. Consultant covenants that no person having any such interest, whether an employee or subcontractor shall perform the Services under this Agreement. During the performance of the Services, Consultant shall not employ or retain the services of any person who is employed by the City or a member of any City Board or Commission. City understands and acknowledges that Consultant is, as of the date of execution of this Agreement, independently involved in the performance of non-related services for other governmental agencies and private parties. Consultant is unaware of any stated position of City relative to such projects. Any future position of City on such projects shall not be considered a conflict of interest for purposes of this section. City understands and acknowledges that Consultant will, perform non-related services for other governmental agencies and private parties following the completion of the Services under this Agreement, and any such future service shall not be considered a conflict of interest for purposes of this section.

16. Non-liability of Officers and Employees. No officer or employee of City shall be personally liable to Consultant, or any successors in interest, in the event of a default or breach by City for any amount which may become due Consultant or its successor, or for any breach of any obligation under the terms of this Agreement.

17. City Right to Employ Other Consultants. This Agreement is non-exclusive with Consultant. City reserves the right to employ other consultants in connection with the Services.

18. Termination of Agreement. This Agreement shall terminate upon completion of the Services, or earlier pursuant to the following.

(a) For Convenience of City. This Agreement may be terminated by City at its discretion upon thirty (30) days prior written notice to Consultant.

(b) For Breach of Either Party. If for any cause either party fails to fulfill in a timely and proper manner its obligations under this Agreement (the "breaching party"), the other party (the "terminating party") shall have the right to terminate the Agreement by giving not less than five (5) working days' written notice to the breaching party of the intent to terminate and specifying the effective date thereof. The terminating party shall, however, provide the breaching party with a detailed statement of the grounds for termination. This statement shall include, as appropriate, references to specific provisions of this Agreement, dates, dollar amounts and other information relevant to the decision to terminate for cause.

(c) Compensation to Consultant Upon Termination. In the event termination is not due to fault attributable to Consultant and provided all other conditions for payment have been met, Consultant shall be paid compensation for services performed prior to notice of termination. As to any phase partially performed but for which the applicable portion of Consultant's compensation has not become due, Consultant shall be paid the reasonable value of its services provided. However, in no event shall such payment when added to any other payment due under the applicable part of the work exceed the total compensation of such part as specified in Section 3 herein. In the event of termination due to Consultant's failure to perform in accordance with the terms of this Agreement through no fault of City, City may withhold an amount that would otherwise be payable as an offset to City's damages caused by such failure.

(d) Effect of Termination. Upon receipt of a termination notice (or completion of this Agreement), Consultant shall: (i) promptly discontinue all Services affected (unless the notice directs otherwise); and (ii) deliver or otherwise make available to the City, without additional compensation, all data, documents, procedures, reports, estimates, summaries, and such other information and materials as may have been accumulated by the Consultant in performing this Agreement, whether completed or in process. Following the termination of this Agreement for any reason whatsoever, City shall have the right to utilize such information and other documents, or any other works of authorship fixed in any tangible medium of expression, including but not limited to physical drawings, data magnetically or otherwise recorded on computer disks, or other writings prepared or caused to be prepared under this Agreement by Consultant. Consultant may not refuse to provide such writings or materials for any reason whatsoever.

19. Insurance. All insurance policies shall be subject to City approval as to form and content. Consultant shall provide City with copies of required certificates of insurance upon request. 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.

- \$2,000,000 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 proposal.

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. City reserves the right to require complete, certified copies of all required insurance policies, at any time.

Acceptable Insurers

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

Waiver of Subrogation

All insurance coverage maintained or procured pursuant to this agreement shall be endorsed to waive subrogation against the City, its elected or appointed officers, agents, officials, employees, and volunteers, or shall specifically allow 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 City 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 City 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.

20. Indemnification.

Indemnity for Professional Liability:

When the law establishes a professional standard of care for Consultant's Services, to the fullest extent permitted by law, including CA Civil Code Section 2782.8, Consultant shall indemnify, protect, defend, and hold harmless City and any and all of its officials, employees and agents from and against any and all losses, liabilities, damages, costs, and expenses, including legal counsel's fees and costs but only to the extent the Consultant (and its Subconsultants), are responsible for such damages, liabilities and costs on a comparative basis of fault between the Consultant (and its Subconsultants) and the City in the performance of professional services under this agreement.

Indemnity for Other Than Professional Liability:

Other than in the performance of professional services and to the full extent permitted by law, Consultant shall indemnify, defend, and hold harmless City, and any and all of its employees, officials and agents from and against any liability (including liability for claims, suits, actions, arbitration proceedings, administrative proceedings, regulatory proceedings, losses, expenses or costs of any kind, whether actual, alleged or threatened, including legal counsel's fees and costs, court costs, defense costs, and expert witness fees), where the same arise out of, are a consequence of, or are in any way attributable to, in whole or in part, the performance of this Agreement by Consultant or by any individual or City for which Consultant is legally liable, including, but not limited to officers, agents, employees, or subcontractors of Consultant, except when caused by the active negligence or willful misconduct of the City.

21. Responsibility For Others. Consultant shall be responsible to City for its services and the services of its sub consultants. Consultant shall not be responsible for the acts or omissions of other parties engaged by City nor for their construction means, methods, techniques, sequences, or procedures, or their health and safety precautions and programs.

22. Professional Responsibility. Consultant shall be obligated to comply with applicable standards of professional care in the performance of the Services by exercising the skill and ability ordinarily required of engineers performing the same or similar services, under the same or similar circumstances, in the State of California. Consultant recognizes that opinions relating to environmental, geologic, and geotechnical conditions are based on limited data and that actual conditions may vary from those encountered at the times and locations where the data are obtained, despite the use of due professional care.

In providing opinions of cost, financial analyses, economic feasibility projections, and schedules for potential projects, Consultant has no control over cost or price of labor and material; unknown or latent conditions of existing equipment or structures that may affect operation and maintenance costs; competitive bidding procedures and market conditions; time or quality of performance of third parties; quality, type, management, or direction of operating personnel; and other economic and operational factors that may materially affect the ultimate project cost or schedule. Therefore, Consultant makes no warranty that the City's actual project costs, financial aspects, economic feasibility, or schedules will not vary from Consultant's opinions, analyses, projections, or estimates

23. Compliance with All Laws. Consultant shall be familiar with and shall comply with all City, State, and Federal laws and regulations applicable to the work to be performed under this Agreement. In providing the services required under this Agreement, Consultant shall at all times comply with all applicable laws, regulations, and resolutions of the United States, the State of California, and the City of Madera now in force and as they may be enacted, issued, or amended during the term of this Agreement.

23.A. Federal funded Task Orders: *Where the Task Order services provided pursuant to the Agreement are funded by a federal program, including but not limited to, Community Block Grant Funds, Consultant certifies and agrees that Consultant will be in:*

- *Compliance with Executive Order 11246 of September 24, 1965, entitled "Equal Employment Opportunity" as amended by Executive Order 11375 of October 13, 1967 and as supplemented in Department of Labor regulations (41 CFR chapter 60). (All construction contracts awarded in excess of \$10,000 by grantees and their contractors or sub grantees.)*
- *Compliance with the Copeland "Anti-Kickback" Act (18 U.S.C. 874) as supplemented in Department of Labor regulations (29 CFR part 3). (All contracts and sub grants or construction or repair).*
- *Compliance with the Davis-Bacon Act (40 U.S.C. 276a to 276a-7) as supplemented by Department of Labor regulations (29 CFR part 5). (Construction contracts in excess of \$2000 awarded by grantees and sub grantees required by Federal grant program legislation.)*

- *Compliance with Sections 103 and 107 of the Contract Work Hours and Safety Standards Act (40 U.S.C. 327-330) as supplemented by Department of Labor regulations (29 CFR part 5). (Construction contracts in excess of \$2000 and in excess of \$2500 for other contracts which involve the employment of mechanics or laborers.)*
- *(e) Compliance with the provisions of any notice of awarding agency requirements and regulations pertaining to reporting.*
- *Compliance with the provisions of any notice of awarding agency requirements and regulations pertaining to patent rights with respect to any discovery or invention which arises or is developed in the course of or under such contract.*
- *Compliance with any awarding agency requirements and regulations pertaining to copyrights and rights in data.*
- *Compliance with access requirements imposed by the grantee, the sub grantee, the Federal grantor agency, the Comptroller General of the United States, or any of their duly authorized representatives to any books, documents, papers, and records of the contractor which are directly pertinent to that specific contract for the purpose of making audit, examination, excerpts, and transcriptions.*
- *Compliance with applicable requirements for the retention of all required records for three years after grantees or sub grantees make final payments and all other pending matters are closed.*
- *Compliance with all applicable standards, orders, or requirements issued under section 306 of the Clean Air Act (42 U.S.C. 1857(h)), section 508 of the Clean Water Act (33 U.S.C. 1368), Executive Order 11738, and Environmental Protection Agency regulations \$100,000.)*
- *Compliance with mandatory standards and policies relating to energy efficiency which are contained in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act (Pub. L 97-163, 89 Stat. 871.) [53 FR 8068.8067. Mar. 11, 1988, as amended at 60 FR 19639, 19642, Apr. 19, 1995]]*

24. Assignment. Neither this Agreement nor any duties or obligations hereunder shall be assignable by Consultant without the prior written consent of City. In the event of an assignment to which City has consented, the assignee shall agree in writing to personally assume and perform the covenants, obligations, and agreements herein contained. In addition, Consultant shall not assign the payment of any monies due Consultant from City under the terms of this Agreement to any other individual, corporation or entity. City retains the right to pay any and all monies due Consultant directly to Consultant.

25. Form and Service of Notices. All notices required or permitted to be given under this Agreement shall be in writing and shall be personally delivered, or sent by certified mail, postage prepaid and return receipt requested, addressed as follows:

To City: CITY ENGINEER
City of Madera
428 E. Yosemite Avenue
Madera, CA 93638
Email:

To Consultant: Yamabe & Horn Engineering Inc.
2985 N. Burl Avenue, Suite 101
Fresno, CA 93727

Notice shall be deemed effective on the date personally delivered or transmitted by facsimile, or if mailed, three (3) days after deposit of the same in the custody of the United States Postal Service.

26. Entire Agreement. This Agreement, including the attachments and exhibits, represents the entire Agreement between City and Consultant, and supersedes all prior negotiations, representations, or agreements, either written or oral with respect to the subject matter herein. This Agreement may be amended only by written instrument signed by both City and Consultant.

27. Authority. The signatories to this Agreement warrant and represent that they have the legal right, power, and authority to execute this Agreement and bind their respective entities.

28. Severability. In the event any term or provision of this Agreement is declared to be invalid or illegal for any reason, this Agreement will remain in full force and effect and will be interpreted as though such invalid or illegal provision were not a part of this Agreement. The remaining provisions will be construed to preserve the intent and purpose of this Agreement and the parties will negotiate in good faith to modify any invalidated provisions to preserve each party's anticipated benefits.

29. Applicable Law and Interpretation and Venue. This Agreement shall be interpreted in accordance with the laws of the State of California. The language of all parts of this Agreement shall, in all cases, be construed as a whole, according to its fair meaning, and not strictly for or against either party. Any controversy or claim arising out of, or relating to, this Agreement which cannot be amicably settled without court action shall be litigated either in the appropriate State court for Madera County, California, or as appropriate in the U. S. District Court for the Eastern District of California, located in Fresno County. The rights and obligations of the

parties and all interpretations and performance of this Agreement shall be governed in all respects by the laws of the State of California.

30. Attorney's Fees. If either party is required to commence any proceeding or legal action to enforce or interpret any term, covenant, or condition of this Agreement, the prevailing party in such proceeding or action shall be entitled to recover from the other party its reasonable attorneys' fees and legal expenses.

31. Amendments and Waiver. This Agreement shall not be modified or amended in any way, and no provision shall be waived, except in writing signed by the parties hereto. No waiver of any provision of this Agreement shall be deemed, or shall constitute, a waiver of any other provision, whether or not similar, nor shall any such waiver constitute a continuing or subsequent waiver of the same provision. Failure of either party to enforce any provision of this Agreement shall not constitute a waiver of the right to compel enforcement of the remaining provisions of this Agreement.

32. Third Party Beneficiaries. Nothing in this Agreement shall be construed to confer any rights upon any party not a signatory to this Agreement.

33. Execution in Counterparts. This Agreement may be executed in counterparts such that the signatures may appear on separate signature pages. A copy or an original, with all signatures appended together, shall be deemed a fully executed Agreement.

34. Non-Discrimination. Consultant shall not discriminate on the basis of any protected class under federal or State law in the provision of the Services or with respect to any Consultant employees or applicants for employment. Consultant shall ensure that any subcontractors are bound to this provision. A protected class includes, but is not necessarily limited to, race, color, national origin, ancestry, religion, age, sex, sexual orientation, marital status, and disability.

[SIGNATURES ON FOLLOWING PAGE]

IN WITNESS WHEREOF, the City and Consultant have executed this Agreement on the date(s) set forth below.

YAMABE & HORN ENGINEERING, INC.

CITY OF MADERA

By: _____
DAVID HORN, PRINCIPAL ENGINEER

By: _____
Santos Garcia, Mayor

Taxpayer ID #: _____

Date: _____

Date: _____

APPROVED AS TO FORM:

Hilda Cantú Montoy, City Attorney

ATTEST:

By: _____
Alicia Gonzales, City Clerk

EXHIBIT A – Scope of Services

EXHIBIT B – Fee Schedule

EXHIBIT C – Task Order Work Schedule Form

EXHIBIT A

SCOPE OF SERVICES

The professional services may include, but not be limited to, the following: land surveying, civil engineering plan checking services, roadway design, drainage and flood control design, water and sewer pipeline design, water well design, wastewater treatment plant design, traffic studies, traffic signal design, master planning services, utility locating and conflict analysis or other similar engineering services. These services may result in the preparation of engineering reports, public presentations or the preparation of plans, specifications, and estimates suitable for the public bidding process.

The following is a list of the types of consulting services being considered. Each consultant is not required to have expertise in all of the items listed:

- Storm drain infrastructure analysis and design, including hydrology and hydraulic analysis.
- Street geometrics, striping and signage analysis and design.
- Street design, including repair/replacement of curb, gutter, sidewalk, driveways, ramps, street trees, signs, pavement, etc.
- Grading design.
- Traffic signal design and Traffic studies.
- Water well design, water, and sewer pipeline design.
- Wastewater Treatment Plant design
- Preparation of engineering plans, specifications and estimates in City-approved format.
- Construction Support services include attending construction meetings, responding to requests for information, reviewing agreement submittals, and evaluating design changes during construction.

Additional requirements are as follows:

1. The Consultant's Project Manager shall be available for periodic meetings to discuss issues related to task orders.
2. The Consultant must be adequately insured for liability and property damage pursuant to the conditions of the Agreement.
3. All work shall be performed and delivered in English Standard Units or as required by the City.
4. All survey work shall be performed on CCS/NAD 83 horizontal coordinates and use true NAVD 88 vertical controls.
5. Plans and Maps shall be submitted in the AutoCAD format in use by the City at the time of issuance of the task order, point files shall be submitted in ASCII format, and any estimates, schedules, or reports shall be submitted in Microsoft Office format.
6. Consultant may be required to provide topographic surveys to support their work product as necessary.

EXHIBIT B

FEE SCHEDULE YAMABE & HORN ENGINEERING

2022-2024 MADERA FEE SCHEDULE

PRINCIPAL ENGINEER	\$ 215 per hour
EXPERT WITNESS	\$ 285 per hour
CIVIL ENGINEER V	\$ 210 per hour
CIVIL ENGINEER IV	\$ 185 per hour
CIVIL ENGINEER III	\$ 175 per hour
CIVIL ENGINEER II	\$ 165 per hour
CIVIL ENGINEER I	\$ 155 per hour
PROJECT MANAGER II	\$ 160 per hour
PROJECT MANAGER I	\$ 150 per hour
ASSISTANT ENGINEER III	\$ 135 per hour
ASSISTANT ENGINEER II	\$ 130 per hour
ASSISTANT ENGINEER I	\$ 120 per hour
LAND SURVEYOR II	\$ 165 per hour
LAND SURVEYOR I	\$ 145 per hour
ASSISTANT SURVEYOR II	\$ 140 per hour
ASSISTANT SURVEYOR I	\$ 125 per hour
GIS ANALYST	\$ 130 per hour
GIS TECHNICIAN	\$ 120 per hour
CONSTRUCTION MANAGER II	\$ 160 per hour
CONSTRUCTION MANAGER I	\$ 145 per hour
PROJECT SERVICES ADMINISTRATOR	\$ 95 per hour
INSPECTOR II	\$ 165 per hour
INSPECTOR I	\$ 155 per hour
CAD MANAGER	\$ 130 per hour
CAD DRAFTER II	\$ 115 per hour
CAD DRAFTER I	\$ 105 per hour
CLERICAL	\$ 90 per hour
2-PERSON SURVEY CREW	\$ 225 per hour
2-PERSON SURVEY CREW PREVAILING WAGE	\$ 278 per hour
1-PERSON SURVEY CREW	\$ 178 per hour
1-PERSON SURVEY CREW PREVAILING WAGE	\$ 220 per hour
TRAVEL	\$ 0.58 per mile
PRINTING	Cost plus 10%

Fee schedule is effective through July 1, 2024 according to Agreement

Note: Prevailing wage rates are shown for Madera County, straight time only, Overtime based on Prevailing Wage

EXHIBIT C

TASK ORDER WORK SCHEDULE FORM

CITY OF MADERA
TASK ORDER FORM No. ____
TO ENGINEERING SERVICES AGREEMENT FOR

PROJECT No. _____

This TASK ORDER NO. _____ to Engineering Services Agreement dated _____, hereinafter called Agreement, between the City of Madera, (CITY), and _____(ENGINEER).

1. DESCRIPTION OF PROJECT

2. SCOPE OF SERVICES

The City agrees to utilize the services of ENGINEER and ENGINEER agrees to perform _____ listed engineering services as requested by CITY as per the Engineering Services Agreement. ENGINEER shall confirm the scope, schedule, and anticipated compensation for such services in writing prior to starting work (see attached proposed Scope of Services).

3. CITY'S RESPONSIBILITIES

CITY to provide ENGINEER with the following information:

1. CITY shall assign appropriate reviewers to the project and compile and provide a single consolidated, coordinated, legible copy of written review comments to ENGINEER for all draft documents and work products, as appropriate.
2. CITY shall provide timely review of submitted products as appropriate.

4. COMPENSATION

1. CITY shall pay ENGINEER according to the fee schedule set forth in Exhibit A to the Engineering Services Agreement dated _____.
2. Services provided under this Task Order shall not exceed (dollar value) _____ (\$_____).

5. MISCELLANEOUS

All terms and conditions of the Engineering Services Agreement apply to this Task Order as though fully set forth therein. In the event of a conflict between this Task Order and the Engineering Services Agreement, the terms of this Task Order shall apply.

The parties do mutually agree to all mutual covenants and agreements contained within this Task Order No. ____.

CITY OF MADERA

By: _____

Title: _____

Date: _____

(ENGINEER) _____

By: _____

Title: _____

Date: _____

STANDARD ADDENDUM FORM

TASK ORDER NO. ____ - ADDENDUM NO. ____

(PROJECT) _____

This Addendum to Task Order No. _____ to the Engineering Services Agreement dated _____, hereinafter called Agreement, between the City of Madera (CITY), and _____(ENGINEER).

_____ Change in Schedule:

_____ Change in Fee: An Increase/Decrease of \$_____ to Task Order No. _____ for a total contract amount of \$_____. These changes are in accordance with the (Project description) _____, scope of services dated _____.

_____ Modifies the Agreement in the following manner:

CITY OF MADERA

By: _____

Title: _____

Date: _____

ENGINEER _____

By: _____

Title: _____

Date: _____

ATTACHMENT 2C

On-Call Agreement with Blair, Church & Flynn Consulting Engineers

**ON-CALL CONSULTANT SERVICES AGREEMENT BETWEEN THE CITY OF MADERA AND
BLAIR, CHURCH & FLYNN CONSULTING ENGINEERS, INC.**

This Consultant Services Agreement ("Agreement") is entered into between the CITY OF MADERA, a California general law city ("City") and Blair, Church & Flynn Consulting Engineers, Inc. ("Consultant"). This Agreement shall be effective on the date signed by City which shall occur after execution by Consultant ("Effective Date").

RECITALS

- A. The City has determined that it requires on-call, as-needed professional engineering services in order to maintain a high level of service to the community.
- B. City has sought, by a Request for Qualifications, to select consultants to provide On-Call Engineering and Land Surveying Consulting Services.
- C. Consultant submitted a Statement of Qualifications for performing the requested Services and is engaged in the business of furnishing such services as a consultant and hereby warrants and represents that it is qualified, licensed, and professionally capable of performing the Services called for in the Request for Qualifications and this Agreement.
- D. City has selected Consultant to perform the requested Services on the basis of Consultant's demonstrated competence and professional qualifications.
- E. City desires to retain Consultant, and Consultant desires to provide City with the Services, on the terms and conditions as set forth in this Agreement.

NOW, THEREFORE, in consideration of the promises and mutual agreements herein, City and Consultant agree as follows:

AGREEMENT

1. Scope of Services. Consultant shall perform, to the satisfaction of City in accordance with this Agreement, the Services described in the "Scope of Services" attached hereto as **EXHIBIT A** and incorporated by herein by this reference. Consultant shall at all times faithfully, competently and to the best of its ability, experience, and talent, perform all services described herein.

At such time as services are needed by City from Consultant, City will discuss with Consultant the general parameters of the applicable scope of services. In response, Consultant

shall deliver to City, a "Preliminary Task Order," which shall include a scope of work and cost proposal for the services needed by City. Consultant's proposal shall include a breakdown of estimated hours and a work order schedule. No work shall be performed by Consultant until the Preliminary Task Order is accepted in writing by City as evidenced by City's issuance to Consultant of a final "Task Order," Consultant shall commence performance and complete all required services no later than the dates set forth and in accordance with the approved, final Task Order.

Consultant accepts full responsibility for the scope of services provided by sub-consultants necessary for delivery and completion of work under a Task Order. Consultant shall comply with applicable City of Madera design standards and requirements as directed by the City and applicable State and Federal requirements.

2. Term of Agreement; Commencement of Services. The term of this Agreement shall be three (3) years commencing on _____, 2022, and shall terminate on _____, 2025, unless terminated earlier as set forth herein. This Agreement may be mutually extended after the initial three (3) year term for up to two (2) additional one (1) year terms upon approval of an extended agreement by the City Council.

Consultant shall commence the Services for each final Task Order upon City's issuance of a written "Notice to Proceed" and shall continue with the Services until Consultant, as determined by City, has satisfactorily performed, and completed the Services for said Task Order, or until such time as the Agreement is terminated by either party in accordance with this Agreement, whichever is earlier.

3. Continuity of Personnel. Consultant shall make every reasonable effort to maintain the stability and continuity of Consultant's staff and subcontractors assigned to perform the Services under this Agreement. Consultant shall notify City of any changes in Consultant's staff and subcontractors assigned to perform the Services under this Agreement.

4. Compensation for Services. City shall compensate Consultant for rendering the Services as follows:

(a) Subject to any limitations set forth in this Agreement, City agrees to pay Consultant by the amounts specified in the Schedule of Compensation attached hereto as **EXHIBIT B** and incorporated herein by this reference. Both parties agree that Consultant's total compensation under this Agreement shall not exceed \$300,000 per fiscal year for a total contract amount of \$900,000. At the end of the three (3) year term, City may extend the term of this Agreement for up to two (2) additional one (1) year periods with a not-to-exceed compensation amount of \$300,000 per year by providing advance written notice to CONSULTANT and written confirmation by CONSULTANT thereof.

(b) City reserves the right to not request any services of Consultant during the entire duration of this Agreement. Consultant shall only be paid for services performed under this Agreement to the extent authorized by final Task Order approved by the City

Engineer. The City does not guarantee any specific amount of work, if any, or billable hours that will be preauthorized. No overhead or other expenses can be recovered for interim periods when Consultant's services are not utilized by City.

(c) City and Consultant agree on the rates shown in EXHIBIT B, "Hourly Rate Schedule", and agree that they will remain in effect for the first two years of Agreement. Thereafter, Consultant may submit a new Hourly Rate Schedule as an amendment to this agreement no more than one time per year. It is understood and agreed by both parties that all expenses incidental to Consultant's performance of services, including travel expenses, are included in the basic fee shown in **EXHIBIT B**.

(d) Each month Consultant shall invoice City for all work performed and expenses incurred during the preceding month. Consultant's invoice shall specify the billed hours and hourly rates for each employee classification. The sub-consultants work shall be included on Consultant's invoice with a copy of the sub-consultant's invoice attached. A report on summary of costs to date for each component of the work shall accompany the invoice. This summary shall also estimate the percentage of the work completed for each component and the balance remaining in each component.

(e) City shall independently review each invoice submitted by the Consultant to determine whether the work performed, and expenses incurred are in compliance with the provisions of this Agreement. The invoiced amount shall be paid within 30 calendar days unless City disputes any charges or expenses. If any charges or expenses are disputed, City shall pay the undisputed amount, and notify Consultant of the nature and amount of the disputed charge or expense. The parties shall seek to resolve the disputed items(s) by mutual agreement.

(f) Payment to Consultant for work performed under this Agreement shall not be deemed to waive any defects in work performed by Consultant.

(g) Extra Services. City agrees to pay Consultant for extra services not contemplated hereunder as set forth in the Scope of Work or for such services as may be specifically requested by City through City Engineer in writing and agreed to by Consultant for an agreed-to fixed fee or hourly rate of compensation or for necessary expenses over that listed in the Budget, provided, however, that the City Engineer's authority is limited to expenditures not to exceed the amount of \$2,000.00 (Two Thousand dollars and zero cents).

5. Time of Completion.

(a) Based on an agreed upon Notice to Proceed date for each Task Order, Consultant shall complete the work as shown in the standard Task Order Form set forth as **EXHIBIT C**.

(b) Consultant shall not be held responsible for delays caused by City review or by reasons beyond Consultant's control. Also, Consultant shall not stop its work, including work unrelated to any extra services request, unless it can be shown that the project work cannot proceed while a claim or request for extra services is being evaluated.

(c) Time is of the essence in the completion of the services covered by this Agreement. Failure of Consultant to comply with the above time schedule by more than fourteen (14) calendar days, unless the delay is not attributable to Consultant or is attributable to City, is sufficient cause to terminate this Agreement, at the option of City, in accordance with Section 18.

6. Independent Contractor Status. Consultant and its subcontractors shall perform the Services as independent contractors and not as officers, employees, agents, or volunteers of City. Nothing contained in this Agreement shall be deemed to create any contractual relationship between City and Consultant's employees or subcontractors, nor shall anything contained in this Agreement be deemed to give any third party, including but not limited to Consultant's employees or subcontractors, any claim or right of action against City. Neither the City nor any of its employees shall have any control over the manner, mode, or means by which Consultant or its agents or employees perform the services under this Agreement.

7. Qualifications, and Professional Standards. Consultant represents and warrants that it has the qualifications, experience, and facilities necessary to properly perform the services required under this Agreement in a thorough, competent, and professional manner. In meeting its obligations under this Agreement, Consultant shall employ, at a minimum, generally accepted standards and practices utilized by persons engaged in providing services similar to those required of Consultant under this Agreement. Consultant represents that to the extent Consultant utilizes subcontractors, such subcontractors are, and will be, qualified in their fields. Consultant also expressly represents that both Consultant and its subcontractors, if any, are now, and will be throughout their performance of the Services under this Agreement, properly licensed or otherwise qualified and authorized to perform the Services required and contemplated by this Agreement. Consultant and its subcontractors, if any, shall utilize the standard of care and skill customarily exercised by members of their profession, shall use reasonable diligence and best judgment while performing the Services, and shall comply with and keep themselves informed of all applicable laws and regulations.

8. Identity of Subcontractors and Sub-Consultants. Consultant shall before commencing any work under this Agreement provide to City in writing: (a) the identity of all subcontractors and sub-consultants (collectively referred to as "subcontractors"), if any, which Consultant intends to utilize in Consultant's performance of this Agreement; and (b) a detailed description of the full scope of work to be provided by such subcontractors. Consultant shall only employ subcontractors pre-approved by City and in no event shall Consultant replace an approved subcontractor without the advance written permission of City, with the understanding that City's permission will not be unreasonably withheld. Notwithstanding any other provisions in this Agreement, Consultant shall be liable to City for the performance of Consultant's

subcontractors.

9. Subcontractor Provisions. Consultant shall include in its written agreements with its subcontractors, if any, provisions which: (a) impose upon the subcontractors the obligation to provide to City the same insurance and indemnity obligations that Consultant owes to City; (b) make clear that City intends to rely upon the reports, opinions, conclusions, and other work product prepared and performed by subcontractors for Consultant; and (c) compliance with all laws and certifications as required under this Agreement.

10. Power to Act on Behalf of City. Consultant shall not have any right, power, or authority to create any obligation, express or implied, or make representations on behalf of City except as may be expressly authorized in advance in writing from time to time by City and then only to the extent of such authorization.

11. Record Keeping; Reports. Consultant shall keep complete records showing the type of Services performed. Consultant shall be responsible and shall require its subcontractors to keep similar records. City shall be given reasonable access to the records of Consultant and its subcontractors for inspection and audit purposes. Consultant shall provide City with a working draft of all reports and a copy of all final reports prepared by Consultant under this Agreement.

12. Ownership and Inspection of Documents. All data, tests, reports, documents, conclusions, opinions, recommendations, and other work product generated by or produced for Consultant or its subcontractors in connection with the Services, regardless of the medium, including physical drawings and materials recorded on computer discs ("Work Product"), shall be and remain the property of City. City shall have the right to use, copy, modify, and reuse the Work Product as it sees fit. Upon City's request, Consultant shall make available for inspection and copying all such Work Product and all Work Product shall be turned over to City promptly at City's request or upon termination of this Agreement, whichever occurs first. Consultant shall not release any Work Product to third parties without prior written approval of the City Manager. This obligation shall survive termination of this Agreement and shall survive for four (4) years from the date of expiration or termination of this Agreement.

13. Confidentiality. All data, reports, conclusions, opinions, recommendations, and other work product prepared and performed by and on behalf of Consultant in connection with the Services performed pursuant to this Agreement shall be kept confidential and shall be disclosed only to City, unless otherwise provided by law or expressly authorized by City. Consultant shall not disclose or permit the disclosure of any confidential information acquired during performance of the Services, except to its agents, employees, affiliates, and subcontractors who need such confidential information in order to properly perform their duties relative to this Agreement. Consultant shall also require its subcontractors to be bound to these confidentiality provisions.

14. City Name and Logo. Consultant shall not use City's name or insignia, photographs relating to the City projects for which Consultant's services are rendered, or any publicity

pertaining to the Consultant's services under this Agreement in any magazine, trade paper, newspaper, television or radio production or other similar medium without the prior written consent of City.

15. Conflicts of Interest. Consultant warrants that neither Consultant nor any of its employees have an interest, present or contemplated, which would conflict in any manner with the interests of the City, or which would in any way hinder Consultant's performance of services under this Agreement. Consultant covenants that no person having any such interest, whether an employee or subcontractor shall perform the Services under this Agreement. During the performance of the Services, Consultant shall not employ or retain the services of any person who is employed by the City or a member of any City Board or Commission. City understands and acknowledges that Consultant is, as of the date of execution of this Agreement, independently involved in the performance of non-related services for other governmental agencies and private parties. Consultant is unaware of any stated position of City relative to such projects. Any future position of City on such projects shall not be considered a conflict of interest for purposes of this section. City understands and acknowledges that Consultant will, perform non-related services for other governmental agencies and private parties following the completion of the Services under this Agreement, and any such future service shall not be considered a conflict of interest for purposes of this section.

16. Non-liability of Officers and Employees. No officer or employee of City shall be personally liable to Consultant, or any successors in interest, in the event of a default or breach by City for any amount which may become due Consultant or its successor, or for any breach of any obligation under the terms of this Agreement.

17. City Right to Employ Other Consultants. This Agreement is non-exclusive with Consultant. City reserves the right to employ other consultants in connection with the Services.

18. Termination of Agreement. This Agreement shall terminate upon completion of the Services, or earlier pursuant to the following.

(a) For Convenience of City. This Agreement may be terminated by City at its discretion upon thirty (30) days prior written notice to Consultant.

(b) For Breach of Either Party. If for any cause either party fails to fulfill in a timely and proper manner its obligations under this Agreement (the "breaching party"), the other party (the "terminating party") shall have the right to terminate the Agreement by giving not less than five (5) working days' written notice to the breaching party of the intent to terminate and specifying the effective date thereof. The terminating party shall, however, provide the breaching party with a detailed statement of the grounds for termination. This statement shall include, as appropriate, references to specific provisions of this Agreement, dates, dollar amounts and other information relevant to the decision to terminate for cause.

(c) Compensation to Consultant Upon Termination. In the event termination is not due to fault attributable to Consultant and provided all other conditions for payment have been met, Consultant shall be paid compensation for services performed prior to notice of termination. As to any phase partially performed but for which the applicable portion of Consultant's compensation has not become due, Consultant shall be paid the reasonable value of its services provided. However, in no event shall such payment when added to any other payment due under the applicable part of the work exceed the total compensation of such part as specified in Section 3 herein. In the event of termination due to Consultant's failure to perform in accordance with the terms of this Agreement through no fault of City, City may withhold an amount that would otherwise be payable as an offset to City's damages caused by such failure.

(d) Effect of Termination. Upon receipt of a termination notice (or completion of this Agreement), Consultant shall: (i) promptly discontinue all Services affected (unless the notice directs otherwise); and (ii) deliver or otherwise make available to the City, without additional compensation, all data, documents, procedures, reports, estimates, summaries, and such other information and materials as may have been accumulated by the Consultant in performing this Agreement, whether completed or in process. Following the termination of this Agreement for any reason whatsoever, City shall have the right to utilize such information and other documents, or any other works of authorship fixed in any tangible medium of expression, including but not limited to physical drawings, data magnetically or otherwise recorded on computer disks, or other writings prepared or caused to be prepared under this Agreement by Consultant. Consultant may not refuse to provide such writings or materials for any reason whatsoever.

19. Insurance. All insurance policies shall be subject to City approval as to form and content. Consultant shall provide City with copies of required certificates of insurance upon request. 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.

- \$2,000,000 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 proposal.

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. City reserves the right to require complete, certified copies of all required insurance policies, at any time.

Acceptable Insurers

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

Waiver of Subrogation

All insurance coverage maintained or procured pursuant to this agreement shall be endorsed to waive subrogation against the City, its elected or appointed officers, agents, officials, employees, and volunteers, or shall specifically allow 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 City 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 City 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.

20. Indemnification.

Indemnity for Professional Liability:

When the law establishes a professional standard of care for Consultant's Services, to the fullest extent permitted by law, Consultant shall indemnify, protect, defend, and hold harmless City and any and all of its officials, employees and agents from and against any and all losses, liabilities, damages, costs, and expenses, including legal counsel's fees and costs but only to the extent the Consultant (and its Subconsultants), are responsible for such damages, liabilities and costs on a comparative basis of fault between the Consultant (and its Subconsultants) and the City in the performance of professional services under this agreement.

Indemnity for Other Than Professional Liability:

Other than in the performance of professional services and to the full extent permitted by law, Consultant shall indemnify, defend, and hold harmless City, and any and all of its employees, officials and agents from and against any liability (including liability for claims, suits, actions, arbitration proceedings, administrative proceedings, regulatory proceedings, losses, expenses or costs of any kind, whether actual, alleged or threatened, including legal counsel's fees and costs, court costs, defense costs, and expert witness fees), where the same arise out of, are a consequence of, or are in any way attributable to, in whole or in part, the performance of this Agreement by Consultant or by any individual or City for which Consultant is legally liable, including, but not limited to officers, agents, employees, or subcontractors of Consultant, except when caused by the active negligence or willful misconduct of the City.

21. Responsibility For Others. Consultant shall be responsible to City for its services and the services of its sub consultants. Consultant shall not be responsible for the acts or omissions of other parties engaged by City nor for their construction means, methods, techniques, sequences, or procedures, or their health and safety precautions and programs.

22. Professional Responsibility. Consultant shall be obligated to comply with applicable standards of professional care in the performance of the Services by exercising the skill and ability ordinarily required of engineers performing the same or similar services, under the same or similar circumstances, in the State of California. Consultant recognizes that opinions relating to environmental, geologic, and geotechnical conditions are based on limited data and that actual conditions may vary from those encountered at the times and locations where the data are obtained, despite the use of due professional care.

In providing opinions of cost, financial analyses, economic feasibility projections, and schedules for potential projects, Consultant has no control over cost or price of labor and material; unknown or latent conditions of existing equipment or structures that may affect operation and maintenance costs; competitive bidding procedures and market conditions; time or quality of performance of third parties; quality, type, management, or direction of operating personnel; and other economic and operational factors that may materially affect the ultimate project cost or schedule. Therefore, Consultant makes no warranty that the City's actual project costs, financial aspects, economic feasibility, or schedules will not vary from Consultant's opinions, analyses, projections, or estimates

23. Compliance with All Laws. Consultant shall be familiar with and shall comply with all City, State, and Federal laws and regulations applicable to the work to be performed under this Agreement. In providing the services required under this Agreement, Consultant shall at all times comply with all applicable laws, regulations, and resolutions of the United States, the State of California, and the City of Madera now in force and as they may be enacted, issued, or amended during the term of this Agreement.

23.A Federal funded Task Orders: *Where the Task Order services provided pursuant to the Agreement are funded by a federal program, including but not limited to, Community Block Grant Funds, Consultant certifies and agrees that Consultant will be in:*

- *Compliance with Executive Order 11246 of September 24, 1965, entitled "Equal Employment Opportunity" as amended by Executive Order 11375 of October 13, 1967 and as supplemented in Department of Labor regulations (41 CFR chapter 60). (All construction contracts awarded in excess of \$10,000 by grantees and their contractors or sub grantees.)*
- *Compliance with the Copeland "Anti-Kickback" Act (18 U.S.C. 874) as supplemented in Department of Labor regulations (29 CFR part 3). (All contracts and sub grants or construction or repair).*
- *Compliance with the Davis-Bacon Act (40 U.S.C. 276a to 276a-7) as supplemented by Department of Labor regulations (29 CFR part 5). (Construction contracts in excess of \$2000 awarded by grantees and sub grantees required by Federal grant program legislation.)*

- *Compliance with Sections 103 and 107 of the Contract Work Hours and Safety Standards Act (40 U.S.C. 327-330) as supplemented by Department of Labor regulations (29 CFR part 5). (Construction contracts in excess of \$2000 and in excess of \$2500 for other contracts which involve the employment of mechanics or laborers.)*
- *(e) Compliance with the provisions of any notice of awarding agency requirements and regulations pertaining to reporting.*
- *Compliance with the provisions of any notice of awarding agency requirements and regulations pertaining to patent rights with respect to any discovery or invention which arises or is developed in the course of or under such contract.*
- *Compliance with any awarding agency requirements and regulations pertaining to copyrights and rights in data.*
- *Compliance with access requirements imposed by the grantee, the sub grantee, the Federal grantor agency, the Comptroller General of the United States, or any of their duly authorized representatives to any books, documents, papers, and records of the contractor which are directly pertinent to that specific contract for the purpose of making audit, examination, excerpts, and transcriptions.*
- *Compliance with applicable requirements for the retention of all required records for three years after grantees or sub grantees make final payments and all other pending matters are closed.*
- *Compliance with all applicable standards, orders, or requirements issued under section 306 of the Clean Air Act (42 U.S.C. 1857(h)), section 508 of the Clean Water Act (33 U.S.C. 1368), Executive Order 11738, and Environmental Protection Agency regulations \$100,000.)*
- *Compliance with mandatory standards and policies relating to energy efficiency which are contained in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act (Pub. L 97-163, 89 Stat. 871.) [53 FR 8068.8067. Mar. 11, 1988, as amended at 60 FR 19639, 19642, Apr. 19, 1995]]*

24. Assignment. Neither this Agreement nor any duties or obligations hereunder shall be assignable by Consultant without the prior written consent of City. In the event of an assignment to which City has consented, the assignee shall agree in writing to personally assume and perform the covenants, obligations, and agreements herein contained. In addition, Consultant shall not assign the payment of any monies due Consultant from City under the terms of this Agreement to any other individual, corporation or entity. City retains the right to pay any and all monies due Consultant directly to Consultant.

25. Form and Service of Notices. All notices required or permitted to be given under this Agreement shall be in writing and shall be personally delivered, or sent by certified mail, postage prepaid and return receipt requested, addressed as follows:

To City: CITY ENGINEER
City of Madera
428 E. Yosemite Avenue
Madera, CA 93638
Email:

To Consultant: Blair, Church & Flynn Consulting Engineers
451 Clovis Avenue, Suite 200
Clovis, CA 93612

Notice shall be deemed effective on the date personally delivered or transmitted by facsimile, or if mailed, three (3) days after deposit of the same in the custody of the United States Postal Service.

26. Entire Agreement. This Agreement, including the attachments and exhibits, represents the entire Agreement between City and Consultant, and supersedes all prior negotiations, representations, or agreements, either written or oral with respect to the subject matter herein. This Agreement may be amended only by written instrument signed by both City and Consultant.

27. Authority. The signatories to this Agreement warrant and represent that they have the legal right, power, and authority to execute this Agreement and bind their respective entities.

28. Severability. In the event any term or provision of this Agreement is declared to be invalid or illegal for any reason, this Agreement will remain in full force and effect and will be interpreted as though such invalid or illegal provision were not a part of this Agreement. The remaining provisions will be construed to preserve the intent and purpose of this Agreement and the parties will negotiate in good faith to modify any invalidated provisions to preserve each party's anticipated benefits.

29. Applicable Law and Interpretation and Venue. This Agreement shall be interpreted in accordance with the laws of the State of California. The language of all parts of this Agreement shall, in all cases, be construed as a whole, according to its fair meaning, and not strictly for or against either party. Any controversy or claim arising out of, or relating to, this Agreement which cannot be amicably settled without court action shall be litigated either in the appropriate State court for Madera County, California, or as appropriate in the U. S. District Court for the Eastern District of California, located in Fresno County. The rights and obligations of the parties and all interpretations and performance of this Agreement shall be governed in all respects by the laws of the State of California.

30. Attorney's Fees. If either party is required to commence any proceeding or legal action to enforce or interpret any term, covenant, or condition of this Agreement, the prevailing party in such proceeding or action shall be entitled to recover from the other party its reasonable attorneys' fees and legal expenses.

31. Amendments and Waiver. This Agreement shall not be modified or amended in any way, and no provision shall be waived, except in writing signed by the parties hereto. No waiver of any provision of this Agreement shall be deemed, or shall constitute, a waiver of any other provision, whether or not similar, nor shall any such waiver constitute a continuing or subsequent waiver of the same provision. Failure of either party to enforce any provision of this Agreement shall not constitute a waiver of the right to compel enforcement of the remaining provisions of this Agreement.

32. Third Party Beneficiaries. Nothing in this Agreement shall be construed to confer any rights upon any party not a signatory to this Agreement.

33. Execution in Counterparts. This Agreement may be executed in counterparts such that the signatures may appear on separate signature pages. A copy or an original, with all signatures appended together, shall be deemed a fully executed Agreement.

34. Non-Discrimination. Consultant shall not discriminate on the basis of any protected class under federal or State law in the provision of the Services or with respect to any Consultant employees or applicants for employment. Consultant shall ensure that any subcontractors are bound to this provision. A protected class includes, but is not necessarily limited to, race, color, national origin, ancestry, religion, age, sex, sexual orientation, marital status, and disability.

[SIGNATURES ON FOLLOWING PAGE]

IN WITNESS WHEREOF, the City and Consultant have executed this Agreement on the date(s) set forth below.

CONSULTANT NAME

CITY OF MADERA

By: _____
(ADD NAME & POSITION)

By: _____
Santos Garcia, Mayor

Taxpayer ID #: _____

Date: _____

Date: _____

APPROVED AS TO FORM:

Hilda Cantú Montoy, City Attorney

ATTEST:

By: _____
Alicia Gonzales, City Clerk

EXHIBIT A – Scope of Services

EXHIBIT B – Fee Schedule

EXHIBIT C – Task Order Work Schedule Form

EXHIBIT A

SCOPE OF SERVICES

The professional services may include, but not be limited to, the following: land surveying, civil engineering plan checking services, roadway design, drainage and flood control design, water and sewer pipeline design, water well design, wastewater treatment plant design, traffic studies, traffic signal design, master planning services, utility locating and conflict analysis or other similar engineering services. These services may result in the preparation of engineering reports, public presentations or the preparation of plans, specifications, and estimates suitable for the public bidding process.

The following is a list of the types of consulting services being considered. Each consultant is not required to have expertise in all of the items listed:

- Storm drain infrastructure analysis and design, including hydrology and hydraulic analysis.
- Street geometrics, striping and signage analysis and design.
- Street design, including repair/replacement of curb, gutter, sidewalk, driveways, ramps, street trees, signs, pavement, etc.
- Grading design.
- Traffic signal design and Traffic studies.
- Water well design, water, and sewer pipeline design.
- Wastewater Treatment Plant design
- Preparation of engineering plans, specifications and estimates in City-approved format.
- Construction Support services include attending construction meetings, responding to requests for information, reviewing agreement submittals, and evaluating design changes during construction.

Additional requirements are as follows:

1. The Consultant's Project Manager shall be available for periodic meetings to discuss issues related to task orders.
2. The Consultant must be adequately insured for liability and property damage pursuant to the conditions of the Agreement.
3. All work shall be performed and delivered in English Standard Units or as required by the City.
4. All survey work shall be performed on CCS/NAD 83 horizontal coordinates and use true NAVD 88 vertical controls.
5. Plans and Maps shall be submitted in the AutoCAD format in use by the City at the time of issuance of the task order, point files shall be submitted in ASCII format, and any estimates, schedules, or reports shall be submitted in Microsoft Office format.
6. Consultant may be required to provide topographic surveys to support their work product as necessary.

EXHIBIT B

FEE SCHEDULE

General Consulting Fee Schedule Prevailing Wage Projects January 1, 2022

<u>CLASSIFICATION</u>	<u>RATE</u>
Principal.....	\$170.00/Hour
Program Manager.....	\$165.00/Hour
Professional Engineer 3.....	\$160.00/Hour
Professional Engineer 2.....	\$155.00/Hour
Professional Engineer 1.....	\$145.00/Hour
Assistant Engineer 3.....	\$125.00/Hour
Assistant Engineer 2.....	\$110.00/Hour
Assistant Engineer 1.....	\$105.00/Hour
Professional Land Surveyor 2.....	\$155.00/Hour
Professional Land Surveyor 1.....	\$140.00/Hour
Assistant Surveyor.....	\$110.00/Hour
Land Services Technician.....	\$95.00/Hour
Professional Landscape Architect.....	\$127.00/Hour
Landscape Designer.....	\$105.00/Hour
Design Technician.....	\$110.00/Hour
CAD Technician 3.....	\$98.00/Hour
CAD Technician 2.....	\$88.00/Hour
CAD Technician 1.....	\$78.00/Hour
Environmental Consultant.....	\$120.00/Hour
Construction Manager.....	\$120.00/Hour
Construction Inspector**.....	\$100.00/Hour
Construction Administrator.....	\$85.00/Hour
Analyst.....	\$90.00/Hour
Coordinator.....	\$80.00/Hour
Administrative Assistant.....	\$65.00/Hour
Aide.....	\$58.00/Hour
Survey Party Mobilization.....	\$80.00/Hour
1- Man Survey Party**.....	\$190.00/Hour
2- Man Survey Party**.....	\$360.00/Hour
LiDAR Scanner.....	\$200.00/Hour
Equipment Rental and Associated Expense.....	Cost x 1.10
Materials, Printing, Subconsultant Procurement.....	Cost x 1.10
Mileage.....	@ Current IRS Rate

** May be subject to change based upon revisions to the State of California Prevailing Wage Determinations

EXHIBIT C

TASK ORDER WORK SCHEDULE FORM

TASK ORDER FORM No. ____
TO ENGINEERING SERVICES AGREEMENT FOR

PROJECT No. _____

This TASK ORDER NO. _____ to Engineering Services Agreement dated _____, hereinafter called Agreement, between the City of Madera, (CITY), and _____(ENGINEER).

1. DESCRIPTION OF PROJECT

2. SCOPE OF SERVICES

The City agrees to utilize the services of ENGINEER and ENGINEER agrees to perform _____ listed engineering services as requested by CITY as per the Engineering Services Agreement. ENGINEER shall confirm the scope, schedule, and anticipated compensation for such services in writing prior to starting work (see attached proposed Scope of Services).

3. CITY'S RESPONSIBILITIES

CITY to provide ENGINEER with the following information:

1. CITY shall assign appropriate reviewers to the project and compile and provide a single consolidated, coordinated, legible copy of written review comments to ENGINEER for all draft documents and work products, as appropriate.
2. CITY shall provide timely review of submitted products as appropriate.

4. COMPENSATION

1. CITY shall pay ENGINEER according to the fee schedule set forth in Exhibit A to the Engineering Services Agreement dated _____.
2. Services provided under this Task Order shall not exceed (dollar value) _____ (\$_____).

5. MISCELLANEOUS

All terms and conditions of the Engineering Services Agreement apply to this Task Order as though fully set forth therein. In the event of a conflict between this Task Order and the Engineering Services Agreement, the terms of this Task Order shall apply.

The parties do mutually agree to all mutual covenants and agreements contained within this Task Order No. ____.

CITY OF MADERA

By: _____

Title: _____

Date: _____

(ENGINEER) _____

By: _____

Title: _____

Date: _____

STANDARD ADDENDUM FORM

TASK ORDER NO. ____ - ADDENDUM NO. ____

(PROJECT) _____

This Addendum to Task Order No. ____ to the Engineering Services Agreement dated _____, hereinafter called Agreement, between the City of Madera (CITY), and _____(ENGINEER).

____ Change in Schedule:

____ Change in Fee: An Increase/Decrease of \$_____ to Task Order No. ____ for a total contract amount of \$_____. These changes are in accordance with the (Project description) _____, scope of services dated _____.

____ Modifies the Agreement in the following manner:

CITY OF MADERA

By: _____

Title: _____

Date: _____

ENGINEER _____

By: _____

Title: _____

Date: _____

ATTACHMENT 2D

On- Call Agreement with Provost and Pritchard Engineering Group

ON-CALL CONSULTANT SERVICES AGREEMENT BETWEEN THE CITY OF MADERA AND PROVOST & PRITCHARD ENGINEERING GROUP

This Consultant Services Agreement ("Agreement") is entered into between the CITY OF MADERA, a California general law city ("City") and Provost & Pritchard Engineering Group, Inc. ("Consultant"). This Agreement shall be effective on the date signed by City which shall occur after execution by Consultant ("Effective Date").

RECITALS

- A. The City has determined that it requires on-call, as-needed professional engineering services in order to maintain a high level of service to the community.
- B. City has sought, by a Request for Qualifications, to select consultants to provide On-Call Engineering and Land Surveying Consulting Services.
- C. Consultant submitted a Statement of Qualifications for performing the requested Services and is engaged in the business of furnishing such services as a consultant and hereby warrants and represents that it is qualified, licensed, and professionally capable of performing the Services called for in the Request for Qualifications and this Agreement.
- D. City has selected Consultant to perform the requested Services on the basis of Consultant's demonstrated competence and professional qualifications.
- E. City desires to retain Consultant, and Consultant desires to provide City with the Services, on the terms and conditions as set forth in this Agreement.

NOW, THEREFORE, in consideration of the promises and mutual agreements herein, City and Consultant agree as follows:

AGREEMENT

1. Scope of Services. Consultant shall perform, to the satisfaction of City in accordance with this Agreement, the Services described in the "Scope of Services" attached hereto as **EXHIBIT A** and incorporated by herein by this reference. Consultant shall at all times faithfully, competently and to the best of its ability, experience, and talent, perform all services described herein.

At such time as services are needed by City from Consultant, City will discuss with Consultant the general parameters of the applicable scope of services. In response, Consultant shall deliver to City, a "Preliminary Task Order," which shall include a scope of work and cost

proposal for the services needed by City. Consultant's proposal shall include a breakdown of estimated hours and a work order schedule. No work shall be performed by Consultant until the Preliminary Task Order is accepted in writing by City as evidenced by City's issuance to Consultant of a final "Task Order," Consultant shall commence performance and complete all required services no later than the dates set forth and in accordance with the approved, final Task Order.

Consultant accepts full responsibility for the scope of services provided by sub-consultants necessary for delivery and completion of work under a Task Order. Consultant shall comply with applicable City of Madera design standards and requirements as directed by the City and applicable State and Federal requirements.

2. Term of Agreement; Commencement of Services. The term of this Agreement shall be three (3) years commencing on _____, 2022, and shall terminate on _____, 2025, unless terminated earlier as set forth herein. This Agreement may be mutually extended after the initial three (3) year term for up to two (2) additional one (1) year terms upon approval of an extended agreement by the City Council.

Consultant shall commence the Services for each final Task Order upon City's issuance of a written "Notice to Proceed" and shall continue with the Services until Consultant, as determined by City, has satisfactorily performed, and completed the Services for said Task Order, or until such time as the Agreement is terminated by either party in accordance with this Agreement, whichever is earlier.

3. Continuity of Personnel. Consultant shall make every reasonable effort to maintain the stability and continuity of Consultant's staff and subcontractors assigned to perform the Services under this Agreement. Consultant shall notify City of any changes in Consultant's staff and subcontractors assigned to perform the Services under this Agreement.

4. Compensation for Services. City shall compensate Consultant for rendering the Services as follows:

(a) Subject to any limitations set forth in this Agreement, City agrees to pay Consultant by the amounts specified in the Schedule of Compensation attached hereto as **EXHIBIT B** and incorporated herein by this reference. Both parties agree that Consultant's total compensation under this Agreement shall not exceed \$300,000 for Year 1, \$300,000 for Year 2, and \$300,000 for Year 3 of the Agreement and shall not exceed a total contract amount of \$900,000. At the end of the three (3) year term, City may extend the term of this Agreement for up to two (2) additional one (1) year periods with a not-to-exceed compensation amount of \$300,000 per year by providing advance written notice to CONSULTANT and written confirmation by CONSULTANT thereof.

(b) City reserves the right to not request any services of Consultant during the entire duration of this Agreement. Consultant shall only be paid for services performed under this Agreement to the extent authorized by final Task Order approved by the City

Engineer. The City does not guarantee any specific amount of work, if any, or billable hours that will be preauthorized. No overhead or other expenses can be recovered for interim periods when Consultant's services are not utilized by City.

(c) City and Consultant agree on the rates shown in EXHIBIT B, "Hourly Rate Schedule", and agree that they will remain in effect for the first two years of Agreement. Thereafter, Consultant may submit a new Hourly Rate Schedule as an amendment to this agreement no more than one time per year. It is understood and agreed by both parties that all expenses incidental to Consultant's performance of services, including travel expenses, are included in the basic fee shown in **EXHIBIT B**.

(d) Each month Consultant shall invoice City for all work performed and expenses incurred during the preceding month. Consultant's invoice shall specify the billed hours and hourly rates for each employee classification. The sub-consultants work shall be included on Consultant's invoice with a copy of the sub-consultant's invoice attached. A report on summary of costs to date for each component of the work shall accompany the invoice. This summary shall also estimate the percentage of the work completed for each component and the balance remaining in each component.

(e) City shall independently review each invoice submitted by the Consultant to determine whether the work performed, and expenses incurred are in compliance with the provisions of this Agreement. The invoiced amount shall be paid within 30 calendar days unless City disputes any charges or expenses. If any charges or expenses are disputed, City shall pay the undisputed amount, and notify Consultant of the nature and amount of the disputed charge or expense. The parties shall seek to resolve the disputed items(s) by mutual agreement.

(f) Payment to Consultant for work performed under this Agreement shall not be deemed to waive any defects in work performed by Consultant.

(g) Extra Services. City agrees to pay Consultant for extra services not contemplated hereunder as set forth in the Scope of Work or for such services as may be specifically requested by City through City Engineer in writing and agreed to by Consultant for an agreed-to fixed fee or hourly rate of compensation or for necessary expenses over that listed in the Budget, provided, however, that the City Engineer's authority is limited to expenditures not to exceed the amount of \$2,000 (Two Thousand dollars and zero cents).

5. Time of Completion.

(a) Based on an agreed upon Notice to Proceed date for each Task Order, Consultant shall complete the work as shown in the standard Task Order Form set forth as **EXHIBIT C**.

(b) Consultant shall not be held responsible for delays caused by City review or by reasons beyond Consultant's control. Also, Consultant shall not stop its work, including work unrelated to any extra services request, unless it can be shown that the project work cannot proceed while a claim or request for extra services is being evaluated.

(c) Time is of the essence in the completion of the services covered by this Agreement. Failure of Consultant to comply with the above time schedule by more than fourteen (14) calendar days, unless the delay is not attributable to Consultant or is attributable to City, is sufficient cause to terminate this Agreement, at the option of City, in accordance with Section 18.

6. Independent Contractor Status. Consultant and its subcontractors shall perform the Services as independent contractors and not as officers, employees, agents, or volunteers of City. Nothing contained in this Agreement shall be deemed to create any contractual relationship between City and Consultant's employees or subcontractors, nor shall anything contained in this Agreement be deemed to give any third party, including but not limited to Consultant's employees or subcontractors, any claim or right of action against City. Neither the City nor any of its employees shall have any control over the manner, mode, or means by which Consultant or its agents or employees perform the services under this Agreement.

7. Qualifications, and Professional Standards. Consultant represents and warrants that it has the qualifications, experience, and facilities necessary to properly perform the services required under this Agreement in a thorough, competent, and professional manner. In meeting its obligations under this Agreement, Consultant shall employ, at a minimum, generally accepted standards and practices utilized by persons engaged in providing services similar to those required of Consultant under this Agreement. Consultant represents that to the extent Consultant utilizes subcontractors, such subcontractors are, and will be, qualified in their fields. Consultant also expressly represents that both Consultant and its subcontractors, if any, are now, and will be throughout their performance of the Services under this Agreement, properly licensed or otherwise qualified and authorized to perform the Services required and contemplated by this Agreement. Consultant and its subcontractors, if any, shall utilize the standard of care and skill customarily exercised by members of their profession, shall use reasonable diligence and best judgment while performing the Services, and shall comply with and keep themselves informed of all applicable laws and regulations.

8. Identity of Subcontractors and Sub-Consultants. Consultant shall before commencing any work under this Agreement provide to City in writing: (a) the identity of all subcontractors and sub-consultants (collectively referred to as "subcontractors"), if any, which Consultant intends to utilize in Consultant's performance of this Agreement; and (b) a detailed description of the full scope of work to be provided by such subcontractors. Consultant shall only employ subcontractors pre-approved by City and in no event shall Consultant replace an approved subcontractor without the advance written permission of City, with the understanding that City's permission will not be unreasonably withheld. Notwithstanding any other provisions in this Agreement, Consultant shall be liable to City for the performance of Consultant's

subcontractors.

9. Subcontractor Provisions. Consultant shall include in its written agreements with its subcontractors, if any, provisions which: (a) impose upon the subcontractors the obligation to provide to City the same insurance and indemnity obligations that Consultant owes to City; (b) make clear that City intends to rely upon the reports, opinions, conclusions, and other work product prepared and performed by subcontractors for Consultant; and (c) compliance with all laws and certifications as required under this Agreement.

10. Power to Act on Behalf of City. Consultant shall not have any right, power, or authority to create any obligation, express or implied, or make representations on behalf of City except as may be expressly authorized in advance in writing from time to time by City and then only to the extent of such authorization.

11. Record Keeping; Reports. Consultant shall keep complete records showing the type of Services performed. Consultant shall be responsible and shall require its subcontractors to keep similar records. City shall be given reasonable access to the records of Consultant and its subcontractors for inspection and audit purposes. Consultant shall provide City with a working draft of all reports and a copy of all final reports prepared by Consultant under this Agreement.

12. Ownership and Inspection of Documents. All data, tests, reports, documents, conclusions, opinions, recommendations, and other work product generated by or produced for Consultant or its subcontractors in connection with the Services, regardless of the medium, including physical drawings and materials recorded on computer discs ("Work Product"), shall be and remain the property of City. City shall have the right to use, copy, modify, and reuse the Work Product as it sees fit. Upon City's request, Consultant shall make available for inspection and copying all such Work Product and all Work Product shall be turned over to City promptly at City's request or upon termination of this Agreement, whichever occurs first. Consultant shall not release any Work Product to third parties without prior written approval of the City Manager. This obligation shall survive termination of this Agreement and shall survive for four (4) years from the date of expiration or termination of this Agreement. Reuse of Work Product for any purpose other than as intended under this Agreement shall be at City's sole risk. City shall indemnify and hold harmless Consultant for any damage incurred as a result of such reuse, including use of incomplete documents.

13. Confidentiality. All data, reports, conclusions, opinions, recommendations, and other work product prepared and performed by and on behalf of Consultant in connection with the Services performed pursuant to this Agreement shall be kept confidential and shall be disclosed only to City, unless otherwise provided by law or expressly authorized by City. Consultant shall not disclose or permit the disclosure of any confidential information acquired during performance of the Services, except to its agents, employees, affiliates, and subcontractors who need such confidential information in order to properly perform their duties relative to this Agreement. Consultant shall also require its subcontractors to be bound to these confidentiality provisions.

14. City Name and Logo. Consultant shall not use City's name or insignia, photographs relating to the City projects for which Consultant's services are rendered, or any publicity pertaining to the Consultant's services under this Agreement in any magazine, trade paper, newspaper, television or radio production or other similar medium without the prior written consent of City.

15. Conflicts of Interest. Consultant warrants that neither Consultant nor any of its employees have an interest, present or contemplated, which would conflict in any manner with the interests of the City, or which would in any way hinder Consultant's performance of services under this Agreement. Consultant covenants that no person having any such interest, whether an employee or subcontractor shall perform the Services under this Agreement. During the performance of the Services, Consultant shall not employ or retain the services of any person who is employed by the City or a member of any City Board or Commission. City understands and acknowledges that Consultant is, as of the date of execution of this Agreement, independently involved in the performance of non-related services for other governmental agencies and private parties. Consultant is unaware of any stated position of City relative to such projects. Any future position of City on such projects shall not be considered a conflict of interest for purposes of this section. City understands and acknowledges that Consultant will, perform non-related services for other governmental agencies and private parties following the completion of the Services under this Agreement, and any such future service shall not be considered a conflict of interest for purposes of this section.

16. Non-liability of Officers and Employees. No officer or employee of City shall be personally liable to Consultant, or any successors in interest, in the event of a default or breach by City for any amount which may become due Consultant or its successor, or for any breach of any obligation under the terms of this Agreement.

17. City Right to Employ Other Consultants. This Agreement is non-exclusive with Consultant. City reserves the right to employ other consultants in connection with the Services.

18. Termination of Agreement. This Agreement shall terminate upon completion of the Services, or earlier pursuant to the following.

(a) For Convenience of City. This Agreement may be terminated by City at its discretion upon thirty (30) days prior written notice to Consultant.

(b) For Breach of Either Party. If for any cause either party fails to fulfill in a timely and proper manner its obligations under this Agreement (the "breaching party"), the other party (the "terminating party") shall have the right to terminate the Agreement by giving not less than five (5) working days' written notice to the breaching party of the intent to terminate and specifying the effective date thereof. The terminating party shall, however, provide the breaching party with a detailed statement of the grounds for termination. This statement shall include, as appropriate, references to specific

provisions of this Agreement, dates, dollar amounts and other information relevant to the decision to terminate for cause.

(c) Compensation to Consultant Upon Termination. In the event termination is not due to fault attributable to Consultant and provided all other conditions for payment have been met, Consultant shall be paid compensation for services performed prior to notice of termination. As to any phase partially performed but for which the applicable portion of Consultant's compensation has not become due, Consultant shall be paid the reasonable value of its services provided. However, in no event shall such payment when added to any other payment due under the applicable part of the work exceed the total compensation of such part as specified in Section 3 herein. In the event of termination due to Consultant's failure to perform in accordance with the terms of this Agreement through no fault of City, City may withhold an amount that would otherwise be payable as an offset to City's damages caused by such failure.

(d) Effect of Termination. Upon receipt of a termination notice (or completion of this Agreement), Consultant shall: (i) promptly discontinue all Services affected (unless the notice directs otherwise); and (ii) deliver or otherwise make available to the City, without additional compensation, all data, documents, procedures, reports, estimates, summaries, and such other information and materials as may have been accumulated by the Consultant in performing this Agreement, whether completed or in process. Following the termination of this Agreement for any reason whatsoever, City shall have the right to utilize such information and other documents, or any other works of authorship fixed in any tangible medium of expression, including but not limited to physical drawings, data magnetically or otherwise recorded on computer disks, or other writings prepared or caused to be prepared under this Agreement by Consultant. Consultant may not refuse to provide such writings or materials for any reason whatsoever.

19. Insurance. All insurance policies shall be subject to City approval as to form and content. Consultant shall provide City with copies of required certificates of insurance upon request. 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.

- \$2,000,000 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 proposal.

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. City reserves the right to require complete, certified copies of all required insurance policies, at any time.

Acceptable Insurers

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

Waiver of Subrogation

All insurance coverage maintained or procured pursuant to this agreement shall be endorsed to waive subrogation against the City, its elected or appointed officers, agents, officials, employees, and volunteers, or shall specifically allow 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 City 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 City 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.

20. Indemnification.

Indemnity for Professional Liability:

When the law establishes a professional standard of care for Consultant's Services, to the fullest extent permitted by law, Consultant shall indemnify, protect, defend, and hold harmless City and any and all of its officials, employees and agents from and against any and all losses, liabilities, damages, costs, and expenses, including legal counsel's fees and costs but only to the extent the Consultant (and its Subconsultants), are responsible for such damages, liabilities and costs on a comparative basis of fault between the Consultant (and its Subconsultants) and the City in the performance of professional services under this agreement.

Indemnity for Other Than Professional Liability:

Other than in the performance of professional services and to the full extent permitted by law, Consultant shall indemnify, defend, and hold harmless City, and any and all of its employees, officials and agents from and against any liability (including liability for claims, suits, actions, arbitration proceedings, administrative proceedings, regulatory proceedings, losses, expenses or costs of any kind, whether actual, alleged or threatened, including legal counsel's fees and costs, court costs, defense costs, and expert witness fees), where the same arise out of, are a consequence of, or are in any way attributable to, in whole or in part, the performance of this Agreement by Consultant or by any individual or City for which Consultant is legally liable, including, but not limited to officers, agents, employees, or subcontractors of Consultant, except when caused by the active negligence or willful misconduct of the City.

21. Responsibility For Others. Consultant shall be responsible to City for its services and the services of its sub consultants. Consultant shall not be responsible for the acts or omissions of other parties engaged by City nor for their construction means, methods, techniques, sequences, or procedures, or their health and safety precautions and programs.

22. Professional Responsibility. Consultant shall be obligated to comply with applicable standards of professional care in the performance of the Services by exercising the skill and ability ordinarily required of engineers performing the same or similar services, under the same or similar circumstances, in the State of California. Consultant recognizes that opinions relating to environmental, geologic, and geotechnical conditions are based on limited data and that actual conditions may vary from those encountered at the times and locations where the data are obtained, despite the use of due professional care.

In providing opinions of cost, financial analyses, economic feasibility projections, and schedules for potential projects, Consultant has no control over cost or price of labor and material; unknown or latent conditions of existing equipment or structures that may affect operation and maintenance costs; competitive bidding procedures and market conditions; time or quality of performance of third parties; quality, type, management, or direction of operating personnel; and other economic and operational factors that may materially affect the ultimate project cost or schedule. Therefore, Consultant makes no warranty that the City's actual project costs, financial aspects, economic feasibility, or schedules will not vary from Consultant's opinions, analyses, projections, or estimates

23. Compliance with All Laws. Consultant shall be familiar with and shall comply with all City, State, and Federal laws and regulations applicable to the work to be performed under this Agreement. In providing the services required under this Agreement, Consultant shall at all times comply with all applicable laws, regulations, and resolutions of the United States, the State of California, and the City of Madera now in force and as they may be enacted, issued, or amended during the term of this Agreement.

23.A. Federal funded Task Orders: *Where the Task Order services provided pursuant to the Agreement are funded by a federal program, including but not limited to, Community Block Grant Funds, Consultant certifies and agrees that Consultant will be in:*

- *Compliance with Executive Order 11246 of September 24, 1965, entitled "Equal Employment Opportunity" as amended by Executive Order 11375 of October 13, 1967 and as supplemented in Department of Labor regulations (41 CFR chapter 60). (All construction contracts awarded in excess of \$10,000 by grantees and their contractors or sub grantees.)*
- *Compliance with the Copeland "Anti-Kickback" Act (18 U.S.C. 874) as supplemented in Department of Labor regulations (29 CFR part 3). (All contracts and sub grants or construction or repair).*
- *Compliance with the Davis-Bacon Act (40 U.S.C. 276a to 276a-7) as supplemented by Department of Labor regulations (29 CFR part 5). (Construction contracts in excess of \$2000 awarded by grantees and sub grantees required by Federal grant program legislation.)*

- *Compliance with Sections 103 and 107 of the Contract Work Hours and Safety Standards Act (40 U.S.C. 327-330) as supplemented by Department of Labor regulations (29 CFR part 5). (Construction contracts in excess of \$2000 and in excess of \$2500 for other contracts which involve the employment of mechanics or laborers.)*
- *(e) Compliance with the provisions of any notice of awarding agency requirements and regulations pertaining to reporting.*
- *Compliance with the provisions of any notice of awarding agency requirements and regulations pertaining to patent rights with respect to any discovery or invention which arises or is developed in the course of or under such contract.*
- *Compliance with any awarding agency requirements and regulations pertaining to copyrights and rights in data.*
- *Compliance with access requirements imposed by the grantee, the sub grantee, the Federal grantor agency, the Comptroller General of the United States, or any of their duly authorized representatives to any books, documents, papers, and records of the contractor which are directly pertinent to that specific contract for the purpose of making audit, examination, excerpts, and transcriptions.*
- *Compliance with applicable requirements for the retention of all required records for three years after grantees or sub grantees make final payments and all other pending matters are closed.*
- *Compliance with all applicable standards, orders, or requirements issued under section 306 of the Clean Air Act (42 U.S.C. 1857(h)), section 508 of the Clean Water Act (33 U.S.C. 1368), Executive Order 11738, and Environmental Protection Agency regulations \$100,000.)*
- *Compliance with mandatory standards and policies relating to energy efficiency which are contained in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act (Pub. L 97-163, 89 Stat. 871.) [53 FR 8068.8067. Mar. 11, 1988, as amended at 60 FR 19639, 19642, Apr. 19, 1995]]*

24. Assignment. Neither this Agreement nor any duties or obligations hereunder shall be assignable by Consultant without the prior written consent of City. In the event of an assignment to which City has consented, the assignee shall agree in writing to personally assume and perform the covenants, obligations, and agreements herein contained. In addition, Consultant shall not assign the payment of any monies due Consultant from City under the terms of this Agreement to any other individual, corporation or entity. City retains the right to pay any and all monies due Consultant directly to Consultant.

25. Form and Service of Notices. All notices required or permitted to be given under this Agreement shall be in writing and shall be personally delivered, or sent by certified mail, postage prepaid and return receipt requested, addressed as follows:

To City: CITY ENGINEER
City of Madera
428 E. Yosemite Avenue
Madera, CA 93638
Email:

To Consultant: Heather Bashian, PE
Provost & Pritchard Engineering Group Inc.
455 W. Fir Avenue
Clovis, CA 93611

Notice shall be deemed effective on the date personally delivered or transmitted by facsimile, or if mailed, three (3) days after deposit of the same in the custody of the United States Postal Service.

26. Entire Agreement. This Agreement, including the attachments and exhibits, represents the entire Agreement between City and Consultant, and supersedes all prior negotiations, representations, or agreements, either written or oral with respect to the subject matter herein. This Agreement may be amended only by written instrument signed by both City and Consultant.

27. Authority. The signatories to this Agreement warrant and represent that they have the legal right, power, and authority to execute this Agreement and bind their respective entities.

28. Severability. In the event any term or provision of this Agreement is declared to be invalid or illegal for any reason, this Agreement will remain in full force and effect and will be interpreted as though such invalid or illegal provision were not a part of this Agreement. The remaining provisions will be construed to preserve the intent and purpose of this Agreement and the parties will negotiate in good faith to modify any invalidated provisions to preserve each party's anticipated benefits.

29. Applicable Law and Interpretation and Venue. This Agreement shall be interpreted in accordance with the laws of the State of California. The language of all parts of this Agreement shall, in all cases, be construed as a whole, according to its fair meaning, and not strictly for or against either party. Any controversy or claim arising out of, or relating to, this Agreement which cannot be amicably settled without court action shall be litigated either in the appropriate State court for Madera County, California, or as appropriate in the U. S. District Court

for the Eastern District of California, located in Fresno County. The rights and obligations of the parties and all interpretations and performance of this Agreement shall be governed in all respects by the laws of the State of California.

30. Attorney's Fees. If either party is required to commence any proceeding or legal action to enforce or interpret any term, covenant, or condition of this Agreement, the prevailing party in such proceeding or action shall be entitled to recover from the other party its reasonable attorneys' fees and legal expenses.

31. Amendments and Waiver. This Agreement shall not be modified or amended in any way, and no provision shall be waived, except in writing signed by the parties hereto. No waiver of any provision of this Agreement shall be deemed, or shall constitute, a waiver of any other provision, whether or not similar, nor shall any such waiver constitute a continuing or subsequent waiver of the same provision. Failure of either party to enforce any provision of this Agreement shall not constitute a waiver of the right to compel enforcement of the remaining provisions of this Agreement.

32. Third Party Beneficiaries. Nothing in this Agreement shall be construed to confer any rights upon any party not a signatory to this Agreement.

33. Execution in Counterparts. This Agreement may be executed in counterparts such that the signatures may appear on separate signature pages. A copy or an original, with all signatures appended together, shall be deemed a fully executed Agreement.

34. Non-Discrimination. Consultant shall not discriminate on the basis of any protected class under federal or State law in the provision of the Services or with respect to any Consultant employees or applicants for employment. Consultant shall ensure that any subcontractors are bound to this provision. A protected class includes, but is not necessarily limited to, race, color, national origin, ancestry, religion, age, sex, sexual orientation, marital status, and disability.

[SIGNATURES ON FOLLOWING PAGE]

IN WITNESS WHEREOF, the City and Consultant have executed this Agreement on the date(s) set forth below.

CONSULTANT NAME

CITY OF MADERA

By: 
(ADD NAME & POSITION)
DIRECTOR OF OPERATIONS
Taxpayer ID #: 94-218-7078

By: _____
Santos Garcia, Mayor

Date: 9-14-2022

Date: _____

APPROVED AS TO FORM:

Hilda Cantú Montoy, City Attorney

ATTEST:

By: _____
Alicia Gonzales, City Clerk

EXHIBIT A – Scope of Services

EXHIBIT B – Fee Schedule

EXHIBIT C – Task Order Work Schedule Form

EXHIBIT A

SCOPE OF SERVICES

The professional services may include, but not be limited to, the following: land surveying, civil engineering plan checking services, roadway design, drainage and flood control design, water and sewer pipeline design, water well design, wastewater treatment plant design, traffic studies, traffic signal design, master planning services, utility locating and conflict analysis or other similar engineering services. These services may result in the preparation of engineering reports, public presentations or the preparation of plans, specifications, and estimates suitable for the public bidding process.

The following is a list of the types of consulting services being considered. Each consultant is not required to have expertise in all of the items listed:

- Storm drain infrastructure analysis and design, including hydrology and hydraulic analysis.
- Street geometrics, striping and signage analysis and design.
- Street design, including repair/replacement of curb, gutter, sidewalk, driveways, ramps, street trees, signs, pavement, etc.
- Grading design.
- Traffic signal design and Traffic studies.
- Water well design, water, and sewer pipeline design.
- Wastewater Treatment Plant design
- Preparation of engineering plans, specifications and estimates in City-approved format.
- Construction Support services include attending construction meetings, responding to requests for information, reviewing agreement submittals, and evaluating design changes during construction.

Additional requirements are as follows:

1. The Consultant's Project Manager shall be available for periodic meetings to discuss issues related to task orders.
2. The Consultant must be adequately insured for liability and property damage pursuant to the conditions of the Agreement.
3. All work shall be performed and delivered in English Standard Units or as required by the City.
4. All survey work shall be performed on CCS/NAD 83 horizontal coordinates and use true NAVD 88 vertical controls.
5. Plans and Maps shall be submitted in the AutoCAD format in use by the City at the time of issuance of the task order, point files shall be submitted in ASCII format, and any estimates, schedules, or reports shall be submitted in Microsoft Office format.
6. Consultant may be required to provide topographic surveys to support their work product as necessary.

EXHIBIT B

FEE SCHEDULE

2022 Standard Fee Schedule

This schedule supersedes previously published fee schedules on the effective date of January 1, 2022.

Multi-year contracts are subject to any subsequent changes in these rates.

Staff Type	Fee Range
Engineering Staff	
Assistant Engineer	\$102.00 – \$130.00
Associate Engineer	\$120.00 – \$152.00
Senior Engineer	\$158.00 – \$189.00
Principal Engineer	\$200.00 – \$240.00
Associate Structural Engineer	\$125.00 – \$151.00
Senior Structural Engineer	\$155.00 – \$175.00
Principal Structural Engineer	\$185.00 – \$235.00
Specialists	
Associate Biologist	\$100.00 – \$120.00
Assistant Environmental Specialist	\$95.00 – \$125.00
Associate Environmental Specialist	\$131.00 – \$160.00
Senior Environmental Specialist	\$160.00 – \$190.00
Principal Environmental Specialist	\$200.00 – \$240.00
Assistant GIS Specialist	\$80.00 – \$98.00
Associate GIS Specialist	\$105.00 – \$132.00
Senior GIS Specialist	\$140.00 – \$175.00
Assistant Geologist/Hydrogeologist	\$100.00 – \$118.00
Associate Geologist/Hydrogeologist	\$125.00 – \$155.00
Senior Geologist/Hydrogeologist	\$155.00 – \$185.00
Principal Geologist/Hydrogeologist	\$200.00 – \$240.00
Associate Water Resources Specialist	\$110.00 – \$135.00
Senior Water Resources Specialist	\$140.00 – \$165.00
Environmental & Roof Specialist	\$125.00 – \$205.00
External Affairs Specialist	\$103.00 – \$133.00
Principal Tunneling Consultant	\$240.00 – \$260.00
Planning Staff	
Assistant Planner/CEQA-NEPA Specialist	\$90.00 – \$110.00
Associate Planner/CEQA-NEPA Specialist	\$115.00 – \$138.00
Senior Planner/CEQA-NEPA Specialist	\$145.00 – \$173.00
Principal Planner/CEQA-NEPA Specialist	\$178.00 – \$201.00
Technical Staff	
Assistant Technician	\$80.00 – \$102.00
Associate Technician	\$107.00 – \$130.00

Staff Type	Fee Range
Senior Technician	\$135.00 – \$155.00
Construction Services Staff	
Associate Construction Manager	\$125.00 – \$145.00
Senior Construction Manager	\$150.00 – \$172.00
Principal Construction Manager	\$185.00 – \$215.00
Construction Inspector ⁽¹⁾	\$157.00 – \$182.00
Construction Inspector ⁽²⁾	\$192.00 – \$223.00
Support Staff	
Administrative Assistant	\$75.00 – \$95.00
Project Administrator	\$85.00 – \$110.00
Senior Project Administrator	\$120.00 – \$205.00
Intern	\$70.00 – \$85.00
Surveying Services Staff	
Assistant Surveyor	\$100.00 – \$120.00
Licensed Surveyor	\$150.00 – \$180.00
1-Man Survey Crew	\$180.00/\$205.00 ⁽¹⁾
2-Man Survey Crew	\$250.00/\$290.00 ⁽¹⁾
2-Man Survey Crew including LS	\$285.00/\$300.00 ⁽¹⁾
UAV (Drone) Services	\$215.00
(Field work not including survey equipment billed at individual standard rate plus vehicle as appropriate.)	
(1) Prevailing wage rates shown for San Joaquin, Stanislaus, Merced, Madera, Fresno, Tulare, Kings, and Kern counties; other counties as quoted.	
(2) Overtime for Construction Services prevailing wage will be calculated at 125% of the standard prevailing wage rate.	

Additional Fees

Expert Witness / GIS Training: As quoted.

Travel Time (for greater than one (1) hour from employee's base office):
\$80/hour (unless the individual's rate is less)

Project Costs

Mileage: IRS value + 15%

Outside Consultants: Cost + 15%

Direct Costs: Cost + 15%

EXHIBIT C

TASK ORDER WORK SCHEDULE FORM

CITY OF MADERA
TASK ORDER FORM No. ____
TO ENGINEERING SERVICES AGREEMENT FOR

PROJECT No. _____

This TASK ORDER NO. _____ to Engineering Services Agreement dated _____, hereinafter called Agreement, between the City of Madera, (CITY), and _____(ENGINEER).

1. DESCRIPTION OF PROJECT

2. SCOPE OF SERVICES

The City agrees to utilize the services of ENGINEER and ENGINEER agrees to perform _____ listed engineering services as requested by CITY as per the Engineering Services Agreement. ENGINEER shall confirm the scope, schedule, and anticipated compensation for such services in writing prior to starting work (see attached proposed Scope of Services).

3. CITY'S RESPONSIBILITIES

CITY to provide ENGINEER with the following information:

1. CITY shall assign appropriate reviewers to the project and compile and provide a single consolidated, coordinated, legible copy of written review comments to ENGINEER for all draft documents and work products, as appropriate.
2. CITY shall provide timely review of submitted products as appropriate.

4. COMPENSATION

1. CITY shall pay ENGINEER according to the fee schedule set forth in Exhibit A to the Engineering Services Agreement dated _____.
2. Services provided under this Task Order shall not exceed (dollar value) _____ (\$_____).

5. MISCELLANEOUS

All terms and conditions of the Engineering Services Agreement apply to this Task Order as though fully set forth therein. In the event of a conflict between this Task Order and the Engineering Services Agreement, the terms of this Task Order shall apply.

The parties do mutually agree to all mutual covenants and agreements contained within this Task Order No. ____.

CITY OF MADERA

By: _____

Title: _____

Date: _____

(ENGINEER) _____

By: _____

Title: _____

Date: _____

STANDARD ADDENDUM FORM

TASK ORDER NO. __ - ADDENDUM NO. ____

(PROJECT) _____

This Addendum to Task Order No. ____ to the Engineering Services Agreement dated _____, hereinafter called Agreement, between the City of Madera (CITY), and _____(ENGINEER).

____ Change in Schedule:

____ Change in Fee: An Increase/Decrease of \$_____ to Task Order No. ____ for a total contract amount of \$_____. These changes are in accordance with the (Project description) _____, scope of services dated _____.

____ Modifies the Agreement in the following manner:

ATTACHMENT 2E

On-Call Agreement with Peters Engineering Group

**ON-CALL CONSULTANT SERVICES AGREEMENT BETWEEN THE CITY OF MADERA AND
PETERS ENGINEERING GROUP, INC.**

This Consultant Services Agreement ("Agreement") is entered into between the CITY OF MADERA, a California general law city ("City") and Peters Engineering Group, Inc. ("Consultant"). This Agreement shall be effective on the date signed by City which shall occur after execution by Consultant ("Effective Date").

RECITALS

- A. The City has determined that it requires on-call, as-needed professional engineering services in order to maintain a high level of service to the community.
- B. City has sought, by a Request for Qualifications, to select consultants to provide On-Call Engineering and Land Surveying Consulting Services.
- C. Consultant submitted a Statement of Qualifications for performing the requested Services and is engaged in the business of furnishing such services as a consultant and hereby warrants and represents that it is qualified, licensed, and professionally capable of performing the Services called for in the Request for Qualifications and this Agreement.
- D. City has selected Consultant to perform the requested Services on the basis of Consultant's demonstrated competence and professional qualifications.
- E. City desires to retain Consultant, and Consultant desires to provide City with the Services, on the terms and conditions as set forth in this Agreement.

NOW, THEREFORE, in consideration of the promises and mutual agreements herein, City and Consultant agree as follows:

AGREEMENT

1. Scope of Services. Consultant shall perform, to the satisfaction of City in accordance with this Agreement, the Services described in the "Scope of Services" attached hereto as **EXHIBIT A** and incorporated by herein by this reference. Consultant shall at all times faithfully, competently and to the best of its ability, experience, and talent, perform all services described herein.

At such time as services are needed by City from Consultant, City will discuss with Consultant the general parameters of the applicable scope of services. In response, Consultant shall deliver to City, a "Preliminary Task Order," which shall include a scope of work and cost

proposal for the services needed by City. Consultant's proposal shall include a breakdown of estimated hours and a work order schedule. No work shall be performed by Consultant until the Preliminary Task Order is accepted in writing by City as evidenced by City's issuance to Consultant of a final "Task Order," Consultant shall commence performance and complete all required services no later than the dates set forth and in accordance with the approved, final Task Order.

Consultant accepts full responsibility for the scope of services provided by sub-consultants necessary for delivery and completion of work under a Task Order. Consultant shall comply with applicable City of Madera design standards and requirements as directed by the City and applicable State and Federal requirements.

2. Term of Agreement; Commencement of Services. The term of this Agreement shall be three (3) years commencing on _____, 2022, and shall terminate on _____, 2025, unless terminated earlier as set forth herein. This Agreement may be mutually extended after the initial three (3) year term for up to two (2) additional one (1) year terms upon approval of an extended agreement by the City Council.

Consultant shall commence the Services for each final Task Order upon City's issuance of a written "Notice to Proceed" and shall continue with the Services until Consultant, as determined by City, has satisfactorily performed, and completed the Services for said Task Order, or until such time as the Agreement is terminated by either party in accordance with this Agreement, whichever is earlier.

3. Continuity of Personnel. Consultant shall make every reasonable effort to maintain the stability and continuity of Consultant's staff and subcontractors assigned to perform the Services under this Agreement. Consultant shall notify City of any changes in Consultant's staff and subcontractors assigned to perform the Services under this Agreement.

4. Compensation for Services. City shall compensate Consultant for rendering the Services as follows:

(a) Subject to any limitations set forth in this Agreement, City agrees to pay Consultant by the amounts specified in the Schedule of Compensation attached hereto as **EXHIBIT B** and incorporated herein by this reference. Both parties agree that Consultant's total compensation under this Agreement shall not exceed \$300,000 for Year 1, \$300,000 for Year 2, and \$300,000 for Year 3 of the Agreement and shall not exceed a total contract amount of \$900,000. At the end of the three (3) year term, City may extend the term of this Agreement for up to two (2) additional one (1) year periods with a not-to-exceed compensation amount of \$300,000 per year by providing advance written notice to CONSULTANT and written confirmation by CONSULTANT thereof.

(b) City reserves the right to not request any services of Consultant during the entire duration of this Agreement. Consultant shall only be paid for services performed under this Agreement to the extent authorized by final Task Order approved by the City

Engineer. The City does not guarantee any specific amount of work, if any, or billable hours that will be preauthorized. No overhead or other expenses can be recovered for interim periods when Consultant's services are not utilized by City.

(c) City and Consultant agree on the rates shown in EXHIBIT B, "Hourly Rate Schedule", and agree that they will remain in effect for the first two years of Agreement. Thereafter, Consultant may submit a new Hourly Rate Schedule as an amendment to this agreement no more than one time per year. It is understood and agreed by both parties that all expenses incidental to Consultant's performance of services, including travel expenses, are included in the basic fee shown in **EXHIBIT B**.

(d) Each month Consultant shall invoice City for all work performed and expenses incurred during the preceding month. Consultant's invoice shall specify the billed hours and hourly rates for each employee classification. The sub-consultants work shall be included on Consultant's invoice with a copy of the sub-consultant's invoice attached. A report on summary of costs to date for each component of the work shall accompany the invoice. This summary shall also estimate the percentage of the work completed for each component and the balance remaining in each component.

(e) City shall independently review each invoice submitted by the Consultant to determine whether the work performed, and expenses incurred are in compliance with the provisions of this Agreement. The invoiced amount shall be paid within 30 calendar days unless City disputes any charges or expenses. If any charges or expenses are disputed, City shall pay the undisputed amount, and notify Consultant of the nature and amount of the disputed charge or expense. The parties shall seek to resolve the disputed items(s) by mutual agreement.

(f) Payment to Consultant for work performed under this Agreement shall not be deemed to waive any defects in work performed by Consultant.

(g) Extra Services. City agrees to pay Consultant for extra services not contemplated hereunder as set forth in the Scope of Work or for such services as may be specifically requested by City through City Engineer in writing and agreed to by Consultant for an agreed-to fixed fee or hourly rate of compensation or for necessary expenses over that listed in the Budget, provided, however, that the City Engineer's authority is limited to expenditures not to exceed the amount of \$2,000 (Two Thousand dollars and zero cents).

5. Time of Completion.

(a) Based on an agreed upon Notice to Proceed date for each Task Order, Consultant shall complete the work as shown in the standard Task Order Form set forth as **EXHIBIT C**.

(b) Consultant shall not be held responsible for delays caused by City review or by reasons beyond Consultant's control. Also, Consultant shall not stop its work, including work unrelated to any extra services request, unless it can be shown that the project work cannot proceed while a claim or request for extra services is being evaluated.

(c) Time is of the essence in the completion of the services covered by this Agreement. Failure of Consultant to comply with the above time schedule by more than fourteen (14) calendar days, unless the delay is not attributable to Consultant or is attributable to City, is sufficient cause to terminate this Agreement, at the option of City, in accordance with Section 18.

6. Independent Contractor Status. Consultant and its subcontractors shall perform the Services as independent contractors and not as officers, employees, agents, or volunteers of City. Nothing contained in this Agreement shall be deemed to create any contractual relationship between City and Consultant's employees or subcontractors, nor shall anything contained in this Agreement be deemed to give any third party, including but not limited to Consultant's employees or subcontractors, any claim or right of action against City. Neither the City nor any of its employees shall have any control over the manner, mode, or means by which Consultant or its agents or employees perform the services under this Agreement.

7. Qualifications, and Professional Standards. Consultant represents and warrants that it has the qualifications, experience, and facilities necessary to properly perform the services required under this Agreement in a thorough, competent, and professional manner. In meeting its obligations under this Agreement, Consultant shall employ, at a minimum, generally accepted standards and practices utilized by persons engaged in providing services similar to those required of Consultant under this Agreement. Consultant represents that to the extent Consultant utilizes subcontractors, such subcontractors are, and will be, qualified in their fields. Consultant also expressly represents that both Consultant and its subcontractors, if any, are now, and will be throughout their performance of the Services under this Agreement, properly licensed or otherwise qualified and authorized to perform the Services required and contemplated by this Agreement. Consultant and its subcontractors, if any, shall utilize the standard of care and skill customarily exercised by members of their profession, shall use reasonable diligence and best judgment while performing the Services, and shall comply with and keep themselves informed of all applicable laws and regulations.

8. Identity of Subcontractors and Sub-Consultants. Consultant shall before commencing any work under this Agreement provide to City in writing: (a) the identity of all subcontractors and sub-consultants (collectively referred to as "subcontractors"), if any, which Consultant intends to utilize in Consultant's performance of this Agreement; and (b) a detailed description of the full scope of work to be provided by such subcontractors. Consultant shall only employ subcontractors pre-approved by City and in no event shall Consultant replace an approved subcontractor without the advance written permission of City, with the understanding that City's permission will not be unreasonably withheld. Notwithstanding any other provisions in this Agreement, Consultant shall be liable to City for the performance of Consultant's

subcontractors.

9. Subcontractor Provisions. Consultant shall include in its written agreements with its subcontractors, if any, provisions which: (a) impose upon the subcontractors the obligation to provide to City the same insurance and indemnity obligations that Consultant owes to City; (b) make clear that City intends to rely upon the reports, opinions, conclusions, and other work product prepared and performed by subcontractors for Consultant; and (c) compliance with all laws and certifications as required under this Agreement.

10. Power to Act on Behalf of City. Consultant shall not have any right, power, or authority to create any obligation, express or implied, or make representations on behalf of City except as may be expressly authorized in advance in writing from time to time by City and then only to the extent of such authorization.

11. Record Keeping; Reports. Consultant shall keep complete records showing the type of Services performed. Consultant shall be responsible and shall require its subcontractors to keep similar records. City shall be given reasonable access to the records of Consultant and its subcontractors for inspection and audit purposes. Consultant shall provide City with a working draft of all reports and a copy of all final reports prepared by Consultant under this Agreement.

12. Ownership and Inspection of Documents. All data, tests, reports, documents, conclusions, opinions, recommendations, and other work product generated by or produced for Consultant or its subcontractors in connection with the Services, regardless of the medium, including physical drawings and materials recorded on computer discs ("Work Product"), shall be and remain the property of City. City shall have the right to use, copy, modify, and reuse the Work Product as it sees fit. Upon City's request, Consultant shall make available for inspection and copying all such Work Product and all Work Product shall be turned over to City promptly at City's request or upon termination of this Agreement, whichever occurs first. Consultant shall not release any Work Product to third parties without prior written approval of the City Manager. This obligation shall survive termination of this Agreement and shall survive for four (4) years from the date of expiration or termination of this Agreement.

13. Confidentiality. All data, reports, conclusions, opinions, recommendations, and other work product prepared and performed by and on behalf of Consultant in connection with the Services performed pursuant to this Agreement shall be kept confidential and shall be disclosed only to City, unless otherwise provided by law or expressly authorized by City. Consultant shall not disclose or permit the disclosure of any confidential information acquired during performance of the Services, except to its agents, employees, affiliates, and subcontractors who need such confidential information in order to properly perform their duties relative to this Agreement. Consultant shall also require its subcontractors to be bound to these confidentiality provisions.

14. City Name and Logo. Consultant shall not use City's name or insignia, photographs relating to the City projects for which Consultant's services are rendered, or any publicity

pertaining to the Consultant's services under this Agreement in any magazine, trade paper, newspaper, television or radio production or other similar medium without the prior written consent of City.

15. Conflicts of Interest. Consultant warrants that neither Consultant nor any of its employees have an interest, present or contemplated, which would conflict in any manner with the interests of the City, or which would in any way hinder Consultant's performance of services under this Agreement. Consultant covenants that no person having any such interest, whether an employee or subcontractor shall perform the Services under this Agreement. During the performance of the Services, Consultant shall not employ or retain the services of any person who is employed by the City or a member of any City Board or Commission. City understands and acknowledges that Consultant is, as of the date of execution of this Agreement, independently involved in the performance of non-related services for other governmental agencies and private parties. Consultant is unaware of any stated position of City relative to such projects. Any future position of City on such projects shall not be considered a conflict of interest for purposes of this section. City understands and acknowledges that Consultant will, perform non-related services for other governmental agencies and private parties following the completion of the Services under this Agreement, and any such future service shall not be considered a conflict of interest for purposes of this section.

16. Non-liability of Officers and Employees. No officer or employee of City shall be personally liable to Consultant, or any successors in interest, in the event of a default or breach by City for any amount which may become due Consultant or its successor, or for any breach of any obligation under the terms of this Agreement.

17. City Right to Employ Other Consultants. This Agreement is non-exclusive with Consultant. City reserves the right to employ other consultants in connection with the Services.

18. Termination of Agreement. This Agreement shall terminate upon completion of the Services, or earlier pursuant to the following.

(a) For Convenience of City. This Agreement may be terminated by City at its discretion upon thirty (30) days prior written notice to Consultant.

(b) For Breach of Either Party. If for any cause either party fails to fulfill in a timely and proper manner its obligations under this Agreement (the "breaching party"), the other party (the "terminating party") shall have the right to terminate the Agreement by giving not less than five (5) working days' written notice to the breaching party of the intent to terminate and specifying the effective date thereof. The terminating party shall, however, provide the breaching party with a detailed statement of the grounds for termination. This statement shall include, as appropriate, references to specific provisions of this Agreement, dates, dollar amounts and other information relevant to the decision to terminate for cause.

(c) Compensation to Consultant Upon Termination. In the event termination is not due to fault attributable to Consultant and provided all other conditions for payment have been met, Consultant shall be paid compensation for services performed prior to notice of termination. As to any phase partially performed but for which the applicable portion of Consultant's compensation has not become due, Consultant shall be paid the reasonable value of its services provided. However, in no event shall such payment when added to any other payment due under the applicable part of the work exceed the total compensation of such part as specified in Section 3 herein. In the event of termination due to Consultant's failure to perform in accordance with the terms of this Agreement through no fault of City, City may withhold an amount that would otherwise be payable as an offset to City's damages caused by such failure.

(d) Effect of Termination. Upon receipt of a termination notice (or completion of this Agreement), Consultant shall: (i) promptly discontinue all Services affected (unless the notice directs otherwise); and (ii) deliver or otherwise make available to the City, without additional compensation, all data, documents, procedures, reports, estimates, summaries, and such other information and materials as may have been accumulated by the Consultant in performing this Agreement, whether completed or in process. Following the termination of this Agreement for any reason whatsoever, City shall have the right to utilize such information and other documents, or any other works of authorship fixed in any tangible medium of expression, including but not limited to physical drawings, data magnetically or otherwise recorded on computer disks, or other writings prepared or caused to be prepared under this Agreement by Consultant. Consultant may not refuse to provide such writings or materials for any reason whatsoever.

19. Insurance. All insurance policies shall be subject to City approval as to form and content. Consultant shall provide City with copies of required certificates of insurance upon request. 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.

- \$2,000,000 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 proposal.

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. City reserves the right to require complete, certified copies of all required insurance policies, at any time.

Acceptable Insurers

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

Waiver of Subrogation

All insurance coverage maintained or procured pursuant to this agreement shall be endorsed to waive subrogation against the City, its elected or appointed officers, agents, officials, employees, and volunteers, or shall specifically allow 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 City 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 City 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.

20. Indemnification.

Indemnity for Professional Liability:

When the law establishes a professional standard of care for Consultant's Services, to the fullest extent permitted by law, Consultant shall indemnify, protect, defend, and hold harmless City and any and all of its officials, employees and agents from and against any and all losses, liabilities, damages, costs, and expenses, including legal counsel's fees and costs but only to the extent the Consultant (and its Subconsultants), are responsible for such damages, liabilities and costs on a comparative basis of fault between the Consultant (and its Subconsultants) and the City in the performance of professional services under this agreement.

Indemnity for Other Than Professional Liability:

Other than in the performance of professional services and to the full extent permitted by law, Consultant shall indemnify, defend, and hold harmless City, and any and all of its employees, officials and agents from and against any liability (including liability for claims, suits, actions, arbitration proceedings, administrative proceedings, regulatory proceedings, losses, expenses or costs of any kind, whether actual, alleged or threatened, including legal counsel's fees and costs, court costs, defense costs, and expert witness fees), where the same arise out of, are a consequence of, or are in any way attributable to, in whole or in part, the performance of this Agreement by Consultant or by any individual or City for which Consultant is legally liable, including, but not limited to officers, agents, employees, or subcontractors of Consultant, except when caused by the active negligence or willful misconduct of the City.

21. Responsibility For Others. Consultant shall be responsible to City for its services and the services of its sub consultants. Consultant shall not be responsible for the acts or omissions of other parties engaged by City nor for their construction means, methods, techniques, sequences, or procedures, or their health and safety precautions and programs.

22. Professional Responsibility. Consultant shall be obligated to comply with applicable standards of professional care in the performance of the Services by exercising the

skill and ability ordinarily required of engineers performing the same or similar services, under the same or similar circumstances, in the State of California. Consultant recognizes that opinions relating to environmental, geologic, and geotechnical conditions are based on limited data and that actual conditions may vary from those encountered at the times and locations where the data are obtained, despite the use of due professional care.

In providing opinions of cost, financial analyses, economic feasibility projections, and schedules for potential projects, Consultant has no control over cost or price of labor and material; unknown or latent conditions of existing equipment or structures that may affect operation and maintenance costs; competitive bidding procedures and market conditions; time or quality of performance of third parties; quality, type, management, or direction of operating personnel; and other economic and operational factors that may materially affect the ultimate project cost or schedule. Therefore, Consultant makes no warranty that the City's actual project costs, financial aspects, economic feasibility, or schedules will not vary from Consultant's opinions, analyses, projections, or estimates

23. Compliance with All Laws. Consultant shall be familiar with and shall comply with all City, State, and Federal laws and regulations applicable to the work to be performed under this Agreement. In providing the services required under this Agreement, Consultant shall at all times comply with all applicable laws, regulations, and resolutions of the United States, the State of California, and the City of Madera now in force and as they may be enacted, issued, or amended during the term of this Agreement.

23.A Federal funded Task Orders: *Where the Task Order services provided pursuant to the Agreement are funded by a federal program, including but not limited to, Community Block Grant Funds, Consultant certifies and agrees that Consultant will be in:*

- *Compliance with Executive Order 11246 of September 24, 1965, entitled "Equal Employment Opportunity" as amended by Executive Order 11375 of October 13, 1967 and as supplemented in Department of Labor regulations (41 CFR chapter 60). (All construction contracts awarded in excess of \$10,000 by grantees and their contractors or sub grantees.)*
- *Compliance with the Copeland "Anti-Kickback" Act (18 U.S.C. 874) as supplemented in Department of Labor regulations (29 CFR part 3). (All contracts and sub grants or construction or repair).*
- *Compliance with the Davis-Bacon Act (40 U.S.C. 276a to 276a-7) as supplemented by Department of Labor regulations (29 CFR part 5). (Construction contracts in excess of \$2000 awarded by grantees and sub grantees required by Federal grant program legislation.)*
- *Compliance with Sections 103 and 107 of the Contract Work Hours and Safety Standards Act (40 U.S.C. 327-330) as supplemented by Department of Labor regulations (29 CFR part*

5). *(Construction contracts in excess of \$2000 and in excess of \$2500 for other contracts which involve the employment of mechanics or laborers.)*

- *(e) Compliance with the provisions of any notice of awarding agency requirements and regulations pertaining to reporting.*
- *Compliance with the provisions of any notice of awarding agency requirements and regulations pertaining to patent rights with respect to any discovery or invention which arises or is developed in the course of or under such contract.*
- *Compliance with any awarding agency requirements and regulations pertaining to copyrights and rights in data.*
- *Compliance with access requirements imposed by the grantee, the sub grantee, the Federal grantor agency, the Comptroller General of the United States, or any of their duly authorized representatives to any books, documents, papers, and records of the contractor which are directly pertinent to that specific contract for the purpose of making audit, examination, excerpts, and transcriptions.*
- *Compliance with applicable requirements for the retention of all required records for three years after grantees or sub grantees make final payments and all other pending matters are closed.*
- *Compliance with all applicable standards, orders, or requirements issued under section 306 of the Clean Air Act (42 U.S.C. 1857(h)), section 508 of the Clean Water Act (33 U.S.C. 1368), Executive Order 11738, and Environmental Protection Agency regulations \$100,000.)*
- *Compliance with mandatory standards and policies relating to energy efficiency which are contained in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act (Pub. L 97-163, 89 Stat. 871.) [53 FR 8068.8067. Mar. 11, 1988, as amended at 60 FR 19639, 19642, Apr. 19, 1995]]*

24. Assignment. Neither this Agreement nor any duties or obligations hereunder shall be assignable by Consultant without the prior written consent of City. In the event of an assignment to which City has consented, the assignee shall agree in writing to personally assume and perform the covenants, obligations, and agreements herein contained. In addition, Consultant shall not assign the payment of any monies due Consultant from City under the terms of this Agreement to any other individual, corporation or entity. City retains the right to pay any and all monies due Consultant directly to Consultant.

25. Form and Service of Notices. All notices required or permitted to be given under this Agreement shall be in writing and shall be personally delivered, or sent by certified mail, postage prepaid and return receipt requested, addressed as follows:

To City: CITY ENGINEER
City of Madera
428 E. Yosemite Avenue
Madera, CA 93638
Email:

To Consultant: Peters Engineering Group Inc.
862 Pollasky Avenue
Clovis, CA 93612

Notice shall be deemed effective on the date personally delivered or transmitted by facsimile, or if mailed, three (3) days after deposit of the same in the custody of the United States Postal Service.

26. Entire Agreement. This Agreement, including the attachments and exhibits, represents the entire Agreement between City and Consultant, and supersedes all prior negotiations, representations, or agreements, either written or oral with respect to the subject matter herein. This Agreement may be amended only by written instrument signed by both City and Consultant.

27. Authority. The signatories to this Agreement warrant and represent that they have the legal right, power, and authority to execute this Agreement and bind their respective entities.

28. Severability. In the event any term or provision of this Agreement is declared to be invalid or illegal for any reason, this Agreement will remain in full force and effect and will be interpreted as though such invalid or illegal provision were not a part of this Agreement. The remaining provisions will be construed to preserve the intent and purpose of this Agreement and the parties will negotiate in good faith to modify any invalidated provisions to preserve each party's anticipated benefits.

29. Applicable Law and Interpretation and Venue. This Agreement shall be interpreted in accordance with the laws of the State of California. The language of all parts of this Agreement shall, in all cases, be construed as a whole, according to its fair meaning, and not strictly for or against either party. Any controversy or claim arising out of, or relating to, this Agreement which cannot be amicably settled without court action shall be litigated either in the appropriate State court for Madera County, California, or as appropriate in the U. S. District Court for the Eastern District of California, located in Fresno County. The rights and obligations of the parties and all interpretations and performance of this Agreement shall be governed in all respects by the laws of the State of California.

30. Attorney's Fees. If either party is required to commence any proceeding or legal action to enforce or interpret any term, covenant, or condition of this Agreement, the prevailing party in such proceeding or action shall be entitled to recover from the other party its reasonable attorneys' fees and legal expenses.

31. Amendments and Waiver. This Agreement shall not be modified or amended in any way, and no provision shall be waived, except in writing signed by the parties hereto. No waiver of any provision of this Agreement shall be deemed, or shall constitute, a waiver of any other provision, whether or not similar, nor shall any such waiver constitute a continuing or subsequent waiver of the same provision. Failure of either party to enforce any provision of this Agreement shall not constitute a waiver of the right to compel enforcement of the remaining provisions of this Agreement.

32. Third Party Beneficiaries. Nothing in this Agreement shall be construed to confer any rights upon any party not a signatory to this Agreement.

33. Execution in Counterparts. This Agreement may be executed in counterparts such that the signatures may appear on separate signature pages. A copy or an original, with all signatures appended together, shall be deemed a fully executed Agreement.

34. Non-Discrimination. Consultant shall not discriminate on the basis of any protected class under federal or State law in the provision of the Services or with respect to any Consultant employees or applicants for employment. Consultant shall ensure that any subcontractors are bound to this provision. A protected class includes, but is not necessarily limited to, race, color, national origin, ancestry, religion, age, sex, sexual orientation, marital status, and disability.

[SIGNATURES ON FOLLOWING PAGE]

IN WITNESS WHEREOF, the City and Consultant have executed this Agreement on the date(s) set forth below.

CONSULTANT NAME

CITY OF MADERA

By: _____
(ADD NAME & POSITION)

By: _____
Santos Garcia, Mayor

Taxpayer ID #: _____

Date: _____

Date: _____

APPROVED AS TO FORM:

Hilda Cantú Montoy, City Attorney

ATTEST:

By: _____
Alicia Gonzales, City Clerk

EXHIBIT A – Scope of Services

EXHIBIT B – Fee Schedule

EXHIBIT C – Task Order Work Schedule Form

EXHIBIT A

SCOPE OF SERVICES

The professional services may include, but not be limited to, the following: land surveying, civil engineering plan checking services, roadway design, drainage and flood control design, water and sewer pipeline design, water well design, wastewater treatment plant design, traffic studies, traffic signal design, master planning services, utility locating and conflict analysis or other similar engineering services. These services may result in the preparation of engineering reports, public presentations or the preparation of plans, specifications, and estimates suitable for the public bidding process.

The following is a list of the types of consulting services being considered. Each consultant is not required to have expertise in all of the items listed:

- Storm drain infrastructure analysis and design, including hydrology and hydraulic analysis.
- Street geometrics, striping and signage analysis and design.
- Street design, including repair/replacement of curb, gutter, sidewalk, driveways, ramps, street trees, signs, pavement, etc.
- Grading design.
- Traffic signal design and Traffic studies.
- Water well design, water, and sewer pipeline design.
- Wastewater Treatment Plant design
- Preparation of engineering plans, specifications and estimates in City-approved format.
- Construction Support services include attending construction meetings, responding to requests for information, reviewing agreement submittals, and evaluating design changes during construction.

Additional requirements are as follows:

1. The Consultant's Project Manager shall be available for periodic meetings to discuss issues related to task orders.
2. The Consultant must be adequately insured for liability and property damage pursuant to the conditions of the Agreement.
3. All work shall be performed and delivered in English Standard Units or as required by the City.
4. All survey work shall be performed on CCS/NAD 83 horizontal coordinates and use true NAVD 88 vertical controls.
5. Plans and Maps shall be submitted in the AutoCAD format in use by the City at the time of issuance of the task order, point files shall be submitted in ASCII format, and any estimates, schedules, or reports shall be submitted in Microsoft Office format.
6. Consultant may be required to provide topographic surveys to support their work product as necessary.

EXHIBIT B

FEE SCHEDULE



PETERS ENGINEERING GROUP
A CALIFORNIA CORPORATION

HOURLY RATE SCHEDULE

(Effective 7/1/22 to 6/30/24)

<u>CLASSIFICATION</u>	<u>RATE</u>
Principal Civil Engineer	\$215/hr
Senior Civil Engineer	\$200/hr
Civil Engineer	\$185/hr
Land Surveyor	\$165/hr
Staff Engineer	\$155/hr
Draftsperson/Technician/Inspector	\$115/hr
Clerical	\$95/hr
Litigation Support	\$500/hr

REIMBURSABLES SCHEDULE

(Effective 1/1/22 to 12/31/22)

<u>DESCRIPTION</u>	<u>RATE</u>
Mileage	\$0.72/mile
Travel Subsistence	Actual Cost + 10%
Postage	Actual Cost + 10%
Reproduction	Actual Cost + 10%
Subconsultant	Actual Cost + 10%

Work requiring an accelerated schedule is subject to a 25% labor surcharge. Peters Engineering Group will furnish monthly billing for work performed in accordance with previously authorized fees and the above fee schedule. Payments shall be due upon presentation and no later than 30 days from the date of original invoice. Finance charges will apply to unpaid balances.

EXHIBIT C

TASK ORDER WORK SCHEDULE FORM

CITY OF MADERA
TASK ORDER FORM No. ____
TO ENGINEERING SERVICES AGREEMENT FOR

PROJECT No. _____

This TASK ORDER NO. _____ to Engineering Services Agreement dated _____, hereinafter called Agreement, between the City of Madera, (CITY), and _____(ENGINEER).

1. DESCRIPTION OF PROJECT

2. SCOPE OF SERVICES

The City agrees to utilize the services of ENGINEER and ENGINEER agrees to perform _____ listed engineering services as requested by CITY as per the Engineering Services Agreement. ENGINEER shall confirm the scope, schedule, and anticipated compensation for such services in writing prior to starting work (see attached proposed Scope of Services).

3. CITY'S RESPONSIBILITIES

CITY to provide ENGINEER with the following information:

1. CITY shall assign appropriate reviewers to the project and compile and provide a single consolidated, coordinated, legible copy of written review comments to ENGINEER for all draft documents and work products, as appropriate.
2. CITY shall provide timely review of submitted products as appropriate.

4. COMPENSATION

1. CITY shall pay ENGINEER according to the fee schedule set forth in Exhibit A to the Engineering Services Agreement dated _____.
2. Services provided under this Task Order shall not exceed (dollar value) _____ (\$_____).

5. MISCELLANEOUS

All terms and conditions of the Engineering Services Agreement apply to this Task Order as though fully set forth therein. In the event of a conflict between this Task Order and the Engineering Services Agreement, the terms of this Task Order shall apply.

The parties do mutually agree to all mutual covenants and agreements contained within this Task Order No. ____.

CITY OF MADERA

By: _____

Title: _____

Date: _____

(ENGINEER) _____

By: _____

Title: _____

Date: _____

STANDARD ADDENDUM FORM

TASK ORDER NO. ____ - ADDENDUM NO. ____

(PROJECT) _____

This Addendum to Task Order No. ____ to the Engineering Services Agreement dated _____, hereinafter called Agreement, between the City of Madera (CITY), and _____(ENGINEER).

____ Change in Schedule:

____ Change in Fee: An Increase/Decrease of \$_____ to Task Order No. ____ for a total contract amount of \$_____. These changes are in accordance with the (Project description) _____, scope of services dated _____.

____ Modifies the Agreement in the following manner:

CITY OF MADERA

By: _____

Title: _____

Date: _____

ENGINEER _____

By: _____

Title: _____

Date: _____

ATTACHMENT 2F

On-Call Agreement with O'Dell Engineering

**ON-CALL CONSULTANT SERVICES AGREEMENT BETWEEN THE CITY OF MADERA AND
O'DELL ENGINEERING INC.**

This Consultant Services Agreement ("Agreement") is entered into between the CITY OF MADERA, a California general law city ("City") and O'Dell Engineering, Inc. ("Consultant"). This Agreement shall be effective on the date signed by City which shall occur after execution by Consultant ("Effective Date").

RECITALS

- A. The City has determined that it requires on-call, as-needed professional engineering services in order to maintain a high level of service to the community.
- B. City has sought, by a Request for Qualifications, to select consultants to provide On-Call Engineering and Land Surveying Consulting Services.
- C. Consultant submitted a Statement of Qualifications for performing the requested Services and is engaged in the business of furnishing such services as a consultant and hereby warrants and represents that it is qualified, licensed, and professionally capable of performing the Services called for in the Request for Qualifications and this Agreement.
- D. City has selected Consultant to perform the requested Services on the basis of Consultant's demonstrated competence and professional qualifications.
- E. City desires to retain Consultant, and Consultant desires to provide City with the Services, on the terms and conditions as set forth in this Agreement.

NOW, THEREFORE, in consideration of the promises and mutual agreements herein, City and Consultant agree as follows:

AGREEMENT

1. Scope of Services. Consultant shall perform, to the satisfaction of City in accordance with this Agreement, the Services described in the "Scope of Services" attached hereto as **EXHIBIT A** and incorporated by herein by this reference. Consultant shall at all times faithfully, competently and to the best of its ability, experience, and talent, perform all services described herein.

At such time as services are needed by City from Consultant, City will discuss with Consultant the general parameters of the applicable scope of services. In response, Consultant shall deliver to City, a "Preliminary Task Order," which shall include a scope of work and cost proposal for the services needed by City. Consultant's proposal shall include a breakdown of

estimated hours and a work order schedule. No work shall be performed by Consultant until the Preliminary Task Order is accepted in writing by City as evidenced by City's issuance to Consultant of a final "Task Order," Consultant shall commence performance and complete all required services no later than the dates set forth and in accordance with the approved, final Task Order.

Consultant accepts full responsibility for the scope of services provided by sub-consultants necessary for delivery and completion of work under a Task Order. Consultant shall comply with applicable City of Madera design standards and requirements as directed by the City and applicable State and Federal requirements.

2. Term of Agreement; Commencement of Services. The term of this Agreement shall be three (3) years commencing on _____, 2022, and shall terminate on _____, 2025, unless terminated earlier as set forth herein. This Agreement may be mutually extended after the initial three (3) year term for up to two (2) additional one (1) year terms upon approval of an extended agreement by the City Council.

Consultant shall commence the Services for each final Task Order upon City's issuance of a written "Notice to Proceed" and shall continue with the Services until Consultant, as determined by City, has satisfactorily performed, and completed the Services for said Task Order, or until such time as the Agreement is terminated by either party in accordance with this Agreement, whichever is earlier.

3. Continuity of Personnel. Consultant shall make every reasonable effort to maintain the stability and continuity of Consultant's staff and subcontractors assigned to perform the Services under this Agreement. Consultant shall notify City of any changes in Consultant's staff and subcontractors assigned to perform the Services under this Agreement.

4. Compensation for Services. City shall compensate Consultant for rendering the Services as follows:

(a) Subject to any limitations set forth in this Agreement, City agrees to pay Consultant by the amounts specified in the Schedule of Compensation attached hereto as **EXHIBIT B** and incorporated herein by this reference. Both parties agree that Consultant's total compensation under this Agreement shall not exceed \$300,000 for Year 1, \$300,000 for Year 2, and \$300,000 for Year 3 of the Agreement and shall not exceed a total contract amount of \$900,000. At the end of the three (3) year term, City may extend the term of this Agreement for up to two (2) additional one (1) year periods with a not-to-exceed compensation amount of \$300,000 per year by providing advance written notice to CONSULTANT and written confirmation by CONSULTANT thereof.

(b) City reserves the right to not request any services of Consultant during the entire duration of this Agreement. Consultant shall only be paid for services performed under this Agreement to the extent authorized by final Task Order approved by the City Engineer. The City does not guarantee any specific amount of work, if any, or billable

hours that will be preauthorized. No overhead or other expenses can be recovered for interim periods when Consultant's services are not utilized by City.

(c) City and Consultant agree on the rates shown in EXHIBIT B, "Hourly Rate Schedule", and agree that they will remain in effect for the first two years of Agreement. Thereafter, Consultant may submit a new Hourly Rate Schedule as an amendment to this agreement no more than one time per year. It is understood and agreed by both parties that all expenses incidental to Consultant's performance of services, including travel expenses, are included in the basic fee shown in **EXHIBIT B**.

(d) Each month Consultant shall invoice City for all work performed and expenses incurred during the preceding month. Consultant's invoice shall specify the billed hours and hourly rates for each employee classification. The sub-consultants work shall be included on Consultant's invoice with a copy of the sub-consultant's invoice attached. A report on summary of costs to date for each component of the work shall accompany the invoice. This summary shall also estimate the percentage of the work completed for each component and the balance remaining in each component.

(e) City shall independently review each invoice submitted by the Consultant to determine whether the work performed, and expenses incurred are in compliance with the provisions of this Agreement. The invoiced amount shall be paid within 30 calendar days unless City disputes any charges or expenses. If any charges or expenses are disputed, City shall pay the undisputed amount, and notify Consultant of the nature and amount of the disputed charge or expense. The parties shall seek to resolve the disputed items(s) by mutual agreement.

(f) Payment to Consultant for work performed under this Agreement shall not be deemed to waive any defects in work performed by Consultant.

(g) Extra Services. City agrees to pay Consultant for extra services not contemplated hereunder as set forth in the Scope of Work or for such services as may be specifically requested by City through City Engineer in writing and agreed to by Consultant for an agreed-to fixed fee or hourly rate of compensation or for necessary expenses over that listed in the Budget, provided, however, that the City Engineer's authority is limited to expenditures not to exceed the amount of \$2,000.00 (Two Thousand dollars and zero cents).

5. Time of Completion.

(a) Based on an agreed upon Notice to Proceed date for each Task Order, Consultant shall complete the work as shown in the standard Task Order Form set forth as **EXHIBIT C**.

(b) Consultant shall not be held responsible for delays caused by City review

or by reasons beyond Consultant's control. Also, Consultant shall not stop its work, including work unrelated to any extra services request, unless it can be shown that the project work cannot proceed while a claim or request for extra services is being evaluated.

(c) Time is of the essence in the completion of the services covered by this Agreement. Failure of Consultant to comply with the above time schedule by more than fourteen (14) calendar days, unless the delay is not attributable to Consultant or is attributable to City, is sufficient cause to terminate this Agreement, at the option of City, in accordance with Section 18.

6. Independent Contractor Status. Consultant and its subcontractors shall perform the Services as independent contractors and not as officers, employees, agents, or volunteers of City. Nothing contained in this Agreement shall be deemed to create any contractual relationship between City and Consultant's employees or subcontractors, nor shall anything contained in this Agreement be deemed to give any third party, including but not limited to Consultant's employees or subcontractors, any claim or right of action against City. Neither the City nor any of its employees shall have any control over the manner, mode, or means by which Consultant or its agents or employees perform the services under this Agreement.

7. Qualifications, and Professional Standards. Consultant represents and warrants that it has the qualifications, experience, and facilities necessary to properly perform the services required under this Agreement in a thorough, competent, and professional manner. In meeting its obligations under this Agreement, Consultant shall employ, at a minimum, generally accepted standards and practices utilized by persons engaged in providing services similar to those required of Consultant under this Agreement. Consultant represents that to the extent Consultant utilizes subcontractors, such subcontractors are, and will be, qualified in their fields. Consultant also expressly represents that both Consultant and its subcontractors, if any, are now, and will be throughout their performance of the Services under this Agreement, properly licensed or otherwise qualified and authorized to perform the Services required and contemplated by this Agreement. Consultant and its subcontractors, if any, shall utilize the standard of care and skill customarily exercised by members of their profession, shall use reasonable diligence and best judgment while performing the Services, and shall comply with and keep themselves informed of all applicable laws and regulations.

8. Identity of Subcontractors and Sub-Consultants. Consultant shall before commencing any work under this Agreement provide to City in writing: (a) the identity of all subcontractors and sub-consultants (collectively referred to as "subcontractors"), if any, which Consultant intends to utilize in Consultant's performance of this Agreement; and (b) a detailed description of the full scope of work to be provided by such subcontractors. Consultant shall only employ subcontractors pre-approved by City and in no event shall Consultant replace an approved subcontractor without the advance written permission of City, with the understanding that City's permission will not be unreasonably withheld. Notwithstanding any other provisions in this Agreement, Consultant shall be liable to City for the performance of Consultant's subcontractors.

9. Subcontractor Provisions. Consultant shall include in its written agreements with its subcontractors, if any, provisions which: (a) impose upon the subcontractors the obligation to provide to City the same insurance and indemnity obligations that Consultant owes to City; (b) make clear that City intends to rely upon the reports, opinions, conclusions, and other work product prepared and performed by subcontractors for Consultant; and (c) compliance with all laws and certifications as required under this Agreement.

10. Power to Act on Behalf of City. Consultant shall not have any right, power, or authority to create any obligation, express or implied, or make representations on behalf of City except as may be expressly authorized in advance in writing from time to time by City and then only to the extent of such authorization.

11. Record Keeping; Reports. Consultant shall keep complete records showing the type of Services performed. Consultant shall be responsible and shall require its subcontractors to keep similar records. City shall be given reasonable access to the records of Consultant and its subcontractors for inspection and audit purposes. Consultant shall provide City with a working draft of all reports and a copy of all final reports prepared by Consultant under this Agreement.

12. Ownership and Inspection of Documents. All data, tests, reports, documents, conclusions, opinions, recommendations, and other work product generated by or produced for Consultant or its subcontractors in connection with the Services, regardless of the medium, including physical drawings and materials recorded on computer discs ("Work Product"), shall be and remain the property of City. City shall have the right to use, copy, modify, and reuse the Work Product as it sees fit. Upon City's request, Consultant shall make available for inspection and copying all such Work Product and all Work Product shall be turned over to City promptly at City's request or upon termination of this Agreement, whichever occurs first. Consultant shall not release any Work Product to third parties without prior written approval of the City Manager. This obligation shall survive termination of this Agreement and shall survive for four (4) years from the date of expiration or termination of this Agreement.

13. Confidentiality. All data, reports, conclusions, opinions, recommendations, and other work product prepared and performed by and on behalf of Consultant in connection with the Services performed pursuant to this Agreement shall be kept confidential and shall be disclosed only to City, unless otherwise provided by law or expressly authorized by City. Consultant shall not disclose or permit the disclosure of any confidential information acquired during performance of the Services, except to its agents, employees, affiliates, and subcontractors who need such confidential information in order to properly perform their duties relative to this Agreement. Consultant shall also require its subcontractors to be bound to these confidentiality provisions.

14. City Name and Logo. Consultant shall not use City's name or insignia, photographs relating to the City projects for which Consultant's services are rendered, or any publicity pertaining to the Consultant's services under this Agreement in any magazine, trade paper,

newspaper, television or radio production or other similar medium without the prior written consent of City.

15. Conflicts of Interest. Consultant warrants that neither Consultant nor any of its employees have an interest, present or contemplated, which would conflict in any manner with the interests of the City, or which would in any way hinder Consultant's performance of services under this Agreement. Consultant covenants that no person having any such interest, whether an employee or subcontractor shall perform the Services under this Agreement. During the performance of the Services, Consultant shall not employ or retain the services of any person who is employed by the City or a member of any City Board or Commission. City understands and acknowledges that Consultant is, as of the date of execution of this Agreement, independently involved in the performance of non-related services for other governmental agencies and private parties. Consultant is unaware of any stated position of City relative to such projects. Any future position of City on such projects shall not be considered a conflict of interest for purposes of this section. City understands and acknowledges that Consultant will, perform non-related services for other governmental agencies and private parties following the completion of the Services under this Agreement, and any such future service shall not be considered a conflict of interest for purposes of this section.

16. Non-liability of Officers and Employees. No officer or employee of City shall be personally liable to Consultant, or any successors in interest, in the event of a default or breach by City for any amount which may become due Consultant or its successor, or for any breach of any obligation under the terms of this Agreement.

17. City Right to Employ Other Consultants. This Agreement is non-exclusive with Consultant. City reserves the right to employ other consultants in connection with the Services.

18. Termination of Agreement. This Agreement shall terminate upon completion of the Services, or earlier pursuant to the following.

(a) For Convenience of City. This Agreement may be terminated by City at its discretion upon thirty (30) days prior written notice to Consultant.

(b) For Breach of Either Party. If for any cause either party fails to fulfill in a timely and proper manner its obligations under this Agreement (the "breaching party"), the other party (the "terminating party") shall have the right to terminate the Agreement by giving not less than five (5) working days' written notice to the breaching party of the intent to terminate and specifying the effective date thereof. The terminating party shall, however, provide the breaching party with a detailed statement of the grounds for termination. This statement shall include, as appropriate, references to specific provisions of this Agreement, dates, dollar amounts and other information relevant to the decision to terminate for cause.

(c) Compensation to Consultant Upon Termination. In the event termination is not due to fault attributable to Consultant and provided all other conditions for payment have been met, Consultant shall be paid compensation for services performed prior to notice of termination. As to any phase partially performed but for which the applicable portion of Consultant's compensation has not become due, Consultant shall be paid the reasonable value of its services provided. However, in no event shall such payment when added to any other payment due under the applicable part of the work exceed the total compensation of such part as specified in Section 3 herein. In the event of termination due to Consultant's failure to perform in accordance with the terms of this Agreement through no fault of City, City may withhold an amount that would otherwise be payable as an offset to City's damages caused by such failure.

(d) Effect of Termination. Upon receipt of a termination notice (or completion of this Agreement), Consultant shall: (i) promptly discontinue all Services affected (unless the notice directs otherwise); and (ii) deliver or otherwise make available to the City, without additional compensation, all data, documents, procedures, reports, estimates, summaries, and such other information and materials as may have been accumulated by the Consultant in performing this Agreement, whether completed or in process. Following the termination of this Agreement for any reason whatsoever, City shall have the right to utilize such information and other documents, or any other works of authorship fixed in any tangible medium of expression, including but not limited to physical drawings, data magnetically or otherwise recorded on computer disks, or other writings prepared or caused to be prepared under this Agreement by Consultant. Consultant may not refuse to provide such writings or materials for any reason whatsoever.

19. Insurance. All insurance policies shall be subject to City approval as to form and content. Consultant shall provide City with copies of required certificates of insurance upon request. 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.

- \$2,000,000 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 proposal.

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. City reserves the right to require complete, certified copies of all required insurance policies, at any time.

Acceptable Insurers

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

Waiver of Subrogation

All insurance coverage maintained or procured pursuant to this agreement shall be endorsed to waive subrogation against the City, its elected or appointed officers, agents, officials, employees, and volunteers, or shall specifically allow 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 City 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 City 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.

20. Indemnification.

Indemnity for Professional Liability:

When the law establishes a professional standard of care for Consultant's Services, to the fullest extent permitted by law, Consultant shall indemnify, protect, defend, and hold harmless City and any and all of its officials, employees and agents from and against any and all losses, liabilities, damages, costs, and expenses, including legal counsel's fees and costs but only to the extent the Consultant (and its Subconsultants), are responsible for such damages, liabilities and costs on a comparative basis of fault between the Consultant (and its Subconsultants) and the City in the performance of professional services under this agreement.

Indemnity for Other Than Professional Liability:

Other than in the performance of professional services and to the full extent permitted by law, Consultant shall indemnify, defend, and hold harmless City, and any and all of its employees, officials and agents from and against any liability (including liability for claims, suits, actions, arbitration proceedings, administrative proceedings, regulatory proceedings, losses, expenses or costs of any kind, whether actual, alleged or threatened, including legal counsel's fees and costs, court costs, defense costs, and expert witness fees), where the same arise out of, are a consequence of, or are in any way attributable to, in whole or in part, the performance of this Agreement by Consultant or by any individual or City for which Consultant is legally liable, including, but not limited to officers, agents, employees, or subcontractors of Consultant, except when caused by the active negligence or willful misconduct of the City.

21. Responsibility For Others. Consultant shall be responsible to City for its services and the services of its sub consultants. Consultant shall not be responsible for the acts or omissions of other parties engaged by City nor for their construction means, methods, techniques, sequences, or procedures, or their health and safety precautions and programs.

22. Professional Responsibility. Consultant shall be obligated to comply with applicable standards of professional care in the performance of the Services by exercising the

skill and ability ordinarily required of engineers performing the same or similar services, under the same or similar circumstances, in the State of California. Consultant recognizes that opinions relating to environmental, geologic, and geotechnical conditions are based on limited data and that actual conditions may vary from those encountered at the times and locations where the data are obtained, despite the use of due professional care.

In providing opinions of cost, financial analyses, economic feasibility projections, and schedules for potential projects, Consultant has no control over cost or price of labor and material; unknown or latent conditions of existing equipment or structures that may affect operation and maintenance costs; competitive bidding procedures and market conditions; time or quality of performance of third parties; quality, type, management, or direction of operating personnel; and other economic and operational factors that may materially affect the ultimate project cost or schedule. Therefore, Consultant makes no warranty that the City's actual project costs, financial aspects, economic feasibility, or schedules will not vary from Consultant's opinions, analyses, projections, or estimates

23. Compliance with All Laws. Consultant shall be familiar with and shall comply with all City, State, and Federal laws and regulations applicable to the work to be performed under this Agreement. In providing the services required under this Agreement, Consultant shall at all times comply with all applicable laws, regulations, and resolutions of the United States, the State of California, and the City of Madera now in force and as they may be enacted, issued, or amended during the term of this Agreement.

23.A Federal funded Task Orders: Where the Task Order services provided pursuant to the Agreement are funded by a federal program, including but not limited to, Community Block Grant Funds, Consultant certifies and agrees that Consultant will be in:

- Compliance with Executive Order 11246 of September 24, 1965, entitled "Equal Employment Opportunity" as amended by Executive Order 11375 of October 13, 1967 and as supplemented in Department of Labor regulations (41 CFR chapter 60). (All construction contracts awarded in excess of \$10,000 by grantees and their contractors or sub grantees.)*
- Compliance with the Copeland "Anti-Kickback" Act (18 U.S.C. 874) as supplemented in Department of Labor regulations (29 CFR part 3). (All contracts and sub grants or construction or repair).*
- Compliance with the Davis-Bacon Act (40 U.S.C. 276a to 276a-7) as supplemented by Department of Labor regulations (29 CFR part 5). (Construction contracts in excess of \$2000 awarded by grantees and sub grantees required by Federal grant program legislation.)*
- Compliance with Sections 103 and 107 of the Contract Work Hours and Safety Standards Act (40 U.S.C. 327-330) as supplemented by Department of Labor regulations (29 CFR part*

5). (Construction contracts in excess of \$2000 and in excess of \$2500 for other contracts which involve the employment of mechanics or laborers.)

- (e) Compliance with the provisions of any notice of awarding agency requirements and regulations pertaining to reporting.
- Compliance with the provisions of any notice of awarding agency requirements and regulations pertaining to patent rights with respect to any discovery or invention which arises or is developed in the course of or under such contract.
- Compliance with any awarding agency requirements and regulations pertaining to copyrights and rights in data.
- Compliance with access requirements imposed by the grantee, the sub grantee, the Federal grantor agency, the Comptroller General of the United States, or any of their duly authorized representatives to any books, documents, papers, and records of the contractor which are directly pertinent to that specific contract for the purpose of making audit, examination, excerpts, and transcriptions.
- Compliance with applicable requirements for the retention of all required records for three years after grantees or sub grantees make final payments and all other pending matters are closed.
- Compliance with all applicable standards, orders, or requirements issued under section 306 of the Clean Air Act (42 U.S.C. 1857(h)), section 508 of the Clean Water Act (33 U.S.C. 1368), Executive Order 11738, and Environmental Protection Agency regulations \$100,000.)
- Compliance with mandatory standards and policies relating to energy efficiency which are contained in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act (Pub. L 97-163, 89 Stat. 871.) [53 FR 8068.8067. Mar. 11, 1988, as amended at 60 FR 19639, 19642, Apr. 19, 1995]]

24. Assignment. Neither this Agreement nor any duties or obligations hereunder shall be assignable by Consultant without the prior written consent of City. In the event of an assignment to which City has consented, the assignee shall agree in writing to personally assume and perform the covenants, obligations, and agreements herein contained. In addition, Consultant shall not assign the payment of any monies due Consultant from City under the terms of this Agreement to any other individual, corporation or entity. City retains the right to pay any and all monies due Consultant directly to Consultant.

25. Form and Service of Notices. All notices required or permitted to be given under this Agreement shall be in writing and shall be personally delivered, or sent by certified mail, postage prepaid and return receipt requested, addressed as follows:

To City: CITY ENGINEER
City of Madera
428 E. Yosemite Avenue
Madera, CA 93638
Email:

To Consultant: O'Dell Engineering Inc.
1165 Scenic Drive, Suite A
Modesto, CA 95350

Notice shall be deemed effective on the date personally delivered or transmitted by facsimile, or if mailed, three (3) days after deposit of the same in the custody of the United States Postal Service.

26. Entire Agreement. This Agreement, including the attachments and exhibits, represents the entire Agreement between City and Consultant, and supersedes all prior negotiations, representations, or agreements, either written or oral with respect to the subject matter herein. This Agreement may be amended only by written instrument signed by both City and Consultant.

27. Authority. The signatories to this Agreement warrant and represent that they have the legal right, power, and authority to execute this Agreement and bind their respective entities.

28. Severability. In the event any term or provision of this Agreement is declared to be invalid or illegal for any reason, this Agreement will remain in full force and effect and will be interpreted as though such invalid or illegal provision were not a part of this Agreement. The remaining provisions will be construed to preserve the intent and purpose of this Agreement and the parties will negotiate in good faith to modify any invalidated provisions to preserve each party's anticipated benefits.

29. Applicable Law and Interpretation and Venue. This Agreement shall be interpreted in accordance with the laws of the State of California. The language of all parts of this Agreement shall, in all cases, be construed as a whole, according to its fair meaning, and not strictly for or against either party. Any controversy or claim arising out of, or relating to, this Agreement which cannot be amicably settled without court action shall be litigated either in the appropriate State court for Madera County, California, or as appropriate in the U. S. District Court for the Eastern District of California, located in Fresno County. The rights and obligations of the parties and all interpretations and performance of this Agreement shall be governed in all respects by the laws of the State of California.

30. Attorney's Fees. If either party is required to commence any proceeding or legal action to enforce or interpret any term, covenant, or condition of this Agreement, the prevailing party in such proceeding or action shall be entitled to recover from the other party its reasonable attorneys' fees and legal expenses.

31. Amendments and Waiver. This Agreement shall not be modified or amended in any way, and no provision shall be waived, except in writing signed by the parties hereto. No waiver of any provision of this Agreement shall be deemed, or shall constitute, a waiver of any other provision, whether or not similar, nor shall any such waiver constitute a continuing or subsequent waiver of the same provision. Failure of either party to enforce any provision of this Agreement shall not constitute a waiver of the right to compel enforcement of the remaining provisions of this Agreement.

32. Third Party Beneficiaries. Nothing in this Agreement shall be construed to confer any rights upon any party not a signatory to this Agreement.

33. Execution in Counterparts. This Agreement may be executed in counterparts such that the signatures may appear on separate signature pages. A copy or an original, with all signatures appended together, shall be deemed a fully executed Agreement.

34. Non-Discrimination. Consultant shall not discriminate on the basis of any protected class under federal or State law in the provision of the Services or with respect to any Consultant employees or applicants for employment. Consultant shall ensure that any subcontractors are bound to this provision. A protected class includes, but is not necessarily limited to, race, color, national origin, ancestry, religion, age, sex, sexual orientation, marital status, and disability.

[SIGNATURES ON FOLLOWING PAGE]

IN WITNESS WHEREOF, the City and Consultant have executed this Agreement on the date(s) set forth below.

CONSULTANT NAME

CITY OF MADERA

By: _____
(ADD NAME & POSITION)

By: _____
Santos Garcia, Mayor

Taxpayer ID #: _____

Date: _____

Date: _____

APPROVED AS TO FORM:

Hilda Cantú Montoy, City Attorney

ATTEST:

By: _____
Alicia Gonzales, City Clerk

EXHIBIT A – Scope of Services

EXHIBIT B – Fee Schedule

EXHIBIT C – Task Order Work Schedule Form

EXHIBIT A

SCOPE OF SERVICES

The professional services may include, but not be limited to, the following: land surveying, civil engineering plan checking services, roadway design, drainage and flood control design, water and sewer pipeline design, water well design, wastewater treatment plant design, traffic studies, traffic signal design, master planning services, utility locating and conflict analysis or other similar engineering services. These services may result in the preparation of engineering reports, public presentations or the preparation of plans, specifications, and estimates suitable for the public bidding process.

The following is a list of the types of consulting services being considered. Each consultant is not required to have expertise in all of the items listed:

- Storm drain infrastructure analysis and design, including hydrology and hydraulic analysis.
- Street geometrics, striping and signage analysis and design.
- Street design, including repair/replacement of curb, gutter, sidewalk, driveways, ramps, street trees, signs, pavement, etc.
- Grading design.
- Traffic signal design and Traffic studies.
- Water well design, water, and sewer pipeline design.
- Wastewater Treatment Plant design
- Preparation of engineering plans, specifications and estimates in City-approved format.
- Construction Support services include attending construction meetings, responding to requests for information, reviewing agreement submittals, and evaluating design changes during construction.

Additional requirements are as follows:

1. The Consultant's Project Manager shall be available for periodic meetings to discuss issues related to task orders.
2. The Consultant must be adequately insured for liability and property damage pursuant to the conditions of the Agreement.
3. All work shall be performed and delivered in English Standard Units or as required by the City.
4. All survey work shall be performed on CCS/NAD 83 horizontal coordinates and use true NAVD 88 vertical controls.
5. Plans and Maps shall be submitted in the AutoCAD format in use by the City at the time of issuance of the task order, point files shall be submitted in ASCII format, and any estimates, schedules, or reports shall be submitted in Microsoft Office format.
6. Consultant may be required to provide topographic surveys to support their work product as necessary.

EXHIBIT B

O'Dell Engineering FEE SCHEDULE

<u>Classification:</u>	<u>Regular Hourly Rate:</u>
Principal	\$244
Senior Civil Engineer	\$206
Senior Engineer 2	\$196
Senior Engineer 1	\$184
Engineer 2	\$182
Engineer 1	\$170
Assistant Engineer 2	\$143
Assistant Engineer 1	\$126
Senior Landscape Architect 2	\$176
Senior Landscape Architect 1	\$164
Landscape Architect 2	\$151
Landscape Architect 1	\$139
Landscape Designer 3	\$134
Landscape Designer 2	\$129
Landscape Designer 1	\$117
Planner	\$173
Assistant Planner	\$139
Dry Utility Project Manager 2	\$168
Dry Utility Project Manager 1	\$151
Utility Engineer	\$135
CADD Operator 2	\$112
CADD Operator 1	\$92
Senior Land Surveyor	\$201
Senior Surveyor 2	\$193
Senior Surveyor 1	\$171
Surveyor2	\$153
Surveyor 1	\$143
Assistant Surveyor 2	\$129
Assistant Surveyor 1	\$117
Survey Crew 2-man/1-man	\$318/\$182
Survey Crew 2-man/ I-man (Prevailing Wage)	\$393/\$216
Administrative	\$102

Outside Services & Reproduction:

Cost of services and expenses charged to O'Dell Engineering by outside consultants, commercial printers, and professional or technical firms engaged in connection with the project.

Travel:

Mileage, per diem, and subsistence are not normally charged to the client unless specific prior authorization is negotiated between client and consultant.

EXHIBIT C

TASK ORDER WORK SCHEDULE FORM

CITY OF MADERA
TASK ORDER FORM No. ____
TO ENGINEERING SERVICES AGREEMENT FOR

PROJECT No. _____

This TASK ORDER NO. _____ to Engineering Services Agreement dated _____, hereinafter called Agreement, between the City of Madera, (CITY), and _____(ENGINEER).

1. DESCRIPTION OF PROJECT

2. SCOPE OF SERVICES

The City agrees to utilize the services of ENGINEER and ENGINEER agrees to perform _____ listed engineering services as requested by CITY as per the Engineering Services Agreement. ENGINEER shall confirm the scope, schedule, and anticipated compensation for such services in writing prior to starting work (see attached proposed Scope of Services).

3. CITY'S RESPONSIBILITIES

CITY to provide ENGINEER with the following information:

1. CITY shall assign appropriate reviewers to the project and compile and provide a single consolidated, coordinated, legible copy of written review comments to ENGINEER for all draft documents and work products, as appropriate.
2. CITY shall provide timely review of submitted products as appropriate.

4. COMPENSATION

1. CITY shall pay ENGINEER according to the fee schedule set forth in Exhibit A to the Engineering Services Agreement dated _____.
2. Services provided under this Task Order shall not exceed (dollar value) _____ (\$_____).

5. MISCELLANEOUS

All terms and conditions of the Engineering Services Agreement apply to this Task Order as though fully set forth therein. In the event of a conflict between this Task Order and the Engineering Services Agreement, the terms of this Task Order shall apply.

The parties do mutually agree to all mutual covenants and agreements contained within this Task Order No. ____.

CITY OF MADERA

By: _____

Title: _____

Date: _____

(ENGINEER) _____

By: _____

Title: _____

Date: _____

STANDARD ADDENDUM FORM

TASK ORDER NO. ____ - ADDENDUM NO. ____

(PROJECT) _____

This Addendum to Task Order No. ____ to the Engineering Services Agreement dated _____, hereinafter called Agreement, between the City of Madera (CITY), and _____(ENGINEER).

____ Change in Schedule:

____ Change in Fee: An Increase/Decrease of \$_____ to Task Order No. ____ for a total contract amount of \$_____. These changes are in accordance with the (Project description) _____, scope of services dated _____.

____ Modifies the Agreement in the following manner:

ATTACHMENT 2G

On-Call Agreement with Quad Knopf (dba QK)

ON-CALL CONSULTANT SERVICES AGREEMENT BETWEEN THE CITY OF MADERA AND QUAD-KNOPF (QK)

This Consultant Services Agreement ("Agreement") is entered into between the CITY OF MADERA, a California general law city ("City") and Quad-Knopf, Inc. (QK) ("Consultant"). This Agreement shall be effective on the date signed by City which shall occur after execution by Consultant ("Effective Date").

RECITALS

- A. The City has determined that it requires on-call, as-needed professional engineering services in order to maintain a high level of service to the community.
- B. City has sought, by a Request for Qualifications, to select consultants to provide On-Call Engineering and Land Surveying Consulting Services.
- C. Consultant submitted a Statement of Qualifications for performing the requested Services and is engaged in the business of furnishing such services as a consultant and hereby warrants and represents that it is qualified, licensed, and professionally capable of performing the Services called for in the Request for Qualifications and this Agreement.
- D. City has selected Consultant to perform the requested Services on the basis of Consultant's demonstrated competence and professional qualifications.
- E. City desires to retain Consultant, and Consultant desires to provide City with the Services, on the terms and conditions as set forth in this Agreement.

NOW, THEREFORE, in consideration of the promises and mutual agreements herein, City and Consultant agree as follows:

AGREEMENT

1. Scope of Services. Consultant shall perform, to the satisfaction of City in accordance with this Agreement, the Services described in the "Scope of Services" attached hereto as **EXHIBIT A** and incorporated by herein by this reference. Consultant shall at all times faithfully, competently and to the best of its ability, experience, and talent, perform all services described herein.

At such time as services are needed by City from Consultant, City will discuss with Consultant the general parameters of the applicable scope of services. In response, Consultant shall deliver to City, a "Preliminary Task Order," which shall include a scope of work and cost

proposal for the services needed by City. Consultant's proposal shall include a breakdown of estimated hours and a work order schedule. No work shall be performed by Consultant until the Preliminary Task Order is accepted in writing by City as evidenced by City's issuance to Consultant of a final "Task Order," Consultant shall commence performance and complete all required services no later than the dates set forth and in accordance with the approved, final Task Order.

Consultant accepts full responsibility for the scope of services provided by sub-consultants necessary for delivery and completion of work under a Task Order. Consultant shall comply with applicable City of Madera design standards and requirements as directed by the City and applicable State and Federal requirements.

2. Term of Agreement; Commencement of Services. The term of this Agreement shall be three (3) years commencing on _____, 2022, and shall terminate on _____, 2025, unless terminated earlier as set forth herein. This Agreement may be mutually extended after the initial three (3) year term for up to two (2) additional one (1) year terms upon approval of an extended agreement by the City Council.

Consultant shall commence the Services for each final Task Order upon City's issuance of a written "Notice to Proceed" and shall continue with the Services until Consultant, as determined by City, has satisfactorily performed, and completed the Services for said Task Order, or until such time as the Agreement is terminated by either party in accordance with this Agreement, whichever is earlier.

3. Continuity of Personnel. Consultant shall make every reasonable effort to maintain the stability and continuity of Consultant's staff and subcontractors assigned to perform the Services under this Agreement. Consultant shall notify City of any changes in Consultant's staff and subcontractors assigned to perform the Services under this Agreement.

4. Compensation for Services. City shall compensate Consultant for rendering the Services as follows:

(a) Subject to any limitations set forth in this Agreement, City agrees to pay Consultant by the amounts specified in the Schedule of Compensation attached hereto as **EXHIBIT B** and incorporated herein by this reference. Both parties agree that Consultant's total compensation under this Agreement shall not exceed \$300,000 for Year 1, \$300,000 for Year 2, and \$300,000 for Year 3 of the Agreement and shall not exceed a total contract amount of \$900,000. At the end of the three (3) year term, City may extend the term of this Agreement for up to two (2) additional one (1) year periods with a not-to-exceed compensation amount of \$300,000 per year by providing advance written notice to CONSULTANT and written confirmation by CONSULTANT thereof.

(b) City reserves the right to not request any services of Consultant during the entire duration of this Agreement. Consultant shall only be paid for services performed under this Agreement to the extent authorized by final Task Order approved by the City

Engineer. The City does not guarantee any specific amount of work, if any, or billable hours that will be preauthorized. No overhead or other expenses can be recovered for interim periods when Consultant's services are not utilized by City.

(c) City and Consultant agree on the rates shown in EXHIBIT B, "Hourly Rate Schedule", and agree that they will remain in effect for the first two years of Agreement. Thereafter, Consultant may submit a new Hourly Rate Schedule as an amendment to this agreement no more than one time per year. It is understood and agreed by both parties that all expenses incidental to Consultant's performance of services, including travel expenses, are included in the basic fee shown in **EXHIBIT B**.

(d) Each month Consultant shall invoice City for all work performed and expenses incurred during the preceding month. Consultant's invoice shall specify the billed hours and hourly rates for each employee classification. The sub-consultants work shall be included on Consultant's invoice with a copy of the sub-consultant's invoice attached. A report on summary of costs to date for each component of the work shall accompany the invoice. This summary shall also estimate the percentage of the work completed for each component and the balance remaining in each component.

(e) City shall independently review each invoice submitted by the Consultant to determine whether the work performed, and expenses incurred are in compliance with the provisions of this Agreement. The invoiced amount shall be paid within 30 calendar days unless City disputes any charges or expenses. If any charges or expenses are disputed, City shall pay the undisputed amount, and notify Consultant of the nature and amount of the disputed charge or expense. The parties shall seek to resolve the disputed items(s) by mutual agreement.

(f) Payment to Consultant for work performed under this Agreement shall not be deemed to waive any defects in work performed by Consultant.

(g) Extra Services. City agrees to pay Consultant for extra services not contemplated hereunder as set forth in the Scope of Work or for such services as may be specifically requested by City through City Engineer in writing and agreed to by Consultant for an agreed-to fixed fee or hourly rate of compensation or for necessary expenses over that listed in the Budget, provided, however, that the City Engineer's authority is limited to expenditures not to exceed the amount of \$2,000 (Two Thousand dollars and zero cents).

5. Time of Completion.

(a) Based on an agreed upon Notice to Proceed date for each Task Order, Consultant shall complete the work as shown in the standard Task Order Form set forth as **EXHIBIT C**.

(b) Consultant shall not be held responsible for delays caused by City review or by reasons beyond Consultant's control. Also, Consultant shall not stop its work, including work unrelated to any extra services request, unless it can be shown that the project work cannot proceed while a claim or request for extra services is being evaluated.

(c) Time is of the essence in the completion of the services covered by this Agreement. Failure of Consultant to comply with the above time schedule by more than fourteen (14) calendar days, unless the delay is not attributable to Consultant or is attributable to City, is sufficient cause to terminate this Agreement, at the option of City, in accordance with Section 18.

6. Independent Contractor Status. Consultant and its subcontractors shall perform the Services as independent contractors and not as officers, employees, agents, or volunteers of City. Nothing contained in this Agreement shall be deemed to create any contractual relationship between City and Consultant's employees or subcontractors, nor shall anything contained in this Agreement be deemed to give any third party, including but not limited to Consultant's employees or subcontractors, any claim or right of action against City. Neither the City nor any of its employees shall have any control over the manner, mode, or means by which Consultant or its agents or employees perform the services under this Agreement.

7. Qualifications, and Professional Standards. Consultant represents and warrants that it has the qualifications, experience, and facilities necessary to properly perform the services required under this Agreement in a thorough, competent, and professional manner. In meeting its obligations under this Agreement, Consultant shall employ, at a minimum, generally accepted standards and practices utilized by persons engaged in providing services similar to those required of Consultant under this Agreement. Consultant represents that to the extent Consultant utilizes subcontractors, such subcontractors are, and will be, qualified in their fields. Consultant also expressly represents that both Consultant and its subcontractors, if any, are now, and will be throughout their performance of the Services under this Agreement, properly licensed or otherwise qualified and authorized to perform the Services required and contemplated by this Agreement. Consultant and its subcontractors, if any, shall utilize the standard of care and skill customarily exercised by members of their profession, shall use reasonable diligence and best judgment while performing the Services, and shall comply with and keep themselves informed of all applicable laws and regulations.

8. Identity of Subcontractors and Sub-Consultants. Consultant shall before commencing any work under this Agreement provide to City in writing: (a) the identity of all subcontractors and sub-consultants (collectively referred to as "subcontractors"), if any, which Consultant intends to utilize in Consultant's performance of this Agreement; and (b) a detailed description of the full scope of work to be provided by such subcontractors. Consultant shall only employ subcontractors pre-approved by City and in no event shall Consultant replace an approved subcontractor without the advance written permission of City, with the understanding that City's permission will not be unreasonably withheld. Notwithstanding any other provisions in this Agreement, Consultant shall be liable to City for the performance of Consultant's

subcontractors.

9. Subcontractor Provisions. Consultant shall include in its written agreements with its subcontractors, if any, provisions which: (a) impose upon the subcontractors the obligation to provide to City the same insurance and indemnity obligations that Consultant owes to City; (b) make clear that City intends to rely upon the reports, opinions, conclusions, and other work product prepared and performed by subcontractors for Consultant; and (c) compliance with all laws and certifications as required under this Agreement.

10. Power to Act on Behalf of City. Consultant shall not have any right, power, or authority to create any obligation, express or implied, or make representations on behalf of City except as may be expressly authorized in advance in writing from time to time by City and then only to the extent of such authorization.

11. Record Keeping; Reports. Consultant shall keep complete records showing the type of Services performed. Consultant shall be responsible and shall require its subcontractors to keep similar records. City shall be given reasonable access to the records of Consultant and its subcontractors for inspection and audit purposes. Consultant shall provide City with a working draft of all reports and a copy of all final reports prepared by Consultant under this Agreement.

12. Ownership and Inspection of Documents. All data, tests, reports, documents, conclusions, opinions, recommendations, and other work product generated by or produced for Consultant or its subcontractors in connection with the Services, regardless of the medium, including physical drawings and materials recorded on computer discs ("Work Product"), shall be and remain the property of City. City shall have the right to use, copy, modify, and reuse the Work Product as it sees fit. Any reuse or modification of Work Product shall be at the City's own risk product and without liability or legal exposure to Consultant. City shall defend, indemnify and hold harmless Consultant against all claims, damages, losses, and expense (including reasonable attorney's fees) arising out of or resulting from such reuse or modification. Upon City's request, Consultant shall make available for inspection and copying all such Work Product and all Work Product shall be turned over to City promptly at City's request or upon termination of this Agreement, whichever occurs first. Consultant shall not release any Work Product to third parties without prior written approval of the City Manager. This obligation shall survive termination of this Agreement and shall survive for four (4) years from the date of expiration or termination of this Agreement.

13. Confidentiality. All data, reports, conclusions, opinions, recommendations, and other work product prepared and performed by and on behalf of Consultant in connection with the Services performed pursuant to this Agreement shall be kept confidential and shall be disclosed only to City, unless otherwise provided by law or expressly authorized by City. Consultant shall not disclose or permit the disclosure of any confidential information acquired during performance of the Services, except to its agents, employees, affiliates, and subcontractors who need such confidential information in order to properly perform their duties relative to this Agreement. Consultant shall also require its subcontractors to be bound to these

confidentiality provisions.

14. City Name and Logo. Consultant shall not use City's name or insignia, photographs relating to the City projects for which Consultant's services are rendered, or any publicity pertaining to the Consultant's services under this Agreement in any magazine, trade paper, newspaper, television or radio production or other similar medium without the prior written consent of City.

15. Conflicts of Interest. Consultant warrants that neither Consultant nor any of its employees have an interest, present or contemplated, which would conflict in any manner with the interests of the City, or which would in any way hinder Consultant's performance of services under this Agreement. Consultant covenants that no person having any such interest, whether an employee or subcontractor shall perform the Services under this Agreement. During the performance of the Services, Consultant shall not employ or retain the services of any person who is employed by the City or a member of any City Board or Commission. City understands and acknowledges that Consultant is, as of the date of execution of this Agreement, independently involved in the performance of non-related services for other governmental agencies and private parties. Consultant is unaware of any stated position of City relative to such projects. Any future position of City on such projects shall not be considered a conflict of interest for purposes of this section. City understands and acknowledges that Consultant will, perform non-related services for other governmental agencies and private parties following the completion of the Services under this Agreement, and any such future service shall not be considered a conflict of interest for purposes of this section.

16. Non-liability of Officers and Employees. No officer or employee of City shall be personally liable to Consultant, or any successors in interest, in the event of a default or breach by City for any amount which may become due Consultant or its successor, or for any breach of any obligation under the terms of this Agreement.

17. City Right to Employ Other Consultants. This Agreement is non-exclusive with Consultant. City reserves the right to employ other consultants in connection with the Services.

18. Termination of Agreement. This Agreement shall terminate upon completion of the Services, or earlier pursuant to the following.

(a) For Convenience of City. This Agreement may be terminated by City at its discretion upon thirty (30) days prior written notice to Consultant.

(b) For Breach of Either Party. If for any cause either party fails to fulfill in a timely and proper manner its obligations under this Agreement (the "breaching party"), the other party (the "terminating party") shall have the right to terminate the Agreement by giving not less than five (5) working days' written notice to the breaching party of the intent to terminate and specifying the effective date thereof. The terminating party shall, however, provide the breaching party with a detailed statement of the grounds for

termination. This statement shall include, as appropriate, references to specific provisions of this Agreement, dates, dollar amounts and other information relevant to the decision to terminate for cause.

(c) Compensation to Consultant Upon Termination. In the event termination is not due to fault attributable to Consultant and provided all other conditions for payment have been met, Consultant shall be paid compensation for services performed prior to notice of termination. As to any phase partially performed but for which the applicable portion of Consultant's compensation has not become due, Consultant shall be paid the reasonable value of its services provided. However, in no event shall such payment when added to any other payment due under the applicable part of the work exceed the total compensation of such part as specified in Section 3 herein. In the event of termination due to Consultant's failure to perform in accordance with the terms of this Agreement through no fault of City, City may withhold an amount that would otherwise be payable as an offset to City's damages caused by such failure.

(d) Effect of Termination. Upon receipt of a termination notice (or completion of this Agreement), Consultant shall: (i) promptly discontinue all Services affected (unless the notice directs otherwise); and (ii) deliver or otherwise make available to the City, without additional compensation, all data, documents, procedures, reports, estimates, summaries, and such other information and materials as may have been accumulated by the Consultant in performing this Agreement, whether completed or in process. Following the termination of this Agreement for any reason whatsoever, City shall have the right to utilize such information and other documents, or any other works of authorship fixed in any tangible medium of expression, including but not limited to physical drawings, data magnetically or otherwise recorded on computer disks, or other writings prepared or caused to be prepared under this Agreement by Consultant. Consultant may not refuse to provide such writings or materials for any reason whatsoever.

19. Insurance. All insurance policies shall be subject to City approval as to form and content. Consultant shall provide City with copies of required certificates of insurance upon request. 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.

- \$2,000,000 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 proposal.

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. City reserves the right to require complete, certified copies of all required insurance policies, at any time.

Acceptable Insurers

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

Waiver of Subrogation

General liability, auto liability, and workers compensation 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 City 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 City 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.

20. Indemnification.

Indemnity for Professional Liability:

When the law establishes a professional standard of care for Consultant's Services, to the fullest extent permitted by law, including CA Civil Code Section 2782.8, Consultant shall indemnify, protect, defend, and hold harmless City and any and all of its officials, employees and agents from and against any and all losses, liabilities, damages, costs, and expenses, including legal counsel's fees and costs but only to the extent the Consultant (and its Subconsultants), are responsible for such damages, liabilities and costs on a comparative basis of fault between the Consultant (and its Subconsultants) and the City in the performance of professional services under this agreement.

Indemnity for Other Than Professional Liability:

Other than in the performance of professional services and to the full extent permitted by law, Consultant shall indemnify, defend, and hold harmless City, and any and all of its employees, officials and agents from and against any liability (including liability for claims, suits, actions, arbitration proceedings, administrative proceedings, regulatory proceedings, losses, expenses or costs of any kind, whether actual, alleged or threatened, including legal counsel's fees and costs, court costs, defense costs, and expert witness fees), where the same arise out of, are a consequence of, or are in any way attributable to, in whole or in part, the performance of this Agreement by Consultant or by any individual or City for which Consultant is legally liable, including, but not limited to officers, agents, employees, or subcontractors of Consultant, except when caused by the active negligence or willful misconduct of the City.

21. Responsibility For Others. Consultant shall be responsible to City for its services and the services of its sub consultants. Consultant shall not be responsible for the acts or

omissions of other parties engaged by City nor for their construction means, methods, techniques, sequences, or procedures, or their health and safety precautions and programs.

22. Professional Responsibility. Consultant shall be obligated to comply with applicable standards of professional care in the performance of the Services by exercising the skill and ability ordinarily required of engineers performing the same or similar services, under the same or similar circumstances, in the State of California. Consultant recognizes that opinions relating to environmental, geologic, and geotechnical conditions are based on limited data and that actual conditions may vary from those encountered at the times and locations where the data are obtained, despite the use of due professional care.

In providing opinions of cost, financial analyses, economic feasibility projections, and schedules for potential projects, Consultant has no control over cost or price of labor and material; unknown or latent conditions of existing equipment or structures that may affect operation and maintenance costs; competitive bidding procedures and market conditions; time or quality of performance of third parties; quality, type, management, or direction of operating personnel; and other economic and operational factors that may materially affect the ultimate project cost or schedule. Therefore, Consultant makes no warranty that the City's actual project costs, financial aspects, economic feasibility, or schedules will not vary from Consultant's opinions, analyses, projections, or estimates

23. Compliance with All Laws. Consultant shall be familiar with and shall comply with all City, State, and Federal laws and regulations applicable to the work to be performed under this Agreement. In providing the services required under this Agreement, Consultant shall at all times comply with all applicable laws, regulations, and resolutions of the United States, the State of California, and the City of Madera now in force and as they may be enacted, issued, or amended during the term of this Agreement.

23.A. Federal funded Task Orders: Where the Task Orders services provided pursuant to the Agreement are funded by a federal program, including but not limited to, Community Block Grant Funds, Consultant certifies and agrees that Consultant will be in:

- *Compliance with Executive Order 11246 of September 24, 1965, entitled "Equal Employment Opportunity" as amended by Executive Order 11375 of October 13, 1967 and as supplemented in Department of Labor regulations (41 CFR chapter 60). (All construction contracts awarded in excess of \$10,000 by grantees and their contractors or sub grantees.)*
- *Compliance with the Copeland "Anti-Kickback" Act (18 U.S.C. 874) as supplemented in Department of Labor regulations (29 CFR part 3). (All contracts and sub grants or construction or repair).*
- *Compliance with the Davis-Bacon Act (40 U.S.C. 276a to 276a-7) as supplemented by Department of Labor regulations (29 CFR part 5). (Construction contracts in excess of*

\$2000 awarded by grantees and sub grantees required by Federal grant program legislation.)

- *Compliance with Sections 103 and 107 of the Contract Work Hours and Safety Standards Act (40 U.S.C. 327-330) as supplemented by Department of Labor regulations (29 CFR part 5). (Construction contracts in excess of \$2000 and in excess of \$2500 for other contracts which involve the employment of mechanics or laborers.)*
- *(e) Compliance with the provisions of any notice of awarding agency requirements and regulations pertaining to reporting.*
- *Compliance with the provisions of any notice of awarding agency requirements and regulations pertaining to patent rights with respect to any discovery or invention which arises or is developed in the course of or under such contract.*
- *Compliance with any awarding agency requirements and regulations pertaining to copyrights and rights in data.*
- *Compliance with access requirements imposed by the grantee, the sub grantee, the Federal grantor agency, the Comptroller General of the United States, or any of their duly authorized representatives to any books, documents, papers, and records of the contractor which are directly pertinent to that specific contract for the purpose of making audit, examination, excerpts, and transcriptions.*
- *Compliance with applicable requirements for the retention of all required records for three years after grantees or sub grantees make final payments and all other pending matters are closed.*
- *Compliance with all applicable standards, orders, or requirements issued under section 306 of the Clean Air Act (42 U.S.C. 1857(h)), section 508 of the Clean Water Act (33 U.S.C. 1368), Executive Order 11738, and Environmental Protection Agency regulations \$100,000.)*
- *Compliance with mandatory standards and policies relating to energy efficiency which are contained in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act (Pub. L 97-163, 89 Stat. 871.) [53 FR 8068.8067. Mar. 11, 1988, as amended at 60 FR 19639, 19642, Apr. 19, 1995]]*

24. Assignment. Neither this Agreement nor any duties or obligations hereunder shall be assignable by Consultant without the prior written consent of City. In the event of an assignment to which City has consented, the assignee shall agree in writing to personally assume and perform the covenants, obligations, and agreements herein contained. In addition, Consultant shall not assign the payment of any monies due Consultant from City under the terms

of this Agreement to any other individual, corporation or entity. City retains the right to pay any and all monies due Consultant directly to Consultant.

25. Form and Service of Notices. All notices required or permitted to be given under this Agreement shall be in writing and shall be personally delivered, or sent by certified mail, postage prepaid and return receipt requested, addressed as follows:

To City: CITY ENGINEER
City of Madera
428 E. Yosemite Avenue
Madera, CA 93638

To Consultant: Quad-Knopf (QK)
2815 Park Avenue
Merced, CA 95348

Notice shall be deemed effective on the date personally delivered or transmitted by facsimile, or if mailed, three (3) days after deposit of the same in the custody of the United States Postal Service.

26. Entire Agreement. This Agreement, including the attachments and exhibits, represents the entire Agreement between City and Consultant, and supersedes all prior negotiations, representations, or agreements, either written or oral with respect to the subject matter herein. This Agreement may be amended only by written instrument signed by both City and Consultant.

27. Authority. The signatories to this Agreement warrant and represent that they have the legal right, power, and authority to execute this Agreement and bind their respective entities.

28. Severability. In the event any term or provision of this Agreement is declared to be invalid or illegal for any reason, this Agreement will remain in full force and effect and will be interpreted as though such invalid or illegal provision were not a part of this Agreement. The remaining provisions will be construed to preserve the intent and purpose of this Agreement and the parties will negotiate in good faith to modify any invalidated provisions to preserve each party's anticipated benefits.

29. Applicable Law and Interpretation and Venue. This Agreement shall be interpreted in accordance with the laws of the State of California. The language of all parts of this Agreement shall, in all cases, be construed as a whole, according to its fair meaning, and not strictly for or against either party. Any controversy or claim arising out of, or relating to, this Agreement which cannot be amicably settled without court action shall be litigated either in the appropriate State court for Madera County, California, or as appropriate in the U. S. District Court

for the Eastern District of California, located in Fresno County. The rights and obligations of the parties and all interpretations and performance of this Agreement shall be governed in all respects by the laws of the State of California.

30. Attorney's Fees. If either party is required to commence any proceeding or legal action to enforce or interpret any term, covenant, or condition of this Agreement, the prevailing party in such proceeding or action shall be entitled to recover from the other party its reasonable attorneys' fees and legal expenses.

31. Amendments and Waiver. This Agreement shall not be modified or amended in any way, and no provision shall be waived, except in writing signed by the parties hereto. No waiver of any provision of this Agreement shall be deemed, or shall constitute, a waiver of any other provision, whether or not similar, nor shall any such waiver constitute a continuing or subsequent waiver of the same provision. Failure of either party to enforce any provision of this Agreement shall not constitute a waiver of the right to compel enforcement of the remaining provisions of this Agreement.

32. Third Party Beneficiaries. Nothing in this Agreement shall be construed to confer any rights upon any party not a signatory to this Agreement.

33. Execution in Counterparts. This Agreement may be executed in counterparts such that the signatures may appear on separate signature pages. A copy or an original, with all signatures appended together, shall be deemed a fully executed Agreement.

34. Non-Discrimination. Consultant shall not discriminate on the basis of any protected class under federal or State law in the provision of the Services or with respect to any Consultant employees or applicants for employment. Consultant shall ensure that any subcontractors are bound to this provision. A protected class includes, but is not necessarily limited to, race, color, national origin, ancestry, religion, age, sex, sexual orientation, marital status, and disability.

[SIGNATURES ON FOLLOWING PAGE]

IN WITNESS WHEREOF, the City and Consultant have executed this Agreement on the date(s) set forth below.

QUAD KNOFF, INC. (QK)

CITY OF MADERA

By: Amber Aguayo
Amber Aguayo, CFO/COO

By: _____
Santos Garcia, Mayor

Taxpayer ID #: 94-2228472

Date: 9/08/2022

Date: _____

APPROVED AS TO FORM:

Hilda Cantú Montoy, City Attorney

ATTEST:

By: _____
Alicia Gonzales, City Clerk

EXHIBIT A – Scope of Services

EXHIBIT B – Fee Schedule

EXHIBIT C – Task Order Work Schedule Form

EXHIBIT A

SCOPE OF SERVICES

The professional services may include, but not be limited to, the following: land surveying, civil engineering plan checking services, roadway design, drainage and flood control design, water and sewer pipeline design, water well design, wastewater treatment plant design, traffic studies, traffic signal design, master planning services, utility locating and conflict analysis or other similar engineering services. These services may result in the preparation of engineering reports, public presentations or the preparation of plans, specifications, and estimates suitable for the public bidding process.

The following is a list of the types of consulting services being considered. Each consultant is not required to have expertise in all of the items listed:

- Storm drain infrastructure analysis and design, including hydrology and hydraulic analysis.
- Street geometrics, striping and signage analysis and design.
- Street design, including repair/replacement of curb, gutter, sidewalk, driveways, ramps, street trees, signs, pavement, etc.
- Grading design.
- Traffic signal design and Traffic studies.
- Water well design, water, and sewer pipeline design.
- Wastewater Treatment Plant design
- Preparation of engineering plans, specifications and estimates in City-approved format.
- Construction Support services include attending construction meetings, responding to requests for information, reviewing agreement submittals, and evaluating design changes during construction.

Additional requirements are as follows:

1. The Consultant's Project Manager shall be available for periodic meetings to discuss issues related to task orders.
2. The Consultant must be adequately insured for liability and property damage pursuant to the conditions of the Agreement.
3. All work shall be performed and delivered in English Standard Units or as required by the City.
4. All survey work shall be performed on CCS/NAD 83 horizontal coordinates and use true NAVD 88 vertical controls.
5. Plans and Maps shall be submitted in the AutoCAD format in use by the City at the time of issuance of the task order, point files shall be submitted in ASCII format, and any estimates, schedules, or reports shall be submitted in Microsoft Office format.
6. Consultant may be required to provide topographic surveys to support their work product as necessary.

EXHIBIT B

FEE SCHEDULE



2022 CHARGE RATE SCHEDULE

	Current
TECHNICAL SERVICES	
Project Assistant	\$69 / hour
Project Administrator	\$92 / hour
Assistant CADD Technician / Assistant CADD Designer / GIS Technician	\$87 / hour
Associate CADD Technician / Associate CADD Designer / Associate GIS Analyst	\$102 / hour
Senior Associate CADD Technician/ Senior Associate CADD Designer / Senior Associate GIS Analyst	\$118 / hour
Senior CADD Technician / Senior CADD Designer / Senior GIS Analyst	\$133 / hour
Landscape Architect Technician	\$102 / hour
PROFESSIONAL SERVICES	
Engineering	
Assistant Engineer	\$115 / hour
Associate Engineer	\$140 / hour
Senior Associate Engineer	\$160 / hour
Project Engineer	\$180 / hour
Senior Engineer / City Engineer / District Engineer	\$210 / hour
Principal Engineer	\$250 / hour
Planning / Environmental / Landscape Architecture	
Assistant Environmental Scientist	\$85 / hour
Assistant Planner	\$95 / hour
Associate Planner / Associate Environmental Scientist	\$110 / hour
Senior Associate Environmental Scientist	\$135 / hour
Senior Associate Planner	\$135 / hour
Senior Environmental Scientist	\$160 / hour
Senior Planner / Senior Landscape Architect	\$160 / hour
Principal Planner / Principal Environmental Scientist	\$175 / hour
Senior Principal Planner / Senior Principal Environmental Scientist	\$195 / hour
Construction and Project Management	
Field Construction Observer	\$118 / hour
Senior Field Construction Observer	\$138 / hour
Assistant Construction Manager / Assistant Project Manager	\$110 / hour
Associate Construction Manager / Associate Project Manager	\$129 / hour
Project Manager	\$133 / hour
Senior Associate Construction Manager / Senior Associate Project Manager	\$148 / hour
Senior Construction Manager / Senior Project Manager	\$170 / hour
Principal Construction Manager / Principal Project Manager	\$185 / hour
Surveying	
Assistant Surveyor	\$110 / hour
Associate Surveyor	\$125 / hour
Senior Associate Surveyor	\$150 / hour
Project Surveyor	\$165 / hour
Senior Surveyor	\$180 / hour
One-Person Survey Crew	\$140 / hour
Two-Person Survey Crew	\$225 / hour
Three-Person Survey Crew	\$275 / hour
UAV Pilot	\$165 / hour
UAV Flight Observer	\$125 / hour

Fees are based on the median hourly pay rate for employees in each classification, plus indirect costs, overhead, and profit.

EXPENSES	
Plotting, Printing and Reproduction, Equipment Rental, Postage and Shipping	1.15 x Cost
Transportation and per diem (QK will provide documented evidence of business travel, travel outside of work areas shall be pre-approved by Client)	1.15 x Cost
Mileage	\$0.67 / mile
Other Expenses – Including Subconsultants & Purchased Services through Subcontracts	1.15 x Cost

Rates are effective through December 31, 2022. If contract assignment extends beyond that date, a new rate schedule may be added to the contract. Expert Witness/ Litigation support will be billed as quoted.

Rates based on "Prevailing Wage" (PW) for Construction Surveying will be determined by project and County per California law.

12/28/2021

EXHIBIT C

TASK ORDER WORK SCHEDULE FORM

CITY OF MADERA
TASK ORDER FORM No. ____
TO ENGINEERING SERVICES AGREEMENT FOR

PROJECT No. _____

This TASK ORDER NO. _____ to Engineering Services Agreement dated _____, hereinafter called Agreement, between the City of Madera, (CITY), and _____(ENGINEER).

1. DESCRIPTION OF PROJECT

2. SCOPE OF SERVICES

The City agrees to utilize the services of ENGINEER and ENGINEER agrees to perform _____ listed engineering services as requested by CITY as per the Engineering Services Agreement. ENGINEER shall confirm the scope, schedule, and anticipated compensation for such services in writing prior to starting work (see attached proposed Scope of Services).

3. CITY'S RESPONSIBILITIES

CITY to provide ENGINEER with the following information:

1. CITY shall assign appropriate reviewers to the project and compile and provide a single consolidated, coordinated, legible copy of written review comments to ENGINEER for all draft documents and work products, as appropriate.
2. CITY shall provide timely review of submitted products as appropriate.

4. COMPENSATION

1. CITY shall pay ENGINEER according to the fee schedule set forth in Exhibit A to the Engineering Services Agreement dated _____.
2. Services provided under this Task Order shall not exceed (dollar value) _____ (\$_____).

5. MISCELLANEOUS

All terms and conditions of the Engineering Services Agreement apply to this Task Order as though fully set forth therein. In the event of a conflict between this Task Order and the Engineering Services Agreement, the terms of this Task Order shall apply.

The parties do mutually agree to all mutual covenants and agreements contained within this Task Order No. ____.

CITY OF MADERA

By: _____

Title: _____

Date: _____

(ENGINEER) _____

By: _____

Title: _____

Date: _____

STANDARD ADDENDUM FORM

TASK ORDER NO. ____ - ADDENDUM NO. ____

(PROJECT) _____

This Addendum to Task Order No. ____ to the Engineering Services Agreement dated _____, hereinafter called Agreement, between the City of Madera (CITY), and _____(ENGINEER).

____ Change in Schedule:

____ Change in Fee: An Increase/Decrease of \$_____ to Task Order No. ____ for a total contract amount of \$_____. These changes are in accordance with the (Project description) _____, scope of services dated _____.

____ Modifies the Agreement in the following manner:

CITY OF MADERA

By: _____

Title: _____

Date: _____

ENGINEER _____

By: _____

Title: _____

Date: _____

ATTACHMENT 2H

On-Call Agreement with AM Consulting Engineers

ON-CALL CONSULTANT SERVICES AGREEMENT BETWEEN THE CITY OF MADERA AND AM CONSULTING ENGINEERS

This Consultant Services Agreement ("Agreement") is entered into between the CITY OF MADERA, a California general law city ("City") and AM Consulting Engineers ("Consultant"). This Agreement shall be effective on the date signed by City which shall occur after execution by Consultant ("Effective Date").

RECITALS

- A. The City has determined that it requires on-call, as-needed professional engineering services in order to maintain a high level of service to the community.
- B. City has sought, by a Request for Qualifications, to select consultants to provide On-Call Engineering and Land Surveying Consulting Services.
- C. Consultant submitted a Statement of Qualifications for performing the requested Services and is engaged in the business of furnishing such services as a consultant and hereby warrants and represents that it is qualified, licensed, and professionally capable of performing the Services called for in the Request for Qualifications and this Agreement.
- D. City has selected Consultant to perform the requested Services on the basis of Consultant's demonstrated competence and professional qualifications.
- E. City desires to retain Consultant, and Consultant desires to provide City with the Services, on the terms and conditions as set forth in this Agreement.

NOW, THEREFORE, in consideration of the promises and mutual agreements herein, City and Consultant agree as follows:

AGREEMENT

1. Scope of Services. Consultant shall perform, to the satisfaction of City in accordance with this Agreement, the Services described in the "Scope of Services" attached hereto as **EXHIBIT A** and incorporated by herein by this reference. Consultant shall at all times faithfully, competently and to the best of its ability, experience, and talent, perform all services described herein.

At such time as services are needed by City from Consultant, City will discuss with Consultant the general parameters of the applicable scope of services. In response, Consultant shall deliver to City, a "Preliminary Task Order," which shall include a scope of work and cost proposal for the services needed by City. Consultant's proposal shall include a breakdown of

estimated hours and a work order schedule. No work shall be performed by Consultant until the Preliminary Task Order is accepted in writing by City as evidenced by City's issuance to Consultant of a final "Task Order," Consultant shall commence performance and complete all required services no later than the dates set forth and in accordance with the approved, final Task Order.

Consultant accepts full responsibility for the scope of services provided by sub-consultants necessary for delivery and completion of work under a Task Order. Consultant shall comply with applicable City of Madera design standards and requirements as directed by the City and applicable State and Federal requirements.

2. Term of Agreement; Commencement of Services. The term of this Agreement shall be three (3) years commencing on _____, 2022, and shall terminate on _____, 2025, unless terminated earlier as set forth herein. This Agreement may be mutually extended after the initial three (3) year term for up to two (2) additional one (1) year terms upon approval of an extended agreement by the City Council.

Consultant shall commence the Services for each final Task Order upon City's issuance of a written "Notice to Proceed" and shall continue with the Services until Consultant, as determined by City, has satisfactorily performed, and completed the Services for said Task Order, or until such time as the Agreement is terminated by either party in accordance with this Agreement, whichever is earlier.

3. Continuity of Personnel. Consultant shall make every reasonable effort to maintain the stability and continuity of Consultant's staff and subcontractors assigned to perform the Services under this Agreement. Consultant shall notify City of any changes in Consultant's staff and subcontractors assigned to perform the Services under this Agreement.

4. Compensation for Services. City shall compensate Consultant for rendering the Services as follows:

(a) Subject to any limitations set forth in this Agreement, City agrees to pay Consultant by the amounts specified in the Schedule of Compensation attached hereto as **EXHIBIT B** and incorporated herein by this reference. Both parties agree that Consultant's total compensation under this Agreement shall not exceed \$300,000 for Year 1, \$300,000 for Year 2, and \$300,000 for Year 3 of the Agreement and shall exceed a total contract amount of \$900,000. At the end of the three (3) year term, City may extend the term of this Agreement for up to two (2) additional one (1) year periods with a not-to-exceed compensation amount of \$300,000 per year by providing advance written notice to CONSULTANT and written confirmation by CONSULTANT thereof.

(b) City reserves the right to not request any services of Consultant during the entire duration of this Agreement. Consultant shall only be paid for services performed under this Agreement to the extent authorized by final Task Order approved by the City Engineer. The City does not guarantee any specific amount of work, if any, or billable

hours that will be preauthorized. No overhead or other expenses can be recovered for interim periods when Consultant's services are not utilized by City.

(c) City and Consultant agree on the rates shown in EXHIBIT B, "Hourly Rate Schedule", and agree that they will remain in effect for the first two years of Agreement. Thereafter, Consultant may submit a new Hourly Rate Schedule as an amendment to this agreement no more than one time per year. It is understood and agreed by both parties that all expenses incidental to Consultant's performance of services, including travel expenses, are included in the basic fee shown in **EXHIBIT B**.

(d) Each month Consultant shall invoice City for all work performed and expenses incurred during the preceding month. Consultant's invoice shall specify the billed hours and hourly rates for each employee classification. The sub-consultants work shall be included on Consultant's invoice with a copy of the sub-consultant's invoice attached. A report on summary of costs to date for each component of the work shall accompany the invoice. This summary shall also estimate the percentage of the work completed for each component and the balance remaining in each component.

(e) City shall independently review each invoice submitted by the Consultant to determine whether the work performed, and expenses incurred are in compliance with the provisions of this Agreement. The invoiced amount shall be paid within 30 calendar days unless City disputes any charges or expenses. If any charges or expenses are disputed, City shall pay the undisputed amount, and notify Consultant of the nature and amount of the disputed charge or expense. The parties shall seek to resolve the disputed items(s) by mutual agreement.

(f) Payment to Consultant for work performed under this Agreement shall not be deemed to waive any defects in work performed by Consultant.

(g) Extra Services. City agrees to pay Consultant for extra services not contemplated hereunder as set forth in the Scope of Work or for such services as may be specifically requested by City through City Engineer in writing and agreed to by Consultant for an agreed-to fixed fee or hourly rate of compensation or for necessary expenses over that listed in the Budget, provided, however, that the City Engineer's authority is limited to expenditures not to exceed the amount of \$2,000 (Two Thousand dollars and zero cents).

5. Time of Completion.

(a) Based on an agreed upon Notice to Proceed date for each Task Order, Consultant shall complete the work as shown in the standard Task Order Form set forth as **EXHIBIT C**.

(b) Consultant shall not be held responsible for delays caused by City review

or by reasons beyond Consultant's control. Also, Consultant shall not stop its work, including work unrelated to any extra services request, unless it can be shown that the project work cannot proceed while a claim or request for extra services is being evaluated.

(c) Time is of the essence in the completion of the services covered by this Agreement. Failure of Consultant to comply with the above time schedule by more than fourteen (14) calendar days, unless the delay is not attributable to Consultant or is attributable to City, is sufficient cause to terminate this Agreement, at the option of City, in accordance with Section 18.

6. Independent Contractor Status. Consultant and its subcontractors shall perform the Services as independent contractors and not as officers, employees, agents, or volunteers of City. Nothing contained in this Agreement shall be deemed to create any contractual relationship between City and Consultant's employees or subcontractors, nor shall anything contained in this Agreement be deemed to give any third party, including but not limited to Consultant's employees or subcontractors, any claim or right of action against City. Neither the City nor any of its employees shall have any control over the manner, mode, or means by which Consultant or its agents or employees perform the services under this Agreement.

7. Qualifications, and Professional Standards. Consultant represents and warrants that it has the qualifications, experience, and facilities necessary to properly perform the services required under this Agreement in a thorough, competent, and professional manner. In meeting its obligations under this Agreement, Consultant shall employ, at a minimum, generally accepted standards and practices utilized by persons engaged in providing services similar to those required of Consultant under this Agreement. Consultant represents that to the extent Consultant utilizes subcontractors, such subcontractors are, and will be, qualified in their fields. Consultant also expressly represents that both Consultant and its subcontractors, if any, are now, and will be throughout their performance of the Services under this Agreement, properly licensed or otherwise qualified and authorized to perform the Services required and contemplated by this Agreement. Consultant and its subcontractors, if any, shall utilize the standard of care and skill customarily exercised by members of their profession, shall use reasonable diligence and best judgment while performing the Services, and shall comply with and keep themselves informed of all applicable laws and regulations.

8. Identity of Subcontractors and Sub-Consultants. Consultant shall before commencing any work under this Agreement provide to City in writing: (a) the identity of all subcontractors and sub-consultants (collectively referred to as "subcontractors"), if any, which Consultant intends to utilize in Consultant's performance of this Agreement; and (b) a detailed description of the full scope of work to be provided by such subcontractors. Consultant shall only employ subcontractors pre-approved by City and in no event shall Consultant replace an approved subcontractor without the advance written permission of City, with the understanding that City's permission will not be unreasonably withheld. Notwithstanding any other provisions in this Agreement, Consultant shall be liable to City for the performance of Consultant's subcontractors.

9. Subcontractor Provisions. Consultant shall include in its written agreements with its subcontractors, if any, provisions which: (a) impose upon the subcontractors the obligation to provide to City the same insurance and indemnity obligations that Consultant owes to City; (b) make clear that City intends to rely upon the reports, opinions, conclusions, and other work product prepared and performed by subcontractors for Consultant; and (c) compliance with all laws and certifications as required under this Agreement.

10. Power to Act on Behalf of City. Consultant shall not have any right, power, or authority to create any obligation, express or implied, or make representations on behalf of City except as may be expressly authorized in advance in writing from time to time by City and then only to the extent of such authorization.

11. Record Keeping; Reports. Consultant shall keep complete records showing the type of Services performed. Consultant shall be responsible and shall require its subcontractors to keep similar records. City shall be given reasonable access to the records of Consultant and its subcontractors for inspection and audit purposes. Consultant shall provide City with a working draft of all reports and a copy of all final reports prepared by Consultant under this Agreement.

12. Ownership and Inspection of Documents. All data, tests, reports, documents, conclusions, opinions, recommendations, and other work product generated by or produced for Consultant or its subcontractors in connection with the Services, regardless of the medium, including physical drawings and materials recorded on computer discs ("Work Product"), shall be and remain the property of City. City shall have the right to use, copy, modify, and reuse the Work Product as it sees fit. Upon City's request, Consultant shall make available for inspection and copying all such Work Product and all Work Product shall be turned over to City promptly at City's request or upon termination of this Agreement, whichever occurs first. Consultant shall not release any Work Product to third parties without prior written approval of the City Manager. This obligation shall survive termination of this Agreement and shall survive for four (4) years from the date of expiration or termination of this Agreement.

13. Confidentiality. All data, reports, conclusions, opinions, recommendations, and other work product prepared and performed by and on behalf of Consultant in connection with the Services performed pursuant to this Agreement shall be kept confidential and shall be disclosed only to City, unless otherwise provided by law or expressly authorized by City. Consultant shall not disclose or permit the disclosure of any confidential information acquired during performance of the Services, except to its agents, employees, affiliates, and subcontractors who need such confidential information in order to properly perform their duties relative to this Agreement. Consultant shall also require its subcontractors to be bound to these confidentiality provisions.

14. City Name and Logo. Consultant shall not use City's name or insignia, photographs relating to the City projects for which Consultant's services are rendered, or any publicity pertaining to the Consultant's services under this Agreement in any magazine, trade paper,

newspaper, television or radio production or other similar medium without the prior written consent of City.

15. Conflicts of Interest. Consultant warrants that neither Consultant nor any of its employees have an interest, present or contemplated, which would conflict in any manner with the interests of the City, or which would in any way hinder Consultant's performance of services under this Agreement. Consultant covenants that no person having any such interest, whether an employee or subcontractor shall perform the Services under this Agreement. During the performance of the Services, Consultant shall not employ or retain the services of any person who is employed by the City or a member of any City Board or Commission. City understands and acknowledges that Consultant is, as of the date of execution of this Agreement, independently involved in the performance of non-related services for other governmental agencies and private parties. Consultant is unaware of any stated position of City relative to such projects. Any future position of City on such projects shall not be considered a conflict of interest for purposes of this section. City understands and acknowledges that Consultant will, perform non-related services for other governmental agencies and private parties following the completion of the Services under this Agreement, and any such future service shall not be considered a conflict of interest for purposes of this section.

16. Non-liability of Officers and Employees. No officer or employee of City shall be personally liable to Consultant, or any successors in interest, in the event of a default or breach by City for any amount which may become due Consultant or its successor, or for any breach of any obligation under the terms of this Agreement.

17. City Right to Employ Other Consultants. This Agreement is non-exclusive with Consultant. City reserves the right to employ other consultants in connection with the Services.

18. Termination of Agreement. This Agreement shall terminate upon completion of the Services, or earlier pursuant to the following.

(a) For Convenience of City. This Agreement may be terminated by City at its discretion upon thirty (30) days prior written notice to Consultant.

(b) For Breach of Either Party. If for any cause either party fails to fulfill in a timely and proper manner its obligations under this Agreement (the "breaching party"), the other party (the "terminating party") shall have the right to terminate the Agreement by giving not less than five (5) working days' written notice to the breaching party of the intent to terminate and specifying the effective date thereof. The terminating party shall, however, provide the breaching party with a detailed statement of the grounds for termination. This statement shall include, as appropriate, references to specific provisions of this Agreement, dates, dollar amounts and other information relevant to the decision to terminate for cause.

(c) Compensation to Consultant Upon Termination. In the event termination is not due to fault attributable to Consultant and provided all other conditions for payment have been met, Consultant shall be paid compensation for services performed prior to notice of termination. As to any phase partially performed but for which the applicable portion of Consultant's compensation has not become due, Consultant shall be paid the reasonable value of its services provided. However, in no event shall such payment when added to any other payment due under the applicable part of the work exceed the total compensation of such part as specified in Section 3 herein. In the event of termination due to Consultant's failure to perform in accordance with the terms of this Agreement through no fault of City, City may withhold an amount that would otherwise be payable as an offset to City's damages caused by such failure.

(d) Effect of Termination. Upon receipt of a termination notice (or completion of this Agreement), Consultant shall: (i) promptly discontinue all Services affected (unless the notice directs otherwise); and (ii) deliver or otherwise make available to the City, without additional compensation, all data, documents, procedures, reports, estimates, summaries, and such other information and materials as may have been accumulated by the Consultant in performing this Agreement, whether completed or in process. Following the termination of this Agreement for any reason whatsoever, City shall have the right to utilize such information and other documents, or any other works of authorship fixed in any tangible medium of expression, including but not limited to physical drawings, data magnetically or otherwise recorded on computer disks, or other writings prepared or caused to be prepared under this Agreement by Consultant. Consultant may not refuse to provide such writings or materials for any reason whatsoever.

19. Insurance. All insurance policies shall be subject to City approval as to form and content. Consultant shall provide City with copies of required certificates of insurance upon request. 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.

- \$2,000,000 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 proposal.

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. City reserves the right to require complete, certified copies of all required insurance policies, at any time.

Acceptable Insurers

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

Waiver of Subrogation

All insurance coverage maintained or procured pursuant to this agreement shall be endorsed to waive subrogation against the City, its elected or appointed officers, agents, officials, employees, and volunteers, or shall specifically allow 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 City 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 City 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.

20. Indemnification.

Indemnity for Professional Liability:

When the law establishes a professional standard of care for Consultant's Services, to the fullest extent permitted by law, Consultant shall indemnify, protect, defend, and hold harmless City and any and all of its officials, employees and agents from and against any and all losses, liabilities, damages, costs, and expenses, including legal counsel's fees and costs but only to the extent the Consultant (and its Subconsultants), are responsible for such damages, liabilities and costs on a comparative basis of fault between the Consultant (and its Subconsultants) and the City in the performance of professional services under this agreement.

Indemnity for Other Than Professional Liability:

Other than in the performance of professional services and to the full extent permitted by law, Consultant shall indemnify, defend, and hold harmless City, and any and all of its employees, officials and agents from and against any liability (including liability for claims, suits, actions, arbitration proceedings, administrative proceedings, regulatory proceedings, losses, expenses or costs of any kind, whether actual, alleged or threatened, including legal counsel's fees and costs, court costs, defense costs, and expert witness fees), where the same arise out of, are a consequence of, or are in any way attributable to, in whole or in part, the performance of this Agreement by Consultant or by any individual or City for which Consultant is legally liable, including, but not limited to officers, agents, employees, or subcontractors of Consultant, except when caused by the active negligence or willful misconduct of the City.

21. Responsibility For Others. Consultant shall be responsible to City for its services and the services of its sub consultants. Consultant shall not be responsible for the acts or omissions of other parties engaged by City nor for their construction means, methods, techniques, sequences, or procedures, or their health and safety precautions and programs.

22. Professional Responsibility. Consultant shall be obligated to comply with applicable standards of professional care in the performance of the Services by exercising the

skill and ability ordinarily required of engineers performing the same or similar services, under the same or similar circumstances, in the State of California. Consultant recognizes that opinions relating to environmental, geologic, and geotechnical conditions are based on limited data and that actual conditions may vary from those encountered at the times and locations where the data are obtained, despite the use of due professional care.

In providing opinions of cost, financial analyses, economic feasibility projections, and schedules for potential projects, Consultant has no control over cost or price of labor and material; unknown or latent conditions of existing equipment or structures that may affect operation and maintenance costs; competitive bidding procedures and market conditions; time or quality of performance of third parties; quality, type, management, or direction of operating personnel; and other economic and operational factors that may materially affect the ultimate project cost or schedule. Therefore, Consultant makes no warranty that the City's actual project costs, financial aspects, economic feasibility, or schedules will not vary from Consultant's opinions, analyses, projections, or estimates

23. Compliance with All Laws. Consultant shall be familiar with and shall comply with all City, State, and Federal laws and regulations applicable to the work to be performed under this Agreement. In providing the services required under this Agreement, Consultant shall at all times comply with all applicable laws, regulations, and resolutions of the United States, the State of California, and the City of Madera now in force and as they may be enacted, issued, or amended during the term of this Agreement.

23. A Federal funded Task Orders: Where the Task Order services provided pursuant to the Agreement are funded by a federal program, including but not limited to, Community Block Grant Funds, Consultant certifies and agrees that Consultant will be in:

- Compliance with Executive Order 11246 of September 24, 1965, entitled "Equal Employment Opportunity" as amended by Executive Order 11375 of October 13, 1967 and as supplemented in Department of Labor regulations (41 CFR chapter 60). (All construction contracts awarded in excess of \$10,000 by grantees and their contractors or sub grantees.)*
- Compliance with the Copeland "Anti-Kickback" Act (18 U.S.C. 874) as supplemented in Department of Labor regulations (29 CFR part 3). (All contracts and sub grants or construction or repair).*
- Compliance with the Davis-Bacon Act (40 U.S.C. 276a to 276a-7) as supplemented by Department of Labor regulations (29 CFR part 5). (Construction contracts in excess of \$2000 awarded by grantees and sub grantees required by Federal grant program legislation.)*
- Compliance with Sections 103 and 107 of the Contract Work Hours and Safety Standards Act (40 U.S.C. 327-330) as supplemented by Department of Labor regulations (29 CFR part*

5). *(Construction contracts in excess of \$2000 and in excess of \$2500 for other contracts which involve the employment of mechanics or laborers.)*

- *(e) Compliance with the provisions of any notice of awarding agency requirements and regulations pertaining to reporting.*
- *Compliance with the provisions of any notice of awarding agency requirements and regulations pertaining to patent rights with respect to any discovery or invention which arises or is developed in the course of or under such contract.*
- *Compliance with any awarding agency requirements and regulations pertaining to copyrights and rights in data.*
- *Compliance with access requirements imposed by the grantee, the sub grantee, the Federal grantor agency, the Comptroller General of the United States, or any of their duly authorized representatives to any books, documents, papers, and records of the contractor which are directly pertinent to that specific contract for the purpose of making audit, examination, excerpts, and transcriptions.*
- *Compliance with applicable requirements for the retention of all required records for three years after grantees or sub grantees make final payments and all other pending matters are closed.*
- *Compliance with all applicable standards, orders, or requirements issued under section 306 of the Clean Air Act (42 U.S.C. 1857(h)), section 508 of the Clean Water Act (33 U.S.C. 1368), Executive Order 11738, and Environmental Protection Agency regulations \$100,000.)*
- *Compliance with mandatory standards and policies relating to energy efficiency which are contained in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act (Pub. L 97-163, 89 Stat. 871.) [53 FR 8068.8067. Mar. 11, 1988, as amended at 60 FR 19639, 19642, Apr. 19, 1995]]*

24. Assignment. Neither this Agreement nor any duties or obligations hereunder shall be assignable by Consultant without the prior written consent of City. In the event of an assignment to which City has consented, the assignee shall agree in writing to personally assume and perform the covenants, obligations, and agreements herein contained. In addition, Consultant shall not assign the payment of any monies due Consultant from City under the terms of this Agreement to any other individual, corporation or entity. City retains the right to pay any and all monies due Consultant directly to Consultant.

25. Form and Service of Notices. All notices required or permitted to be given under this Agreement shall be in writing and shall be personally delivered, or sent by certified mail, postage prepaid and return receipt requested, addressed as follows:

To City: CITY ENGINEER
City of Madera
428 E. Yosemite Avenue
Madera, CA 93638
Email:

To Consultant: AM Consulting Engineers
5150 N. Sixth Street, Suite 124
Fresno, CA 93710

Notice shall be deemed effective on the date personally delivered or transmitted by facsimile, or if mailed, three (3) days after deposit of the same in the custody of the United States Postal Service.

26. Entire Agreement. This Agreement, including the attachments and exhibits, represents the entire Agreement between City and Consultant, and supersedes all prior negotiations, representations, or agreements, either written or oral with respect to the subject matter herein. This Agreement may be amended only by written instrument signed by both City and Consultant.

27. Authority. The signatories to this Agreement warrant and represent that they have the legal right, power, and authority to execute this Agreement and bind their respective entities.

28. Severability. In the event any term or provision of this Agreement is declared to be invalid or illegal for any reason, this Agreement will remain in full force and effect and will be interpreted as though such invalid or illegal provision were not a part of this Agreement. The remaining provisions will be construed to preserve the intent and purpose of this Agreement and the parties will negotiate in good faith to modify any invalidated provisions to preserve each party's anticipated benefits.

29. Applicable Law and Interpretation and Venue. This Agreement shall be interpreted in accordance with the laws of the State of California. The language of all parts of this Agreement shall, in all cases, be construed as a whole, according to its fair meaning, and not strictly for or against either party. Any controversy or claim arising out of, or relating to, this Agreement which cannot be amicably settled without court action shall be litigated either in the appropriate State court for Madera County, California, or as appropriate in the U. S. District Court for the Eastern District of California, located in Fresno County. The rights and obligations of the parties and all interpretations and performance of this Agreement shall be governed in all respects by the laws of the State of California.

30. Attorney's Fees. If either party is required to commence any proceeding or legal action to enforce or interpret any term, covenant, or condition of this Agreement, the prevailing party in such proceeding or action shall be entitled to recover from the other party its reasonable attorneys' fees and legal expenses.

31. Amendments and Waiver. This Agreement shall not be modified or amended in any way, and no provision shall be waived, except in writing signed by the parties hereto. No waiver of any provision of this Agreement shall be deemed, or shall constitute, a waiver of any other provision, whether or not similar, nor shall any such waiver constitute a continuing or subsequent waiver of the same provision. Failure of either party to enforce any provision of this Agreement shall not constitute a waiver of the right to compel enforcement of the remaining provisions of this Agreement.

32. Third Party Beneficiaries. Nothing in this Agreement shall be construed to confer any rights upon any party not a signatory to this Agreement.

33. Execution in Counterparts. This Agreement may be executed in counterparts such that the signatures may appear on separate signature pages. A copy or an original, with all signatures appended together, shall be deemed a fully executed Agreement.

34. Non-Discrimination. Consultant shall not discriminate on the basis of any protected class under federal or State law in the provision of the Services or with respect to any Consultant employees or applicants for employment. Consultant shall ensure that any subcontractors are bound to this provision. A protected class includes, but is not necessarily limited to, race, color, national origin, ancestry, religion, age, sex, sexual orientation, marital status, and disability.

[SIGNATURES ON FOLLOWING PAGE]

IN WITNESS WHEREOF, the City and Consultant have executed this Agreement on the date(s) set forth below.

CONSULTANT NAME

CITY OF MADERA

By: _____
(ADD NAME & POSITION)

By: _____
Santos Garcia, Mayor

Taxpayer ID #: _____

Date: _____

Date: _____

APPROVED AS TO FORM:

Hilda Cantú Montoy, City Attorney

ATTEST:

By: _____
Alicia Gonzales, City Clerk

EXHIBIT A – Scope of Services

EXHIBIT B – Fee Schedule

EXHIBIT C – Task Order Work Schedule Form

EXHIBIT A

SCOPE OF SERVICES

The professional services may include, but not be limited to, the following: land surveying, civil engineering plan checking services, roadway design, drainage and flood control design, water and sewer pipeline design, water well design, wastewater treatment plant design, traffic studies, traffic signal design, master planning services, utility locating and conflict analysis or other similar engineering services. These services may result in the preparation of engineering reports, public presentations or the preparation of plans, specifications, and estimates suitable for the public bidding process.

The following is a list of the types of consulting services being considered. Each consultant is not required to have expertise in all of the items listed:

- Storm drain infrastructure analysis and design, including hydrology and hydraulic analysis.
- Street geometrics, striping and signage analysis and design.
- Street design, including repair/replacement of curb, gutter, sidewalk, driveways, ramps, street trees, signs, pavement, etc.
- Grading design.
- Traffic signal design and Traffic studies.
- Water well design, water, and sewer pipeline design.
- Wastewater Treatment Plant design
- Preparation of engineering plans, specifications and estimates in City-approved format.
- Construction Support services include attending construction meetings, responding to requests for information, reviewing agreement submittals, and evaluating design changes during construction.

Additional requirements are as follows:

1. The Consultant's Project Manager shall be available for periodic meetings to discuss issues related to task orders.
2. The Consultant must be adequately insured for liability and property damage pursuant to the conditions of the Agreement.
3. All work shall be performed and delivered in English Standard Units or as required by the City.
4. All survey work shall be performed on CCS/NAD 83 horizontal coordinates and use true NAVD 88 vertical controls.
5. Plans and Maps shall be submitted in the AutoCAD format in use by the City at the time of issuance of the task order, point files shall be submitted in ASCII format, and any estimates, schedules, or reports shall be submitted in Microsoft Office format.
6. Consultant may be required to provide topographic surveys to support their work product as necessary.

EXHIBIT B

FEE SCHEDULE



**Fees for Professional Services
Hourly Rate Schedule**
(Valid through July 1, 2024)

CLASSIFICATION	RATE
Engineering	
Project Manager	\$150.00 per hour
Principal Engineer	\$150.00 per hour
Senior Engineer	\$120.00 per hour
Associate Engineer	\$110.00 per hour
Assistant Engineer	\$100.00 per hour
Designing/Drafting	
Design CADD Operator.....	\$100.00 per hour
Support Staff	
Technical Typist/Word Processor	\$80.00 per hour

Notes:

1. Standard Hourly Rates include salaries and wages paid to personnel in each billing class plus the cost of customary and statutory benefits, general and administrative overhead, non-project operating costs, and operating margin or profit.
2. It is understood and agreed that these rates and charges include normal equipment and materials used in connection with the production of the required engineering and/or architectural services. If authorized by the client, an overtime premium multiplier of 1.5 will be applied to the direct wage cost of hourly personnel who work overtime in order to meet a deadline which cannot be met during normal hours. Applicable sales taxes, if any, will be added to these rates.
3. Fee schedule is subject to general revision. New equipment categories and charges may be added or revised from time to time.

EXHIBIT C

TASK ORDER WORK SCHEDULE FORM

TASK ORDER FORM No. ____
TO ENGINEERING SERVICES AGREEMENT FOR

PROJECT No. _____

This TASK ORDER NO. _____ to Engineering Services Agreement dated _____, hereinafter called Agreement, between the City of Madera, (CITY), and _____(ENGINEER).

1. DESCRIPTION OF PROJECT

2. SCOPE OF SERVICES

The City agrees to utilize the services of ENGINEER and ENGINEER agrees to perform _____ listed engineering services as requested by CITY as per the Engineering Services Agreement. ENGINEER shall confirm the scope, schedule, and anticipated compensation for such services in writing prior to starting work (see attached proposed Scope of Services).

3. CITY'S RESPONSIBILITIES

CITY to provide ENGINEER with the following information:

1. CITY shall assign appropriate reviewers to the project and compile and provide a single consolidated, coordinated, legible copy of written review comments to ENGINEER for all draft documents and work products, as appropriate.
2. CITY shall provide timely review of submitted products as appropriate.

4. COMPENSATION

1. CITY shall pay ENGINEER according to the fee schedule set forth in Exhibit A to the Engineering Services Agreement dated _____.
2. Services provided under this Task Order shall not exceed (dollar value) _____ (\$_____).

5. MISCELLANEOUS

All terms and conditions of the Engineering Services Agreement apply to this Task Order as though fully set forth therein. In the event of a conflict between this Task Order and the Engineering Services Agreement, the terms of this Task Order shall apply.

The parties do mutually agree to all mutual covenants and agreements contained within this Task Order No. ____.

CITY OF MADERA

By: _____

Title: _____

Date: _____

(ENGINEER) _____

By: _____

Title: _____

Date: _____

STANDARD ADDENDUM FORM

TASK ORDER NO. ____ - ADDENDUM NO. ____

(PROJECT) _____

This Addendum to Task Order No. ____ to the Engineering Services Agreement dated _____, hereinafter called Agreement, between the City of Madera (CITY), and _____(ENGINEER).

____ Change in Schedule:

____ Change in Fee: An Increase/Decrease of \$_____ to Task Order No. ____ for a total contract amount of \$_____. These changes are in accordance with the (Project description) _____, scope of services dated _____.

____ Modifies the Agreement in the following manner:

CITY OF MADERA

By: _____

Title: _____

Date: _____

ENGINEER _____

By: _____

Title: _____

Date: _____

ATTACHMENT 2I

On-Call Agreement with AKEL Engineering Group

**ON-CALL CONSULTANT SERVICES AGREEMENT BETWEEN THE CITY OF MADERA AND
AKEL ENGINEERING GROUP INC.**

This Consultant Services Agreement ("Agreement") is entered into between the CITY OF MADERA, a California general law city ("City") and Akel Engineering Group, Inc. ("Consultant"). This Agreement shall be effective on the date signed by City which shall occur after execution by Consultant ("Effective Date").

RECITALS

- A. The City has determined that it requires on-call, as-needed professional engineering services in order to maintain a high level of service to the community.
- B. City has sought, by a Request for Qualifications, to select consultants to provide On-Call Engineering and Land Surveying Consulting Services.
- C. Consultant submitted a Statement of Qualifications for performing the requested Services and is engaged in the business of furnishing such services as a consultant and hereby warrants and represents that it is qualified, licensed, and professionally capable of performing the Services called for in the Request for Qualifications and this Agreement.
- D. City has selected Consultant to perform the requested Services on the basis of Consultant's demonstrated competence and professional qualifications.
- E. City desires to retain Consultant, and Consultant desires to provide City with the Services, on the terms and conditions as set forth in this Agreement.

NOW, THEREFORE, in consideration of the promises and mutual agreements herein, City and Consultant agree as follows:

AGREEMENT

1. Scope of Services. Consultant shall perform, to the satisfaction of City in accordance with this Agreement, the Services described in the "Scope of Services" attached hereto as **EXHIBIT A** and incorporated by herein by this reference. Consultant shall at all times faithfully, competently and to the best of its ability, experience, and talent, perform all services described herein.

At such time as services are needed by City from Consultant, City will discuss with Consultant the general parameters of the applicable scope of services. In response, Consultant shall deliver to City, a "Preliminary Task Order," which shall include a scope of work and cost

proposal for the services needed by City. Consultant's proposal shall include a breakdown of estimated hours and a work order schedule. No work shall be performed by Consultant until the Preliminary Task Order is accepted in writing by City as evidenced by City's issuance to Consultant of a final "Task Order," Consultant shall commence performance and complete all required services no later than the dates set forth and in accordance with the approved, final Task Order.

Consultant accepts full responsibility for the scope of services provided by sub-consultants necessary for delivery and completion of work under a Task Order. Consultant shall comply with applicable City of Madera design standards and requirements as directed by the City and applicable State and Federal requirements.

2. Term of Agreement; Commencement of Services. The term of this Agreement shall be three (3) years commencing on _____, 2022, and shall terminate on _____, 2025, unless terminated earlier as set forth herein. This Agreement may be mutually extended after the initial three (3) year term for up to two (2) additional one (1) year terms upon approval of an extended agreement by the City Council.

Consultant shall commence the Services for each final Task Order upon City's issuance of a written "Notice to Proceed" and shall continue with the Services until Consultant, as determined by City, has satisfactorily performed, and completed the Services for said Task Order, or until such time as the Agreement is terminated by either party in accordance with this Agreement, whichever is earlier.

3. Continuity of Personnel. Consultant shall make every reasonable effort to maintain the stability and continuity of Consultant's staff and subcontractors assigned to perform the Services under this Agreement. Consultant shall notify City of any changes in Consultant's staff and subcontractors assigned to perform the Services under this Agreement.

4. Compensation for Services. City shall compensate Consultant for rendering the Services as follows:

(a) Subject to any limitations set forth in this Agreement, City agrees to pay Consultant by the amounts specified in the Schedule of Compensation attached hereto as **EXHIBIT B** and incorporated herein by this reference. Both parties agree that Consultant's total compensation under this Agreement shall not exceed \$300,000 for Year 1, \$300,000 for Year 2, and \$300,000 for Year 3 of the Agreement and shall not exceed a total contract amount of \$900,000. At the end of the three (3) year term, City may extend the term of this Agreement for up to two (2) additional one (1) year periods with a not-to-exceed compensation amount of \$300,000 per year by providing advance written notice to CONSULTANT and written confirmation by CONSULTANT thereof.

(b) City reserves the right to not request any services of Consultant during the entire duration of this Agreement. Consultant shall only be paid for services performed under this Agreement to the extent authorized by final Task Order approved by the City

Engineer. The City does not guarantee any specific amount of work, if any, or billable hours that will be preauthorized. No overhead or other expenses can be recovered for interim periods when Consultant's services are not utilized by City.

(c) City and Consultant agree on the rates shown in EXHIBIT B, "Hourly Rate Schedule", and agree that they will remain in effect for the first two years of Agreement. Thereafter, Consultant may submit a new Hourly Rate Schedule as an amendment to this agreement no more than one time per year. It is understood and agreed by both parties that all expenses incidental to Consultant's performance of services, including travel expenses, are included in the basic fee shown in **EXHIBIT B**.

(d) Each month Consultant shall invoice City for all work performed and expenses incurred during the preceding month. Consultant's invoice shall specify the billed hours and hourly rates for each employee classification. The sub-consultants work shall be included on Consultant's invoice with a copy of the sub-consultant's invoice attached. A report on summary of costs to date for each component of the work shall accompany the invoice. This summary shall also estimate the percentage of the work completed for each component and the balance remaining in each component.

(e) City shall independently review each invoice submitted by the Consultant to determine whether the work performed, and expenses incurred are in compliance with the provisions of this Agreement. The invoiced amount shall be paid within 30 calendar days unless City disputes any charges or expenses. If any charges or expenses are disputed, City shall pay the undisputed amount, and notify Consultant of the nature and amount of the disputed charge or expense. The parties shall seek to resolve the disputed items(s) by mutual agreement.

(f) Payment to Consultant for work performed under this Agreement shall not be deemed to waive any defects in work performed by Consultant.

(g) Extra Services. City agrees to pay Consultant for extra services not contemplated hereunder as set forth in the Scope of Work or for such services as may be specifically requested by City through City Engineer in writing and agreed to by Consultant for an agreed-to fixed fee or hourly rate of compensation or for necessary expenses over that listed in the Budget, provided, however, that the City Engineer's authority is limited to expenditures not to exceed the amount of \$2,000 (Two Thousand dollars and zero cents).

5. Time of Completion.

(a) Based on an agreed upon Notice to Proceed date for each Task Order, Consultant shall complete the work as shown in the standard Task Order Form set forth as **EXHIBIT C**.

(b) Consultant shall not be held responsible for delays caused by City review or by reasons beyond Consultant's control. Also, Consultant shall not stop its work, including work unrelated to any extra services request, unless it can be shown that the project work cannot proceed while a claim or request for extra services is being evaluated.

(c) Time is of the essence in the completion of the services covered by this Agreement. Failure of Consultant to comply with the above time schedule by more than fourteen (14) calendar days, unless the delay is not attributable to Consultant or is attributable to City, is sufficient cause to terminate this Agreement, at the option of City, in accordance with Section 18.

6. Independent Contractor Status. Consultant and its subcontractors shall perform the Services as independent contractors and not as officers, employees, agents, or volunteers of City. Nothing contained in this Agreement shall be deemed to create any contractual relationship between City and Consultant's employees or subcontractors, nor shall anything contained in this Agreement be deemed to give any third party, including but not limited to Consultant's employees or subcontractors, any claim or right of action against City. Neither the City nor any of its employees shall have any control over the manner, mode, or means by which Consultant or its agents or employees perform the services under this Agreement.

7. Qualifications, and Professional Standards. Consultant represents and warrants that it has the qualifications, experience, and facilities necessary to properly perform the services required under this Agreement in a thorough, competent, and professional manner. In meeting its obligations under this Agreement, Consultant shall employ, at a minimum, generally accepted standards and practices utilized by persons engaged in providing services similar to those required of Consultant under this Agreement. Consultant represents that to the extent Consultant utilizes subcontractors, such subcontractors are, and will be, qualified in their fields. Consultant also expressly represents that both Consultant and its subcontractors, if any, are now, and will be throughout their performance of the Services under this Agreement, properly licensed or otherwise qualified and authorized to perform the Services required and contemplated by this Agreement. Consultant and its subcontractors, if any, shall utilize the standard of care and skill customarily exercised by members of their profession, shall use reasonable diligence and best judgment while performing the Services, and shall comply with and keep themselves informed of all applicable laws and regulations.

8. Identity of Subcontractors and Sub-Consultants. Consultant shall before commencing any work under this Agreement provide to City in writing: (a) the identity of all subcontractors and sub-consultants (collectively referred to as "subcontractors"), if any, which Consultant intends to utilize in Consultant's performance of this Agreement; and (b) a detailed description of the full scope of work to be provided by such subcontractors. Consultant shall only employ subcontractors pre-approved by City and in no event shall Consultant replace an approved subcontractor without the advance written permission of City, with the understanding that City's permission will not be unreasonably withheld. Notwithstanding any other provisions in this Agreement, Consultant shall be liable to City for the performance of Consultant's

subcontractors.

9. Subcontractor Provisions. Consultant shall include in its written agreements with its subcontractors, if any, provisions which: (a) impose upon the subcontractors the obligation to provide to City the same insurance and indemnity obligations that Consultant owes to City; (b) make clear that City intends to rely upon the reports, opinions, conclusions, and other work product prepared and performed by subcontractors for Consultant; and (c) compliance with all laws and certifications as required under this Agreement.

10. Power to Act on Behalf of City. Consultant shall not have any right, power, or authority to create any obligation, express or implied, or make representations on behalf of City except as may be expressly authorized in advance in writing from time to time by City and then only to the extent of such authorization.

11. Record Keeping; Reports. Consultant shall keep complete records showing the type of Services performed. Consultant shall be responsible and shall require its subcontractors to keep similar records. City shall be given reasonable access to the records of Consultant and its subcontractors for inspection and audit purposes. Consultant shall provide City with a working draft of all reports and a copy of all final reports prepared by Consultant under this Agreement.

12. Ownership and Inspection of Documents. All data, tests, reports, documents, conclusions, opinions, recommendations, and other work product generated by or produced for Consultant or its subcontractors in connection with the Services, regardless of the medium, including physical drawings and materials recorded on computer discs ("Work Product"), shall be and remain the property of City. City shall have the right to use, copy, modify, and reuse the Work Product as it sees fit. Upon City's request, Consultant shall make available for inspection and copying all such Work Product and all Work Product shall be turned over to City promptly at City's request or upon termination of this Agreement, whichever occurs first. Consultant shall not release any Work Product to third parties without prior written approval of the City Manager. This obligation shall survive termination of this Agreement and shall survive for four (4) years from the date of expiration or termination of this Agreement.

13. Confidentiality. All data, reports, conclusions, opinions, recommendations, and other work product prepared and performed by and on behalf of Consultant in connection with the Services performed pursuant to this Agreement shall be kept confidential and shall be disclosed only to City, unless otherwise provided by law or expressly authorized by City. Consultant shall not disclose or permit the disclosure of any confidential information acquired during performance of the Services, except to its agents, employees, affiliates, and subcontractors who need such confidential information in order to properly perform their duties relative to this Agreement. Consultant shall also require its subcontractors to be bound to these confidentiality provisions.

14. City Name and Logo. Consultant shall not use City's name or insignia, photographs relating to the City projects for which Consultant's services are rendered, or any publicity

pertaining to the Consultant's services under this Agreement in any magazine, trade paper, newspaper, television or radio production or other similar medium without the prior written consent of City.

15. Conflicts of Interest. Consultant warrants that neither Consultant nor any of its employees have an interest, present or contemplated, which would conflict in any manner with the interests of the City, or which would in any way hinder Consultant's performance of services under this Agreement. Consultant covenants that no person having any such interest, whether an employee or subcontractor shall perform the Services under this Agreement. During the performance of the Services, Consultant shall not employ or retain the services of any person who is employed by the City or a member of any City Board or Commission. City understands and acknowledges that Consultant is, as of the date of execution of this Agreement, independently involved in the performance of non-related services for other governmental agencies and private parties. Consultant is unaware of any stated position of City relative to such projects. Any future position of City on such projects shall not be considered a conflict of interest for purposes of this section. City understands and acknowledges that Consultant will, perform non-related services for other governmental agencies and private parties following the completion of the Services under this Agreement, and any such future service shall not be considered a conflict of interest for purposes of this section.

16. Non-liability of Officers and Employees. No officer or employee of City shall be personally liable to Consultant, or any successors in interest, in the event of a default or breach by City for any amount which may become due Consultant or its successor, or for any breach of any obligation under the terms of this Agreement.

17. City Right to Employ Other Consultants. This Agreement is non-exclusive with Consultant. City reserves the right to employ other consultants in connection with the Services.

18. Termination of Agreement. This Agreement shall terminate upon completion of the Services, or earlier pursuant to the following.

(a) For Convenience of City. This Agreement may be terminated by City at its discretion upon thirty (30) days prior written notice to Consultant.

(b) For Breach of Either Party. If for any cause either party fails to fulfill in a timely and proper manner its obligations under this Agreement (the "breaching party"), the other party (the "terminating party") shall have the right to terminate the Agreement by giving not less than five (5) working days' written notice to the breaching party of the intent to terminate and specifying the effective date thereof. The terminating party shall, however, provide the breaching party with a detailed statement of the grounds for termination. This statement shall include, as appropriate, references to specific provisions of this Agreement, dates, dollar amounts and other information relevant to the decision to terminate for cause.

(c) Compensation to Consultant Upon Termination. In the event termination is not due to fault attributable to Consultant and provided all other conditions for payment have been met, Consultant shall be paid compensation for services performed prior to notice of termination. As to any phase partially performed but for which the applicable portion of Consultant's compensation has not become due, Consultant shall be paid the reasonable value of its services provided. However, in no event shall such payment when added to any other payment due under the applicable part of the work exceed the total compensation of such part as specified in Section 3 herein. In the event of termination due to Consultant's failure to perform in accordance with the terms of this Agreement through no fault of City, City may withhold an amount that would otherwise be payable as an offset to City's damages caused by such failure.

(d) Effect of Termination. Upon receipt of a termination notice (or completion of this Agreement), Consultant shall: (i) promptly discontinue all Services affected (unless the notice directs otherwise); and (ii) deliver or otherwise make available to the City, without additional compensation, all data, documents, procedures, reports, estimates, summaries, and such other information and materials as may have been accumulated by the Consultant in performing this Agreement, whether completed or in process. Following the termination of this Agreement for any reason whatsoever, City shall have the right to utilize such information and other documents, or any other works of authorship fixed in any tangible medium of expression, including but not limited to physical drawings, data magnetically or otherwise recorded on computer disks, or other writings prepared or caused to be prepared under this Agreement by Consultant. Consultant may not refuse to provide such writings or materials for any reason whatsoever.

19. Insurance. All insurance policies shall be subject to City approval as to form and content. Consultant shall provide City with copies of required certificates of insurance upon request. 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.

- \$2,000,000 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 proposal.

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. City reserves the right to require complete, certified copies of all required insurance policies, at any time.

Acceptable Insurers

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

Waiver of Subrogation

All insurance coverage maintained or procured pursuant to this agreement shall be endorsed to waive subrogation against the City, its elected or appointed officers, agents, officials, employees, and volunteers, or shall specifically allow 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 City 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 City 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.

20. Indemnification.

Indemnity for Professional Liability:

When the law establishes a professional standard of care for Consultant's Services, to the fullest extent permitted by law, Consultant shall indemnify, protect, defend, and hold harmless City and any and all of its officials, employees and agents from and against any and all losses, liabilities, damages, costs, and expenses, including legal counsel's fees and costs but only to the extent the Consultant (and its Subconsultants), are responsible for such damages, liabilities and costs on a comparative basis of fault between the Consultant (and its Subconsultants) and the City in the performance of professional services under this agreement.

Indemnity for Other Than Professional Liability:

Other than in the performance of professional services and to the full extent permitted by law, Consultant shall indemnify, defend, and hold harmless City, and any and all of its employees, officials and agents from and against any liability (including liability for claims, suits, actions, arbitration proceedings, administrative proceedings, regulatory proceedings, losses, expenses or costs of any kind, whether actual, alleged or threatened, including legal counsel's fees and costs, court costs, defense costs, and expert witness fees), where the same arise out of, are a consequence of, or are in any way attributable to, in whole or in part, the performance of this Agreement by Consultant or by any individual or City for which Consultant is legally liable, including, but not limited to officers, agents, employees, or subcontractors of Consultant, except when caused by the active negligence or willful misconduct of the City.

21. Responsibility For Others. Consultant shall be responsible to City for its services and the services of its sub consultants. Consultant shall not be responsible for the acts or omissions of other parties engaged by City nor for their construction means, methods, techniques, sequences, or procedures, or their health and safety precautions and programs.

22. Professional Responsibility. Consultant shall be obligated to comply with applicable standards of professional care in the performance of the Services by exercising the skill and ability ordinarily required of engineers performing the same or similar services, under the same or similar circumstances, in the State of California. Consultant recognizes that opinions relating to environmental, geologic, and geotechnical conditions are based on limited data and that actual conditions may vary from those encountered at the times and locations where the data are obtained, despite the use of due professional care.

In providing opinions of cost, financial analyses, economic feasibility projections, and schedules for potential projects, Consultant has no control over cost or price of labor and material; unknown or latent conditions of existing equipment or structures that may affect operation and maintenance costs; competitive bidding procedures and market conditions; time or quality of performance of third parties; quality, type, management, or direction of operating personnel; and other economic and operational factors that may materially affect the ultimate project cost or schedule. Therefore, Consultant makes no warranty that the City's actual project costs, financial aspects, economic feasibility, or schedules will not vary from Consultant's opinions, analyses, projections, or estimates

23. Compliance with All Laws. Consultant shall be familiar with and shall comply with all City, State, and Federal laws and regulations applicable to the work to be performed under this Agreement. In providing the services required under this Agreement, Consultant shall at all times comply with all applicable laws, regulations, and resolutions of the United States, the State of California, and the City of Madera now in force and as they may be enacted, issued, or amended during the term of this Agreement.

23.A Federal Funded Task Orders: *Where the Task Order services provided pursuant to the Agreement are funded by a federal program, including but not limited to, Community Block Grant Funds, Consultant certifies and agrees that Consultant will be in:*

- *Compliance with Executive Order 11246 of September 24, 1965, entitled "Equal Employment Opportunity" as amended by Executive Order 11375 of October 13, 1967 and as supplemented in Department of Labor regulations (41 CFR chapter 60). (All construction contracts awarded in excess of \$10,000 by grantees and their contractors or sub grantees.)*
- *Compliance with the Copeland "Anti-Kickback" Act (18 U.S.C. 874) as supplemented in Department of Labor regulations (29 CFR part 3). (All contracts and sub grants or construction or repair).*
- *Compliance with the Davis-Bacon Act (40 U.S.C. 276a to 276a-7) as supplemented by Department of Labor regulations (29 CFR part 5). (Construction contracts in excess of \$2000 awarded by grantees and sub grantees required by Federal grant program legislation.)*

- *Compliance with Sections 103 and 107 of the Contract Work Hours and Safety Standards Act (40 U.S.C. 327-330) as supplemented by Department of Labor regulations (29 CFR part 5). (Construction contracts in excess of \$2000 and in excess of \$2500 for other contracts which involve the employment of mechanics or laborers.)*
- *(e) Compliance with the provisions of any notice of awarding agency requirements and regulations pertaining to reporting.*
- *Compliance with the provisions of any notice of awarding agency requirements and regulations pertaining to patent rights with respect to any discovery or invention which arises or is developed in the course of or under such contract. .*
- *Compliance with any awarding agency requirements and regulations pertaining to copyrights and rights in data.*
- *Compliance with access requirements imposed by the grantee, the sub grantee, the Federal grantor agency, the Comptroller General of the United States, or any of their duly authorized representatives to any books, documents, papers, and records of the contractor which are directly pertinent to that specific contract for the purpose of making audit, examination, excerpts, and transcriptions.*
- *Compliance with applicable requirements for the retention of all required records for three years after grantees or sub grantees make final payments and all other pending matters are closed.*
- *Compliance with all applicable standards, orders, or requirements issued under section 306 of the Clean Air Act (42 U.S.C. 1857(h)), section 508 of the Clean Water Act (33 U.S.C. 1368), Executive Order 11738, and Environmental Protection Agency regulations \$100,000.)*
- *Compliance with mandatory standards and policies relating to energy efficiency which are contained in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act (Pub. L 97-163, 89 Stat. 871.) [53 FR 8068.8067. Mar. 11, 1988, as amended at 60 FR 19639, 19642, Apr. 19, 1995]]*

24. Assignment. Neither this Agreement nor any duties or obligations hereunder shall be assignable by Consultant without the prior written consent of City. In the event of an assignment to which City has consented, the assignee shall agree in writing to personally assume and perform the covenants, obligations, and agreements herein contained. In addition, Consultant shall not assign the payment of any monies due Consultant from City under the terms of this Agreement to any other individual, corporation or entity. City retains the right to pay any and all monies due Consultant directly to Consultant.

25. Form and Service of Notices. All notices required or permitted to be given under this Agreement shall be in writing and shall be personally delivered, or sent by certified mail, postage prepaid and return receipt requested, addressed as follows:

To City: CITY ENGINEER
City of Madera
428 E. Yosemite Avenue
Madera, CA 93638
Email:

To Consultant: Akel Engineering Group Inc.
7433 N. First Street, Suite 103
Fresno, CA 93720

Notice shall be deemed effective on the date personally delivered or transmitted by facsimile, or if mailed, three (3) days after deposit of the same in the custody of the United States Postal Service.

26. Entire Agreement. This Agreement, including the attachments and exhibits, represents the entire Agreement between City and Consultant, and supersedes all prior negotiations, representations, or agreements, either written or oral with respect to the subject matter herein. This Agreement may be amended only by written instrument signed by both City and Consultant.

27. Authority. The signatories to this Agreement warrant and represent that they have the legal right, power, and authority to execute this Agreement and bind their respective entities.

28. Severability. In the event any term or provision of this Agreement is declared to be invalid or illegal for any reason, this Agreement will remain in full force and effect and will be interpreted as though such invalid or illegal provision were not a part of this Agreement. The remaining provisions will be construed to preserve the intent and purpose of this Agreement and the parties will negotiate in good faith to modify any invalidated provisions to preserve each party's anticipated benefits.

29. Applicable Law and Interpretation and Venue. This Agreement shall be interpreted in accordance with the laws of the State of California. The language of all parts of this Agreement shall, in all cases, be construed as a whole, according to its fair meaning, and not strictly for or against either party. Any controversy or claim arising out of, or relating to, this Agreement which cannot be amicably settled without court action shall be litigated either in the appropriate State court for Madera County, California, or as appropriate in the U. S. District Court for the Eastern District of California, located in Fresno County. The rights and obligations of the parties and all interpretations and performance of this Agreement shall be governed in all respects by the laws of the State of California.

30. Attorney's Fees. If either party is required to commence any proceeding or legal action to enforce or interpret any term, covenant, or condition of this Agreement, the prevailing party in such proceeding or action shall be entitled to recover from the other party its reasonable attorneys' fees and legal expenses.

31. Amendments and Waiver. This Agreement shall not be modified or amended in any way, and no provision shall be waived, except in writing signed by the parties hereto. No waiver of any provision of this Agreement shall be deemed, or shall constitute, a waiver of any other provision, whether or not similar, nor shall any such waiver constitute a continuing or subsequent waiver of the same provision. Failure of either party to enforce any provision of this Agreement shall not constitute a waiver of the right to compel enforcement of the remaining provisions of this Agreement.

32. Third Party Beneficiaries. Nothing in this Agreement shall be construed to confer any rights upon any party not a signatory to this Agreement.

33. Execution in Counterparts. This Agreement may be executed in counterparts such that the signatures may appear on separate signature pages. A copy or an original, with all signatures appended together, shall be deemed a fully executed Agreement.

34. Non-Discrimination. Consultant shall not discriminate on the basis of any protected class under federal or State law in the provision of the Services or with respect to any Consultant employees or applicants for employment. Consultant shall ensure that any subcontractors are bound to this provision. A protected class includes, but is not necessarily limited to, race, color, national origin, ancestry, religion, age, sex, sexual orientation, marital status, and disability.

[SIGNATURES ON FOLLOWING PAGE]

IN WITNESS WHEREOF, the City and Consultant have executed this Agreement on the date(s) set forth below.

AKEL ENGINEERING GROUP, INC.

CITY OF MADERA

By: 
Tony Akel, President

By: _____
Santos Garcia, Mayor

Taxpayer ID #: 22-3936108

Date: 9/5/2022

Date: _____

APPROVED AS TO FORM:

Hilda Cantú Montoy, City Attorney

ATTEST:

By: _____
Alicia Gonzales, City Clerk

EXHIBIT A – Scope of Services

EXHIBIT B – Fee Schedule

EXHIBIT C – Task Order Work Schedule Form

EXHIBIT A

SCOPE OF SERVICES

The professional services may include, but not be limited to, the following: land surveying, civil engineering plan checking services, roadway design, drainage and flood control design, water and sewer pipeline design, water well design, wastewater treatment plant design, traffic studies, traffic signal design, master planning services, utility locating and conflict analysis or other similar engineering services. These services may result in the preparation of engineering reports, public presentations or the preparation of plans, specifications, and estimates suitable for the public bidding process.

The following is a list of the types of consulting services being considered. Each consultant is not required to have expertise in all of the items listed:

- Storm drain infrastructure analysis and design, including hydrology and hydraulic analysis.
- Street geometrics, striping and signage analysis and design.
- Street design, including repair/replacement of curb, gutter, sidewalk, driveways, ramps, street trees, signs, pavement, etc.
- Grading design.
- Traffic signal design and Traffic studies.
- Water well design, water, and sewer pipeline design.
- Wastewater Treatment Plant design
- Preparation of engineering plans, specifications and estimates in City-approved format.
- Construction Support services include attending construction meetings, responding to requests for information, reviewing agreement submittals, and evaluating design changes during construction.

Additional requirements are as follows:

1. The Consultant's Project Manager shall be available for periodic meetings to discuss issues related to task orders.
2. The Consultant must be adequately insured for liability and property damage pursuant to the conditions of the Agreement.
3. All work shall be performed and delivered in English Standard Units or as required by the City.
4. All survey work shall be performed on CCS/NAD 83 horizontal coordinates and use true NAVD 88 vertical controls.
5. Plans and Maps shall be submitted in the AutoCAD format in use by the City at the time of issuance of the task order, point files shall be submitted in ASCII format, and any estimates, schedules, or reports shall be submitted in Microsoft Office format.
6. Consultant may be required to provide topographic surveys to support their work product as necessary.

EXHIBIT B

FEE SCHEDULE



Fee Schedules

The following fee schedules are included in this package:

- Akel Engineering Group Inc.
- American Leak Detection
- Bedrock Engineering
- Kasraie Consulting
- Kenneth D. Schmidt and Associates
- Kleinfelder
- Nor-Cal Pipeline
- Stantec
- V&A



FEE SCHEDULE

Effective Through:

June 30, 2023

June 30, 2024*

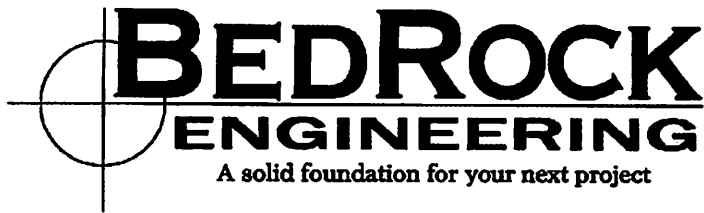
Category	Hourly Rate	Hourly Rate
Senior Principal Engineer	\$273.00	\$281.00
Principal Engineer	\$246.00	\$253.00
Senior Engineer	\$203.00	\$209.00
Associate Engineer	\$182.00	\$187.00
Assistant Engineer	\$155.00	\$160.00
Engineering Assistant	\$123.00	\$127.00
Senior GIS Technician	\$161.00	\$166.00
GIS Technician	\$134.00	\$138.00
Word Processing/Secretarial	\$107.00	\$110.00
Other Direct Expenses		
Travel and Subsistence	at Cost	at Cost
Other Direct Cost	Cost plus 5%	Cost plus 5%

* Fee Schedule reflects a 3% annual increase through June 2024



Fee Proposal

The daily rates for the proposed survey work for Phase 2 estimated at 100 mile is 1,550.00 per day for the first 50 miles then 1275.00 for per day for the next 50 miles – averaging 3 miles per day



Physical: 10878 Highway 41, Madera, CA 93636
 Mailing: P.O. Box 25783, Fresno, CA 93729
 559.645.4849 fax: 559.645.4869
www.bedrockeng.com

FEE SCHEDULE FOR LAND SURVEYING AND CIVIL ENGINEERING SERVICES

EMPLOYEE CLASSIFICATION

HOURLY RATE

Principal Civil Engineer / Principal Land Surveyor
 Registered Civil Engineer / Planning Consultant / Professional Land Surveyor
 Engineering / Land Surveying Technician
 Administrative Assistant / Clerical
 Principal Expert Witness Testimony

\$190.00
 \$170.00
 \$140.00
 \$110.00
 \$360.00

FIELD CREW (normal rate and non-prevailing wage)

HOURLY RATE

One-person crew with robotic total station
 One-person crew with GPS total station
 One-person crew with GPR and electromagnetic pipe & cable locator
 Each additional crew member
 Mobilization fee (per trip; based on project location)

\$170.00
 \$190.00
 \$170.00
 \$130.00
 TBD

FIELD CREW (prevailing wage in all counties)

HOURLY RATE

One-person crew with robotic total station
 One-person crew with GPS total station
 Each additional crew member
 Mobilization fee (per trip; based on project location)

\$220.00
 \$240.00
 \$190.00
 TBD

EXPENSES & DAILY FEES

RATE

Digital Level
 Sonar Equipment
 Hydrone (if needed for sonar)
 Quad
 UAV (drone) - (mapping software included at no additional cost)
 Faro X330 or Riegl Z390i laser scanner
 Surveying supplies
 Plotting and reproduction services
 Transportation
 Lodging and meals
 Postage
 Subconsultants

\$75.00 per day
 \$150.00 per day
 \$250.00 per day
 \$200.00 per day
 \$500.00 per day
 \$1000.00 per day
 Direct cost + 15%
 Direct cost + 15%
 \$0.75 per mile
 Direct cost + 15%
 Direct cost + 15%
 Direct cost + 10%

OVERTIME RATE
 DOUBLE-TIME RATE

Selected Rate x 30%
 Selected Rate x 60%

Rates are effective January 1, 2022 and are subject to periodic revision.

**KASRAIE CONSULTING**

Ventura, CA 93003

Phone: (805) 340-4744

Email: kasraie@kasraieconsulting.com | www.KasraieConsulting.com

PUBLIC WORKS PROJECTS
RATE SHEET

July 1, 2022 through June 30, 2024

	POSITION TITLE	HOURLY BILLING RATES FY 2022-23	HOURLY BILLING RATES FY 2023-24
1	Principal Project Manager	\$217	\$224
2	Senior Project Manager	\$207	\$213
3	Senior Project Engineer	\$196	\$202
4	Senior Civil Engineer/Senior Hydrologist	\$170	\$175
5	Civil Engineer / Water Resource Engineer / Hydrologist	\$138	\$142
6	GIS Specialist	\$127	\$131
7	Engineering Technician/CAD Operator	\$111	\$115
8	Office Support/Admin Staff	\$76	\$79

MISCELENEOUS

Printing, reproduction, postage, delivery and other services
Mileage outside Ventura County
Subconsultant Markup

At Cost
At Current IRS Rate
15 Percent

Other direct and miscellaneous charges encountered in performance of services, such as permits, supplies not normally used to perform a specific job, etc. are billed at cost with no additional service charge.

**2022 RATE SCHEDULE FOR
KENNETH D. SCHMIDT AND ASSOCIATES**

Staff	Hourly Rate
Principal normal work	\$375
Depositions	\$560
Associate Hydrogeologist	\$180
Senior Hydrogeologist	\$170
Hydrogeologic Aide	\$120
Hydrologic Aide	\$80
Secretarial Services	\$60

Mileage is billed at \$0.80 per mile and copies at \$0.20 each. All other expenses are billed at a direct cost.

KLEINFELDER 2021 FEE SCHEDULE

PROFESSIONAL STAFF RATES*

Professional	\$	139/ hour
Staff Professional	\$	148/ hour
Prevailing Wage for Professional Services	\$	165/ hour
Project Professional	\$	186/ hour
Principal Professional	\$	211/ hour
Senior Principal Professional	\$	296/ hour
Project Manager	\$	192/ hour
Senior Project Manager	\$	261/ hour
Designer/Drafter	\$	132/ hour
Senior Designer/Drafter	\$	150/ hour
Project Controls Professional	\$	143/ hour
Senior Project Controls Professional	\$	207/ hour

TECHNICAL STAFF RATES (Non-Prevailing Wage) Prevailing Wage Rates Will be Charged Based on the Sate Determination

Technician	\$	87/ hour
Senior Technician	\$	113/ hour
Inspector	\$	113/ hour
Senior Inspector	\$	144/ hour
Construction Manager	\$	191/ hour

ADMINISTRATIVE STAFF RATES

Administrator	\$	90/ hour
Project Administrator	\$	129/ hour

Minimum Charges for Office Time Per Day..... One Hour at Applicable Rate

Kleinfelder reserves the right to adjust the fee schedule on projects not completed within 180 days from the contract signature date.

Public works projects or projects receiving public funds may be subject to Prevailing Wage laws. The above rates do not apply to projects subject to prevailing wages. Hourly rates for those projects will be supplied separately.

* Applies to all professional rates including but not limited to civil, mechanical, chemical, electrical, geotechnical, and environmental engineers; industrial hygienists; geologists; hydrogeologists; hydrologists; and computer specialists.

**KLEINFELDER FEE SCHEDULE FOR
GEOTECHNICAL / MATERIALS TESTING EQUIPMENT**

EQUIPMENT CHARGES

MATERIALS TESTING EQUIPMENT			
Equipment	Invoice Name	Test Method†	Price
Anchor Bolt Testing Device	ANCHOR BOLT TST/DAY		\$150.00 / day
Brinell Hardness Tester	BRINELL HARDNESS/DAY	E10	\$20.00 / day
Concrete Rebound (Schmidt) Hammer	SCHMIDT HAMMER/DAY	C805	\$55.00 / day
Concrete Vapor Emission Test Kit	MOIST FLOOR/SLAB TST	F1869	\$30.00 / kit
Coring Machine	CORING MACHINE /DAY		\$85.00 / day
Coring Machine with Generator	CORING MCH W/GEN DAY		\$165.00 / day
Cylinder Mold	CYLINDER MOLDS		\$3.00 each
Diamond Bit Core Barrel Charge			
3" Diameter	CORING, 3" DIAM./IN		\$3.30 / inch
4" Diameter	CORING, 4" DIAM./IN		\$4.40 / inch
6" Diameter	CORING, 6" DIAM./IN		\$6.60 / inch
Digital Thickness Gauge	THICKNESS GAUGE /DAY		\$50.00 / day
FerroScan Equipment	FERROSCAN EQUIPMENT		\$275.00 / day
Floor Flatness Testing Device (Per Sq Ft)	FLOOR FLATNESS /SF	E1155	\$0.10 /sq ft
Floor Flatness Testing Device (Per Test)	FLOOR FLATNESS TST	E1155	\$150.00 / day
Hand Auger and Soil Sampler	HAND AUGER/DAY		\$75.00 / day
Magnetic Particle Testing Device	MAGNETIC PARTICLE	ASNT, AWS B1.1	\$45.00 / day
Nuclear Soil Density/Moisture Gauge	NUCLEAR DENS GAUGE	D6938	\$75.00 / day
Skidmore Bolt Tension Calibrator	SKID WILH BOLT/DAY	A325, A490	\$55.00 / day
Torque Wrench, up to 1,000 foot-pounds	TORQUE WRENCH/DAY	A325, A490	\$50.00 / day
Ultrasonic Testing Device	UT TESTING EQUIP/DAY	ASNT, AWS B1.1	\$75.00 / day

VEHICLES		
Description	Invoice Name	Price
Mileage, 2 Wheel Drive (Per Mile)	MILEAGE, 2 WH/MILE	\$0.80 / mile
Mileage, 4 Wheel Drive (Per Mile)	MILEAGE, 4 WH/MILE	\$1.60 / mile
Vehicle, 2 Wheel Drive (Per Hour)	VEHICLE, 2 WHEEL/HR	\$10.00 / hour
Vehicle w/Std Testing Equip (Per Hour)	VEH WSTD EQUIP/HR	\$19.00 / hour

OFFICE EQUIPMENT		
Description	Invoice Name	Price
Reproduction (Per Page)	REPRODUCTION/PAGE	\$0.65 / page
Report Surcharge (Per Copy)	REPORT (PER COPY)	\$44.00 / each
Bond Cost for CADD (Per Square Foot)	CADD – BOND	\$0.60 / sq ft
CADD Workstation (Per Hour)	CADD WORKSTATION /HR	\$15.75 / hour

†Examples of common test methods. Other methods may exist.



Fee Proposal

CCTV Camera Inspection for Phase 2 (approximately 475000 LF).

- CCTV without flushing \$1.50-\$1.80/LF (To be confirmed)
- CCTV with flushing \$2.50-\$3.10/LF (To be confirmed)

SCHEDULE OF BILLING RATES – Applicable through December 2024

Billing Level	Hourly Rate	Description
3	\$120	Junior Level position ☐ Independently carries out assignments of limited scope using standard procedures, methods and techniques ☐ Assists senior staff in carrying out more advanced procedures ☐ Completed work is reviewed for feasibility and soundness of judgment ☐ Graduate from an appropriate post-secondary program or equivalent ☐ Generally, one to three years' experience
4	\$125	
5	\$142	
6	\$146	Fully Qualified Professional Position ☐ Carries out assignments requiring general familiarity within a broad field of the respective profession ☐ Makes decisions by using a combination of standard methods and techniques ☐ Actively participates in planning to ensure the achievement of objectives ☐ Works independently to interpret information and resolve difficulties ☐ Graduate from an appropriate post-secondary program, with credentials or equivalent ☐ Generally, three to six years' experience
7	\$160	
8	\$165	
9	\$176	First Level Supervisor or first complete Level of Specialization ☐ Provides applied professional knowledge and initiative in planning and coordinating work programs ☐ Adapts established guidelines as necessary to address unusual issues ☐ Decisions accepted as technically accurate, however may on occasion be reviewed for soundness of judgment ☐ Graduate from an appropriate post-secondary program, with credentials or equivalent ☐ Generally, five to nine years' experience
10	\$182	
11	\$195	
12	\$205	Highly Specialized Technical Professional or Supervisor of groups of professionals ☐ Provides multi-discipline knowledge to deliver innovative solutions in related field of expertise ☐ Participates in short- and long-range planning to ensure the achievement of objectives ☐ Makes responsible decisions on all matters, including policy recommendations, work methods, and financial controls associated with large expenditures ☐ Reviews and evaluates technical work ☐ Graduate from an appropriate post-secondary program, with credentials or equivalent ☐ Generally, ten to fifteen years' experience with extensive, broad experience
13	\$215	
14	\$230	
15	\$245	Senior Level Consultant or Management ☐ Recognized as an authority in a specific field with qualifications of significant value ☐ Provides multi-discipline knowledge to deliver innovative solutions in related field of expertise ☐ Independently conceives programs and problems for investigation ☐ Participates in discussions to ensure the achievement of program and/or project objectives ☐ Makes responsible decisions on expenditures, including large sums or implementation of major programs and/or projects ☐ Graduate from an appropriate post-secondary program, with credentials or equivalent ☐ Generally, more than twelve years' experience with extensive experience
16	\$260	
17	\$265	
18	\$265	Senior Level Management under review by Vice President or higher ☐ Recognized as an authority in a specific field with qualifications of significant value ☐ Responsible for long range planning within a specific area of practice or region ☐ Makes decisions which are far reaching and limited only by objectives and policies of the organization ☐ Plans/approves projects requiring significant human resources or capital investment ☐ Graduate from an appropriate post-secondary program, with credentials or equivalent ☐ Generally, fifteen years' experience with extensive professional and management experience
19	\$275	
20	\$285	
21	\$298	

T-3 2022



Fee Proposal

V&A proposes to complete this work on a lump sum basis at a total cost not to exceed \$26,000 with terms of net 30 days (contingent payment terms dependent on timely processing of V&A's submitted invoice). This fee is valid for 90 days from the date of this proposal. The scope of work was developed as a result of our discussions and represents our mutual understanding.

Summary of Cost per Task

Task	Amount
Option 1: Flow Monitoring at 6sites and Rainfall Monitoring at 1site for 2 weeks	\$22,800
Option 2: Flow Monitoring at 8sites and Rainfall Monitoring at 1 site for 2 weeks	\$26,000

EXHIBIT C

TASK ORDER WORK SCHEDULE FORM

CITY OF MADERA
TASK ORDER FORM No. ____
TO ENGINEERING SERVICES AGREEMENT FOR

PROJECT No. _____

This TASK ORDER NO. _____ to Engineering Services Agreement dated _____, hereinafter called Agreement, between the City of Madera, (CITY), and _____(ENGINEER).

1. DESCRIPTION OF PROJECT

2. SCOPE OF SERVICES

The City agrees to utilize the services of ENGINEER and ENGINEER agrees to perform _____ listed engineering services as requested by CITY as per the Engineering Services Agreement. ENGINEER shall confirm the scope, schedule, and anticipated compensation for such services in writing prior to starting work (see attached proposed Scope of Services).

3. CITY'S RESPONSIBILITIES

CITY to provide ENGINEER with the following information:

1. CITY shall assign appropriate reviewers to the project and compile and provide a single consolidated, coordinated, legible copy of written review comments to ENGINEER for all draft documents and work products, as appropriate.
2. CITY shall provide timely review of submitted products as appropriate.

4. COMPENSATION

1. CITY shall pay ENGINEER according to the fee schedule set forth in Exhibit A to the Engineering Services Agreement dated _____.
2. Services provided under this Task Order shall not exceed (dollar value) _____ (\$_____).

5. MISCELLANEOUS

All terms and conditions of the Engineering Services Agreement apply to this Task Order as though fully set forth therein. In the event of a conflict between this Task Order and the Engineering Services Agreement, the terms of this Task Order shall apply.

The parties do mutually agree to all mutual covenants and agreements contained within this Task Order No. ____.

CITY OF MADERA

By: _____

Title: _____

Date: _____

(ENGINEER) _____

By: _____

Title: _____

Date: _____

STANDARD ADDENDUM FORM

TASK ORDER NO. ____ - ADDENDUM NO. ____

(PROJECT) _____

This Addendum to Task Order No. ____ to the Engineering Services Agreement dated _____, hereinafter called Agreement, between the City of Madera (CITY), and _____(ENGINEER).

____ Change in Schedule:

____ Change in Fee: An Increase/Decrease of \$ _____ to Task Order No. ____ for a total contract amount of \$ _____. These changes are in accordance with the (Project description) _____, scope of services dated _____.

____ Modifies the Agreement in the following manner:

CITY OF MADERA

By: _____

Title: _____

Date: _____

ENGINEER_____

By: _____

Title: _____

Date: _____

ATTACHMENT 2J

On-Call Agreement with TJKM Consultants

ON-CALL CONSULTANT SERVICES AGREEMENT BETWEEN THE CITY OF MADERA AND TJKM CONSULTANTS

This Consultant Services Agreement ("Agreement") is entered into between the CITY OF MADERA, a California general law city ("City") and TJKM Consultants ("Consultant"). This Agreement shall be effective on the date signed by City which shall occur after execution by Consultant ("Effective Date").

RECITALS

- A. The City has determined that it requires on-call, as-needed professional engineering services in order to maintain a high level of service to the community.
- B. City has sought, by a Request for Qualifications, to select consultants to provide On-Call Engineering and Land Surveying Consulting Services.
- C. Consultant submitted a Statement of Qualifications for performing the requested Services and is engaged in the business of furnishing such services as a consultant and hereby warrants and represents that it is qualified, licensed, and professionally capable of performing the Services called for in the Request for Qualifications and this Agreement.
- D. City has selected Consultant to perform the requested Services on the basis of Consultant's demonstrated competence and professional qualifications.
- E. City desires to retain Consultant, and Consultant desires to provide City with the Services, on the terms and conditions as set forth in this Agreement.

NOW, THEREFORE, in consideration of the promises and mutual agreements herein, City and Consultant agree as follows:

AGREEMENT

1. Scope of Services. Consultant shall perform, to the satisfaction of City in accordance with this Agreement, the Services described in the "Scope of Services" attached hereto as **EXHIBIT A** and incorporated by herein by this reference. Consultant shall at all times faithfully, competently and to the best of its ability, experience, and talent, perform all services described herein.

At such time as services are needed by City from Consultant, City will discuss with Consultant the general parameters of the applicable scope of services. In response, Consultant shall deliver to City, a "Preliminary Task Order," which shall include a scope of work and cost

proposal for the services needed by City. Consultant's proposal shall include a breakdown of estimated hours and a work order schedule. No work shall be performed by Consultant until the Preliminary Task Order is accepted in writing by City as evidenced by City's issuance to Consultant of a final "Task Order," Consultant shall commence performance and complete all required services no later than the dates set forth and in accordance with the approved, final Task Order.

Consultant accepts full responsibility for the scope of services provided by sub-consultants necessary for delivery and completion of work under a Task Order. Consultant shall comply with applicable City of Madera design standards and requirements as directed by the City and applicable State and Federal requirements.

2. Term of Agreement; Commencement of Services. The term of this Agreement shall be three (3) years commencing on _____, 2022, and shall terminate on _____, 2025, unless terminated earlier as set forth herein. This Agreement may be mutually extended after the initial three (3) year term for up to two (2) additional one (1) year terms upon approval of an extended agreement by the City Council.

Consultant shall commence the Services for each final Task Order upon City's issuance of a written "Notice to Proceed" and shall continue with the Services until Consultant, as determined by City, has satisfactorily performed, and completed the Services for said Task Order, or until such time as the Agreement is terminated by either party in accordance with this Agreement, whichever is earlier.

3. Continuity of Personnel. Consultant shall make every reasonable effort to maintain the stability and continuity of Consultant's staff and subcontractors assigned to perform the Services under this Agreement. Consultant shall notify City of any changes in Consultant's staff and subcontractors assigned to perform the Services under this Agreement.

4. Compensation for Services. City shall compensate Consultant for rendering the Services as follows:

(a) Subject to any limitations set forth in this Agreement, City agrees to pay Consultant by the amounts specified in the Schedule of Compensation attached hereto as **EXHIBIT B** and incorporated herein by this reference. Both parties agree that Consultant's total compensation under this Agreement shall not exceed \$300,000 for Year 1, \$300,000 for Year 2, \$300,000 for Year 3 of the Agreement and shall not exceed a total contract amount of \$900,000. At the end of the three (3) year term, City may extend the term of this Agreement for up to two (2) additional one (1) year periods with a not-to-exceed compensation amount of \$300,000 per year by providing advance written notice to CONSULTANT and written confirmation by CONSULTANT thereof.

(b) City reserves the right to not request any services of Consultant during the entire duration of this Agreement. Consultant shall only be paid for services performed under this Agreement to the extent authorized by final Task Order approved by the City

Engineer. The City does not guarantee any specific amount of work, if any, or billable hours that will be preauthorized. No overhead or other expenses can be recovered for interim periods when Consultant's services are not utilized by City.

(c) City and Consultant agree on the rates shown in EXHIBIT B, "Hourly Rate Schedule", and agree that they will remain in effect for the first two years of Agreement. Thereafter, Consultant may submit a new Hourly Rate Schedule as an amendment to this agreement no more than one time per year. It is understood and agreed by both parties that all expenses incidental to Consultant's performance of services, including travel expenses, are included in the basic fee shown in **EXHIBIT B**.

(d) Each month Consultant shall invoice City for all work performed and expenses incurred during the preceding month. Consultant's invoice shall specify the billed hours and hourly rates for each employee classification. The sub-consultants work shall be included on Consultant's invoice with a copy of the sub-consultant's invoice attached. A report on summary of costs to date for each component of the work shall accompany the invoice. This summary shall also estimate the percentage of the work completed for each component and the balance remaining in each component.

(e) City shall independently review each invoice submitted by the Consultant to determine whether the work performed, and expenses incurred are in compliance with the provisions of this Agreement. The invoiced amount shall be paid within 30 calendar days unless City disputes any charges or expenses. If any charges or expenses are disputed, City shall pay the undisputed amount, and notify Consultant of the nature and amount of the disputed charge or expense. The parties shall seek to resolve the disputed items(s) by mutual agreement.

(f) Payment to Consultant for work performed under this Agreement shall not be deemed to waive any defects in work performed by Consultant.

(g) Extra Services. City agrees to pay Consultant for extra services not contemplated hereunder as set forth in the Scope of Work or for such services as may be specifically requested by City through City Engineer in writing and agreed to by Consultant for an agreed-to fixed fee or hourly rate of compensation or for necessary expenses over that listed in the Budget, provided, however, that the City Engineer's authority is limited to expenditures not to exceed the amount of \$2,000 (Two Thousand dollars and zero cents).

5. Time of Completion.

(a) Based on an agreed upon Notice to Proceed date for each Task Order, Consultant shall complete the work as shown in the standard Task Order Form set forth as **EXHIBIT C**.

(b) Consultant shall not be held responsible for delays caused by City review or by reasons beyond Consultant's control. Also, Consultant shall not stop its work, including work unrelated to any extra services request, unless it can be shown that the project work cannot proceed while a claim or request for extra services is being evaluated.

(c) Time is of the essence in the completion of the services covered by this Agreement. Failure of Consultant to comply with the above time schedule by more than fourteen (14) calendar days, unless the delay is not attributable to Consultant or is attributable to City, is sufficient cause to terminate this Agreement, at the option of City, in accordance with Section 18.

6. Independent Contractor Status. Consultant and its subcontractors shall perform the Services as independent contractors and not as officers, employees, agents, or volunteers of City. Nothing contained in this Agreement shall be deemed to create any contractual relationship between City and Consultant's employees or subcontractors, nor shall anything contained in this Agreement be deemed to give any third party, including but not limited to Consultant's employees or subcontractors, any claim or right of action against City. Neither the City nor any of its employees shall have any control over the manner, mode, or means by which Consultant or its agents or employees perform the services under this Agreement.

7. Qualifications, and Professional Standards. Consultant represents and warrants that it has the qualifications, experience, and facilities necessary to properly perform the services required under this Agreement in a thorough, competent, and professional manner. In meeting its obligations under this Agreement, Consultant shall employ, at a minimum, generally accepted standards and practices utilized by persons engaged in providing services similar to those required of Consultant under this Agreement. Consultant represents that to the extent Consultant utilizes subcontractors, such subcontractors are, and will be, qualified in their fields. Consultant also expressly represents that both Consultant and its subcontractors, if any, are now, and will be throughout their performance of the Services under this Agreement, properly licensed or otherwise qualified and authorized to perform the Services required and contemplated by this Agreement. Consultant and its subcontractors, if any, shall utilize the standard of care and skill customarily exercised by members of their profession, shall use reasonable diligence and best judgment while performing the Services, and shall comply with and keep themselves informed of all applicable laws and regulations.

8. Identity of Subcontractors and Sub-Consultants. Consultant shall before commencing any work under this Agreement provide to City in writing: (a) the identity of all subcontractors and sub-consultants (collectively referred to as "subcontractors"), if any, which Consultant intends to utilize in Consultant's performance of this Agreement; and (b) a detailed description of the full scope of work to be provided by such subcontractors. Consultant shall only employ subcontractors pre-approved by City and in no event shall Consultant replace an approved subcontractor without the advance written permission of City, with the understanding that City's permission will not be unreasonably withheld. Notwithstanding any other provisions in this Agreement, Consultant shall be liable to City for the performance of Consultant's

subcontractors.

9. Subcontractor Provisions. Consultant shall include in its written agreements with its subcontractors, if any, provisions which: (a) impose upon the subcontractors the obligation to provide to City the same insurance and indemnity obligations that Consultant owes to City; (b) make clear that City intends to rely upon the reports, opinions, conclusions, and other work product prepared and performed by subcontractors for Consultant; and (c) compliance with all laws and certifications as required under this Agreement.

10. Power to Act on Behalf of City. Consultant shall not have any right, power, or authority to create any obligation, express or implied, or make representations on behalf of City except as may be expressly authorized in advance in writing from time to time by City and then only to the extent of such authorization.

11. Record Keeping; Reports. Consultant shall keep complete records showing the type of Services performed. Consultant shall be responsible and shall require its subcontractors to keep similar records. City shall be given reasonable access to the records of Consultant and its subcontractors for inspection and audit purposes. Consultant shall provide City with a working draft of all reports and a copy of all final reports prepared by Consultant under this Agreement.

12. Ownership and Inspection of Documents. All data, tests, reports, documents, conclusions, opinions, recommendations, and other work product generated by or produced for Consultant or its subcontractors in connection with the Services, regardless of the medium, including physical drawings and materials recorded on computer discs ("Work Product"), shall be and remain the property of City. City shall have the right to use, copy, modify, and reuse the Work Product as it sees fit. Upon City's request, Consultant shall make available for inspection and copying all such Work Product and all Work Product shall be turned over to City promptly at City's request or upon termination of this Agreement, whichever occurs first. Consultant shall not release any Work Product to third parties without prior written approval of the City Manager. This obligation shall survive termination of this Agreement and shall survive for four (4) years from the date of expiration or termination of this Agreement.

13. Confidentiality. All data, reports, conclusions, opinions, recommendations, and other work product prepared and performed by and on behalf of Consultant in connection with the Services performed pursuant to this Agreement shall be kept confidential and shall be disclosed only to City, unless otherwise provided by law or expressly authorized by City. Consultant shall not disclose or permit the disclosure of any confidential information acquired during performance of the Services, except to its agents, employees, affiliates, and subcontractors who need such confidential information in order to properly perform their duties relative to this Agreement. Consultant shall also require its subcontractors to be bound to these confidentiality provisions.

14. City Name and Logo. Consultant shall not use City's name or insignia, photographs relating to the City projects for which Consultant's services are rendered, or any publicity

pertaining to the Consultant's services under this Agreement in any magazine, trade paper, newspaper, television or radio production or other similar medium without the prior written consent of City.

15. Conflicts of Interest. Consultant warrants that neither Consultant nor any of its employees have an interest, present or contemplated, which would conflict in any manner with the interests of the City, or which would in any way hinder Consultant's performance of services under this Agreement. Consultant covenants that no person having any such interest, whether an employee or subcontractor shall perform the Services under this Agreement. During the performance of the Services, Consultant shall not employ or retain the services of any person who is employed by the City or a member of any City Board or Commission. City understands and acknowledges that Consultant is, as of the date of execution of this Agreement, independently involved in the performance of non-related services for other governmental agencies and private parties. Consultant is unaware of any stated position of City relative to such projects. Any future position of City on such projects shall not be considered a conflict of interest for purposes of this section. City understands and acknowledges that Consultant will, perform non-related services for other governmental agencies and private parties following the completion of the Services under this Agreement, and any such future service shall not be considered a conflict of interest for purposes of this section.

16. Non-liability of Officers and Employees. No officer or employee of City shall be personally liable to Consultant, or any successors in interest, in the event of a default or breach by City for any amount which may become due Consultant or its successor, or for any breach of any obligation under the terms of this Agreement.

17. City Right to Employ Other Consultants. This Agreement is non-exclusive with Consultant. City reserves the right to employ other consultants in connection with the Services.

18. Termination of Agreement. This Agreement shall terminate upon completion of the Services, or earlier pursuant to the following.

(a) For Convenience of City. This Agreement may be terminated by City at its discretion upon thirty (30) days prior written notice to Consultant.

(b) For Breach of Either Party. If for any cause either party fails to fulfill in a timely and proper manner its obligations under this Agreement (the "breaching party"), the other party (the "terminating party") shall have the right to terminate the Agreement by giving not less than five (5) working days' written notice to the breaching party of the intent to terminate and specifying the effective date thereof. The terminating party shall, however, provide the breaching party with a detailed statement of the grounds for termination. This statement shall include, as appropriate, references to specific provisions of this Agreement, dates, dollar amounts and other information relevant to the decision to terminate for cause.

(c) Compensation to Consultant Upon Termination. In the event termination is not due to fault attributable to Consultant and provided all other conditions for payment have been met, Consultant shall be paid compensation for services performed prior to notice of termination. As to any phase partially performed but for which the applicable portion of Consultant's compensation has not become due, Consultant shall be paid the reasonable value of its services provided. However, in no event shall such payment when added to any other payment due under the applicable part of the work exceed the total compensation of such part as specified in Section 3 herein. In the event of termination due to Consultant's failure to perform in accordance with the terms of this Agreement through no fault of City, City may withhold an amount that would otherwise be payable as an offset to City's damages caused by such failure.

(d) Effect of Termination. Upon receipt of a termination notice (or completion of this Agreement), Consultant shall: (i) promptly discontinue all Services affected (unless the notice directs otherwise); and (ii) deliver or otherwise make available to the City, without additional compensation, all data, documents, procedures, reports, estimates, summaries, and such other information and materials as may have been accumulated by the Consultant in performing this Agreement, whether completed or in process. Following the termination of this Agreement for any reason whatsoever, City shall have the right to utilize such information and other documents, or any other works of authorship fixed in any tangible medium of expression, including but not limited to physical drawings, data magnetically or otherwise recorded on computer disks, or other writings prepared or caused to be prepared under this Agreement by Consultant. Consultant may not refuse to provide such writings or materials for any reason whatsoever.

19. Insurance. All insurance policies shall be subject to City approval as to form and content. Consultant shall provide City with copies of required certificates of insurance upon request. 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.

- \$2,000,000 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 proposal.

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. City reserves the right to require complete, certified copies of all required insurance policies, at any time.

Acceptable Insurers

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

Waiver of Subrogation

All insurance coverage maintained or procured pursuant to this agreement shall be endorsed to waive subrogation against the City, its elected or appointed officers, agents, officials, employees, and volunteers, or shall specifically allow 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 City 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 City 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.

20. Indemnification.

Indemnity for Professional Liability:

When the law establishes a professional standard of care for Consultant's Services, to the fullest extent permitted by law, Consultant shall indemnify, protect, defend, and hold harmless City and any and all of its officials, employees and agents from and against any and all losses, liabilities, damages, costs, and expenses, including legal counsel's fees and costs but only to the extent the Consultant (and its Subconsultants), are responsible for such damages, liabilities and costs on a comparative basis of fault between the Consultant (and its Subconsultants) and the City in the performance of professional services under this agreement.

Indemnity for Other Than Professional Liability:

Other than in the performance of professional services and to the full extent permitted by law, Consultant shall indemnify, defend, and hold harmless City, and any and all of its employees, officials and agents from and against any liability (including liability for claims, suits, actions, arbitration proceedings, administrative proceedings, regulatory proceedings, losses, expenses or costs of any kind, whether actual, alleged or threatened, including legal counsel's fees and costs, court costs, defense costs, and expert witness fees), where the same arise out of, are a consequence of, or are in any way attributable to, in whole or in part, the performance of this Agreement by Consultant or by any individual or City for which Consultant is legally liable, including, but not limited to officers, agents, employees, or subcontractors of Consultant, except when caused by the active negligence or willful misconduct of the City.

21. Responsibility For Others. Consultant shall be responsible to City for its services and the services of its sub consultants. Consultant shall not be responsible for the acts or omissions of other parties engaged by City nor for their construction means, methods, techniques, sequences, or procedures, or their health and safety precautions and programs.

22. Professional Responsibility. Consultant shall be obligated to comply with applicable standards of professional care in the performance of the Services by exercising the skill and ability ordinarily required of engineers performing the same or similar services, under the same or similar circumstances, in the State of California. Consultant recognizes that opinions relating to environmental, geologic, and geotechnical conditions are based on limited data and that actual conditions may vary from those encountered at the times and locations where the data are obtained, despite the use of due professional care.

In providing opinions of cost, financial analyses, economic feasibility projections, and schedules for potential projects, Consultant has no control over cost or price of labor and material; unknown or latent conditions of existing equipment or structures that may affect operation and maintenance costs; competitive bidding procedures and market conditions; time or quality of performance of third parties; quality, type, management, or direction of operating personnel; and other economic and operational factors that may materially affect the ultimate project cost or schedule. Therefore, Consultant makes no warranty that the City's actual project costs, financial aspects, economic feasibility, or schedules will not vary from Consultant's opinions, analyses, projections, or estimates

23. Compliance with All Laws. Consultant shall be familiar with and shall comply with all City, State, and Federal laws and regulations applicable to the work to be performed under this Agreement. In providing the services required under this Agreement, Consultant shall at all times comply with all applicable laws, regulations, and resolutions of the United States, the State of California, and the City of Madera now in force and as they may be enacted, issued, or amended during the term of this Agreement.

23. A. Federal funded Task Orders: Where the Task Order services provided pursuant to the Agreement are funded by a federal program, including but not limited to, Community Block Grant Funds, Consultant certifies and agrees that Consultant will be in:

- Compliance with Executive Order 11246 of September 24, 1965, entitled "Equal Employment Opportunity" as amended by Executive Order 11375 of October 13, 1967 and as supplemented in Department of Labor regulations (41 CFR chapter 60). (All construction contracts awarded in excess of \$10,000 by grantees and their contractors or sub grantees.)*
- Compliance with the Copeland "Anti-Kickback" Act (18 U.S.C. 874) as supplemented in Department of Labor regulations (29 CFR part 3). (All contracts and sub grants or construction or repair).*
- Compliance with the Davis-Bacon Act (40 U.S.C. 276a to 276a-7) as supplemented by Department of Labor regulations (29 CFR part 5). (Construction contracts in excess of \$2000 awarded by grantees and sub grantees required by Federal grant program legislation.)*

- *Compliance with Sections 103 and 107 of the Contract Work Hours and Safety Standards Act (40 U.S.C. 327-330) as supplemented by Department of Labor regulations (29 CFR part 5). (Construction contracts in excess of \$2000 and in excess of \$2500 for other contracts which involve the employment of mechanics or laborers.)*
- *(e) Compliance with the provisions of any notice of awarding agency requirements and regulations pertaining to reporting.*
- *Compliance with the provisions of any notice of awarding agency requirements and regulations pertaining to patent rights with respect to any discovery or invention which arises or is developed in the course of or under such contract.*
- *Compliance with any awarding agency requirements and regulations pertaining to copyrights and rights in data.*
- *Compliance with access requirements imposed by the grantee, the sub grantee, the Federal grantor agency, the Comptroller General of the United States, or any of their duly authorized representatives to any books, documents, papers, and records of the contractor which are directly pertinent to that specific contract for the purpose of making audit, examination, excerpts, and transcriptions.*
- *Compliance with applicable requirements for the retention of all required records for three years after grantees or sub grantees make final payments and all other pending matters are closed.*
- *Compliance with all applicable standards, orders, or requirements issued under section 306 of the Clean Air Act (42 U.S.C. 1857(h)), section 508 of the Clean Water Act (33 U.S.C. 1368), Executive Order 11738, and Environmental Protection Agency regulations \$100,000.)*
- *Compliance with mandatory standards and policies relating to energy efficiency which are contained in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act (Pub. L 97-163, 89 Stat. 871.) [53 FR 8068.8067. Mar. 11, 1988, as amended at 60 FR 19639, 19642, Apr. 19, 1995]]*

24. Assignment. Neither this Agreement nor any duties or obligations hereunder shall be assignable by Consultant without the prior written consent of City. In the event of an assignment to which City has consented, the assignee shall agree in writing to personally assume and perform the covenants, obligations, and agreements herein contained. In addition, Consultant shall not assign the payment of any monies due Consultant from City under the terms of this Agreement to any other individual, corporation or entity. City retains the right to pay any and all monies due Consultant directly to Consultant.

25. Form and Service of Notices. All notices required or permitted to be given under this Agreement shall be in writing and shall be personally delivered, or sent by certified mail, postage prepaid and return receipt requested, addressed as follows:

To City:	CITY ENGINEER City of Madera 428 E. Yosemite Avenue Madera, CA 93638 Email:
To Consultant:	TJKM Consultants 4305 Hacienda Drive, Suite 550 Pleasanton, CA 94588

Notice shall be deemed effective on the date personally delivered or transmitted by facsimile, or if mailed, three (3) days after deposit of the same in the custody of the United States Postal Service.

26. Entire Agreement. This Agreement, including the attachments and exhibits, represents the entire Agreement between City and Consultant, and supersedes all prior negotiations, representations, or agreements, either written or oral with respect to the subject matter herein. This Agreement may be amended only by written instrument signed by both City and Consultant.

27. Authority. The signatories to this Agreement warrant and represent that they have the legal right, power, and authority to execute this Agreement and bind their respective entities.

28. Severability. In the event any term or provision of this Agreement is declared to be invalid or illegal for any reason, this Agreement will remain in full force and effect and will be interpreted as though such invalid or illegal provision were not a part of this Agreement. The remaining provisions will be construed to preserve the intent and purpose of this Agreement and the parties will negotiate in good faith to modify any invalidated provisions to preserve each party's anticipated benefits.

29. Applicable Law and Interpretation and Venue. This Agreement shall be interpreted in accordance with the laws of the State of California. The language of all parts of this Agreement shall, in all cases, be construed as a whole, according to its fair meaning, and not strictly for or against either party. Any controversy or claim arising out of, or relating to, this Agreement which cannot be amicably settled without court action shall be litigated either in the appropriate State court for Madera County, California, or as appropriate in the U. S. District Court for the Eastern District of California, located in Fresno County. The rights and obligations of the parties and all interpretations and performance of this Agreement shall be governed in all respects by the laws of the State of California.

30. Attorney's Fees. If either party is required to commence any proceeding or legal action to enforce or interpret any term, covenant, or condition of this Agreement, the prevailing party in such proceeding or action shall be entitled to recover from the other party its reasonable attorneys' fees and legal expenses.

31. Amendments and Waiver. This Agreement shall not be modified or amended in any way, and no provision shall be waived, except in writing signed by the parties hereto. No waiver of any provision of this Agreement shall be deemed, or shall constitute, a waiver of any other provision, whether or not similar, nor shall any such waiver constitute a continuing or subsequent waiver of the same provision. Failure of either party to enforce any provision of this Agreement shall not constitute a waiver of the right to compel enforcement of the remaining provisions of this Agreement.

32. Third Party Beneficiaries. Nothing in this Agreement shall be construed to confer any rights upon any party not a signatory to this Agreement.

33. Execution in Counterparts. This Agreement may be executed in counterparts such that the signatures may appear on separate signature pages. A copy or an original, with all signatures appended together, shall be deemed a fully executed Agreement.

34. Non-Discrimination. Consultant shall not discriminate on the basis of any protected class under federal or State law in the provision of the Services or with respect to any Consultant employees or applicants for employment. Consultant shall ensure that any subcontractors are bound to this provision. A protected class includes, but is not necessarily limited to, race, color, national origin, ancestry, religion, age, sex, sexual orientation, marital status, and disability.

[SIGNATURES ON FOLLOWING PAGE]

IN WITNESS WHEREOF, the City and Consultant have executed this Agreement on the date(s) set forth below.

CONSULTANT NAME

CITY OF MADERA

By: _____
(ADD NAME & POSITION)

By: _____
Santos Garcia, Mayor

Taxpayer ID #: _____

Date: _____

Date: _____

APPROVED AS TO FORM:

Hilda Cantú Montoy, City Attorney

ATTEST:

By: _____
Alicia Gonzales, City Clerk

EXHIBIT A – Scope of Services

EXHIBIT B – Fee Schedule

EXHIBIT C – Task Order Work Schedule Form

EXHIBIT A

SCOPE OF SERVICES

The professional services may include, but not be limited to, the following: land surveying, civil engineering plan checking services, roadway design, drainage and flood control design, water and sewer pipeline design, water well design, wastewater treatment plant design, traffic studies, traffic signal design, master planning services, utility locating and conflict analysis or other similar engineering services. These services may result in the preparation of engineering reports, public presentations or the preparation of plans, specifications, and estimates suitable for the public bidding process.

The following is a list of the types of consulting services being considered. Each consultant is not required to have expertise in all of the items listed:

- Storm drain infrastructure analysis and design, including hydrology and hydraulic analysis.
- Street geometrics, striping and signage analysis and design.
- Street design, including repair/replacement of curb, gutter, sidewalk, driveways, ramps, street trees, signs, pavement, etc.
- Grading design.
- Traffic signal design and Traffic studies.
- Water well design, water, and sewer pipeline design.
- Wastewater Treatment Plant design
- Preparation of engineering plans, specifications and estimates in City-approved format.
- Construction Support services include attending construction meetings, responding to requests for information, reviewing agreement submittals, and evaluating design changes during construction.

Additional requirements are as follows:

1. The Consultant's Project Manager shall be available for periodic meetings to discuss issues related to task orders.
2. The Consultant must be adequately insured for liability and property damage pursuant to the conditions of the Agreement.
3. All work shall be performed and delivered in English Standard Units or as required by the City.
4. All survey work shall be performed on CCS/NAD 83 horizontal coordinates and use true NAVD 88 vertical controls.
5. Plans and Maps shall be submitted in the AutoCAD format in use by the City at the time of issuance of the task order, point files shall be submitted in ASCII format, and any estimates, schedules, or reports shall be submitted in Microsoft Office format.
6. Consultant may be required to provide topographic surveys to support their work product as necessary.

EXHIBIT B

FEE SCHEDULE



RATE SCHEDULE

Principal	\$220/hour
Director	200/hour
Senior Project Manager	190/hour
Project Manager	160/hour
Senior Transportation Engineer	140/hour
Transportation Engineer	130/hour
Assistant Transportation Engineer	115/hour
Senior Transportation Planner	115/hour
Transportation Planner	110/hour
Assistant Transportation Planner	105/hour
Graphics Designer	100/hour
Designer	95/hour
Technical Staff II	85/hour
Administration Staff	80/hour
Production Staff	55/hour

Reimbursable Expenses

Plotting (per sheet)	\$18.00
Travel Cost (per mile, subject to change; based on IRS standard mileage rates)...	.56

*All outside services are billed at cost plus a ten percent margin for handling.
Expert Witness charges available upon request.*

*Rates Effective January 1, 2022
Rates Subject to Change*

EXHIBIT C

TASK ORDER WORK SCHEDULE FORM

TASK ORDER FORM No. ____
TO ENGINEERING SERVICES AGREEMENT FOR

PROJECT No. _____

This TASK ORDER NO. _____ to Engineering Services Agreement dated _____, hereinafter called Agreement, between the City of Madera, (CITY), and _____(ENGINEER).

1. DESCRIPTION OF PROJECT

2. SCOPE OF SERVICES

The City agrees to utilize the services of ENGINEER and ENGINEER agrees to perform _____ listed engineering services as requested by CITY as per the Engineering Services Agreement. ENGINEER shall confirm the scope, schedule, and anticipated compensation for such services in writing prior to starting work (see attached proposed Scope of Services).

3. CITY'S RESPONSIBILITIES

CITY to provide ENGINEER with the following information:

1. CITY shall assign appropriate reviewers to the project and compile and provide a single consolidated, coordinated, legible copy of written review comments to ENGINEER for all draft documents and work products, as appropriate.
2. CITY shall provide timely review of submitted products as appropriate.

4. COMPENSATION

1. CITY shall pay ENGINEER according to the fee schedule set forth in Exhibit A to the Engineering Services Agreement dated _____.
2. Services provided under this Task Order shall not exceed (dollar value) _____ (\$_____).

5. MISCELLANEOUS

All terms and conditions of the Engineering Services Agreement apply to this Task Order as though fully set forth therein. In the event of a conflict between this Task Order and the Engineering Services Agreement, the terms of this Task Order shall apply.

The parties do mutually agree to all mutual covenants and agreements contained within this Task Order No. ____.

CITY OF MADERA

By: _____

Title: _____

Date: _____

(ENGINEER) _____

By: _____

Title: _____

Date: _____

STANDARD ADDENDUM FORM

TASK ORDER NO. ____ - ADDENDUM NO. ____

(PROJECT) _____

This Addendum to Task Order No. ____ to the Engineering Services Agreement dated _____, hereinafter called Agreement, between the City of Madera (CITY), and _____(ENGINEER).

____ Change in Schedule:

____ Change in Fee: An Increase/Decrease of \$_____ to Task Order No. ____ for a total contract amount of \$_____. These changes are in accordance with the (Project description) _____, scope of services dated _____.

____ Modifies the Agreement in the following manner:

CITY OF MADERA

By: _____

Title: _____

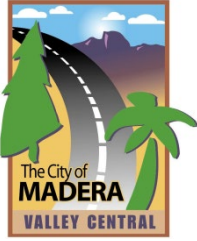
Date: _____

ENGINEER _____

By: _____

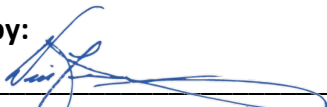
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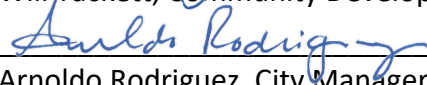
Date: _____



REPORT TO CITY COUNCIL

Approved by:


Will Tackett, Community Development Director


Arnoldo Rodriguez, City Manager

Council Meeting of: October 19, 2022

Agenda Number: D-2

SUBJECT:

Consideration of an Appropriation of Funds from the General Fund for Purposes of the Planning Department Personnel Support Contracted Services Account

RECOMMENDATION:

Adopt a Resolution appropriating funds from the General Fund for the Planning Department Contracted Services (1020-4100-6440) Account

SUMMARY:

The Fiscal Year 2021/22 annual operating budget adopted for the Planning Department included an appropriation and allocation of funds in the amount of \$250,000 for purposes of Contracted Services, represented within the 1020-4100-6440 expenditure account. This appropriation authorized expenditures for Council approved professional planning service contracts, which were executed with specific consultant firms and/or contingent labor persons to assist City staff with: the processing of property development entitlements and other land use planning processes (e.g., Zoning Ordinance, General Plan, or Special Studies) and associated document preparation; coordination of California Environmental Quality Act (CEQA) compliance processes as well as preparation and documentation of appropriate analyses and findings; attendance and presentations at Planning Commission and/or City Council meetings, neighborhood meetings, or other stakeholder organization meetings; geographic information system (GIS) services, updates and maintenance; and, other matters as may be directed from time to time by the City Manager, Development Director, and/or Planning Manager.

The terms of duration for these previously approved professional planning service contracts were not defined based upon a specified length of time but rather, based upon monetary compensation for performance of said on-call services not to exceed the appropriated amount. Following Council adoption of the Fiscal Year 2022/23 annual operating budget and receipt of invoices for compensation of the professional contract services performed, City staff discovered

that previously allocated funding within the Planning Department's operating budget from the 2021/22 Fiscal Year were inadvertently omitted and not carried over to the same line-item/account within the Planning Department's 2022/23 Fiscal Year operating budget. As no funds were available within this account, it was necessary for City staff to utilize Central Administrative Contingency funds (from the General Fund) to satisfy the City's obligation to provide compensation for the contracted services performed, and for which the invoices were received.

Therefore, City staff request the Council to approve an amendment to the General Fund Fiscal Year 2022/2023 Budget in order to appropriate and allocate funds for purposes of a line-item increase to the Planning Department's Contracted Services Account in an amount equal to the balances of the existing and previously approved professional service contracts and agreements in order to be able to continue to utilize such services over the remainder of the 2022/23 Fiscal Year. This amount must also include an allocation equal to those Central Administrative Contingency funds expended for purposes of reimbursement of the contingency fund. The total amount requested to be appropriated and allocated from the General Fund to the Planning 1020-4100-6440 expenditure account to cover previously approved Contract Services over the balance of the current fiscal year and to reimburse the Central Administrative Contingency Fund is \$237,563.23.

DISCUSSION:

The absence of an appropriation, and allocation for expenditures related to the Contracted Services account within the Planning Department's operating budget translates to an inability by the Planning Department to continue to utilize previously approved professional consultant services or contingent labor to assist staff in meeting customer needs and demands for the processing of land use related entitlement applications; as well as an inability to rely on such professional consultants or contracted labor to assist with facilitation of either present or future local planning-related, or state or even federal mandated initiatives or obligations.

The recruitment of additional full-time staff within the Planning Department will be a primary focus of Department administration and management within the current fiscal year. The Planning Department presently employs the Planning Manager, one Senior Planner, one Planning Intern, and one Administrative Assistant. Currently, the Department has position vacancies for an additional Assistant Planner and an additional Associate/Senior Planner. While economic projections may result in a reduction in application volume over the next eight months, current workload volume and an ability to satisfy customer service demand as well as public and private expectations relative to expediency in application processing will require continued reliance on supplemental professional consultant and contingent labor personnel assistance until additional full-time salary staff can be recruited.

FINANCIAL IMPACT:

The approved City of Madera 2022/23 Fiscal Year budget contains sufficient surplus or reserve funds to accommodate the request for re-allocation of funding to the Planning Department's

Contract Services account. No additional contracts, extensions or modifications of existing contracts, or additional funding beyond what has been previously approved by the City Council for the same services and purposes is being requested. Given the fact that funds were appropriated and allocated to the same line item in the previous fiscal year budget, and for the same purpose of authorizing expenditures to compensate the same professional consultant contracted and contingent labor services, the current fiscal year budget's surplus is in part realized from reserve equal to the amount of funds requested to be appropriated and re-allocated with this request.

CONSISTENCY WITH THE VISION MADERA 2025 PLAN:

The proposed action is not specifically addressed in the vision or action plans. The requested action is also not in conflict with any of the actions or goals contained in the plan; but rather, will assist the City in implementing the underlying principles of the Vision 2025 Plan as well as meeting the goals, objectives and policies of the General Plan.

ALTERNATIVES:

Should the Council not take action on the proposed budget amendments, the adopted budget will remain unchanged.

ATTACHMENTS:

1. Resolution Appropriating Funds from the General Fund for the Planning Department Contracted Services (1020-4100-6440) Account in the Amount of \$237,563.23.
2. Planning Department FY 2022/23 Operating Budget
3. Planning Department FY 2021/22 Operating Budget

ATTACHMENT 1

Resolution Appropriating Funds from the General Fund for the Planning
Department Contracted Services (1020-4100-6440) Account in the Amount of
\$237,563.23.

Resolution No. _____

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MADERA
APPROPRIATING FUNDS FROM THE GENERAL FUND FOR THE PLANNING
DEPARTMENT CONTRACTED SERVICES (1020-4100-6440 ACCOUNT IN THE
AMOUNT OF \$237,563.23)**

WHEREAS, the City Council previously adopted a Citywide budget for the 2022/2023 fiscal year; and

WHEREAS, the City has determined that it is prudent to appropriate funds from the General Fund to increase expenditure allocations for purposes of personnel support contracted services in the Planning Department operating budget; and

WHEREAS, expenditure accounts will need to be increased within the Planning Fund and Contracted Services Account (1020-4100-6440) for said purposes; and

WHEREAS, an adequate fund balance is available in said General Fund to allow for said increase of appropriations.

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 budgets of the Planning Fund are hereby amended to increase expenditure allocations for Contracted Services in the Planning Department 2022/2023 Operating Budget.
3. The City's Finance Department is directed to take all actions necessary to effectuate this budget amendment.
4. This resolution is effective immediately upon adoption.

* * * * *

ATTACHMENT 2

Planning Department FY 2022/23 Operating Budget

	Actual 2019/20	Actual 2020/21	Budgeted 2021/22	11Mo Actual 2021/22	Projection 2021/22	Budgeted 2022/23
33-Charges for Services						
4137-New Projects	-	-	-	114,548	-	-
4231-Sale of Maps and Publications	-	-	50	-	-	-
4249-Zoning/Land Use/Annex Fees	(1,236)	-	200,000	311,596	311,600	200,000
Total 33-Charges for Services	\$207,051	\$197,485	\$200,050	\$426,144	\$311,600	\$200,000
48-Refunds						
4657-Miscellaneous Revenue	10	1,345	3,760	25	25	25
4659-Refunds and Reimbursements	-	-	-	4,025	4,025	-
Total 48-Refunds	\$10	\$1,345	\$3,760	\$4,050	\$4,050	\$25
Total Revenues	\$207,061	\$198,830	\$203,810	\$430,194	\$315,650	\$200,025
50-Salaries & Benefits						
5000-Salaries / Full-Time	226,895	272,039	329,406	301,332	301,055	372,541
5005-Salaries / Part-time	-	-	-	4,056	4,056	17,472
5100-Salaries / Overtime	36	-	2,500	9,967	9,970	10,000
5105-Salaries - Leave Payout	19,187	3,604	5,864	3,031	3,030	-
5200-Salaries - Auto & Expense Allo	-	-	-	-	-	-
5300-Public Employees Retirement Sy	19,377	32,868	35,898	34,000	33,972	38,557
5302-Long Term Disability Insurance	7	16	940	1,162	1,161	1,014
5303-Life Insurance Premiums	178	333	358	338	338	331
5304-Workers Compensation Insurance	321	469	29,872	31,696	31,669	36,727
5305-Medicare Tax- Employer's Share	38	56	4,935	4,745	4,742	5,897
5306-Unfunded Accrued Liability	28,846	54,769	37,702	64,961	64,961	69,375
5307-Deferred Comp/Part-Time	2,388	-	2,511	152	152	655
5308-Deferred Compensation/Full-tim	74	59	9,298	8,070	8,070	10,591
5309-Unemployment Insurance	984	1,306	926	1,098	1,097	903
5310-Section 125 Benefit Allow.	45,133	66,885	65,448	71,212	71,212	80,538
Total 50-Salaries & Benefits	\$390,396	\$484,334	\$525,658	\$535,820	\$535,485	\$644,601
53-Materials & Services						
6402-Telephone & Fax Charges	2,914	5,996	2,958	3,864	3,858	3,858
6405-Copier Lease/Paper Charges	2,137	2,002	2,300	1,659	2,300	1,750
6411-Advertising/Bids and Notices	8,425	14,435	13,000	26,434	27,000	30,000
6414-Professional Dues	727	99	1,500	992	1,000	2,500
6415-Publications/Subscriptions	581	1,223	1,000	8	50	1,500
6416-Office Supplies/Expendable	-	76	11,400	3,321	3,500	10,000
6418-Postage / Other Mailing Charge	1,676	1,714	3,000	3,458	3,500	4,000
6419-Food	-	-	-	-	-	2,500
6440-Contracted Services	1,942	153,844	550,159	491,658	450,000	-
6451-Bank Service Charges	1,105	1,853	1,138	986	1,138	-
6530-Conference/Training/Ed	5,516	3,322	10,000	3,077	10,000	20,000
Total 53-Materials & Services	\$26,722	\$187,888	\$596,455	\$522,693	\$502,346	\$76,108
54-Interfund Charges						
6900-Interfund Chg Facility Maint.	11,155	11,359	11,155	11,155	11,155	11,155
6902-Interfund Chg Central Supply	228	152	228	152	200	-
6903-Interfund Chg Cost Distrib	-	31,570	-	-	-	31,570
6918-Interfund Chg Comp Maint	26,236	25,772	26,236	26,236	26,236	22,643
6920-Interfund Chg Computer Replace	5,619	5,619	5,619	5,619	5,619	6,052
6924-Interfund Chg Motor Rental	1,047	-	800	800	800	857
Total 54-Interfund Charges	\$44,285	\$74,472	\$44,038	\$43,962	\$44,010	\$72,277
60-Capital Outlay						
6447-Cap/Master/Other Plan Updates	9	-	-	-	-	300,000
Total 60-Capital Outlay	\$9	\$0	\$0	\$0	\$0	\$300,000
63-Transfer Out						
8200-Transfer Out	-	-	-	-	-	-
Total 63-Transfer Out	\$0	\$0	\$0	\$0	\$0	\$0
Total Expenses	\$461,412	\$746,694	\$1,166,151	\$1,102,475	\$1,081,841	\$1,092,986
Total 10204100-Planning Net Surplus/(Deficit)	(\$254,351)	(\$547,864)	(\$962,341)	(\$672,281)	(\$766,191)	(\$892,961)

ATTACHMENT 3

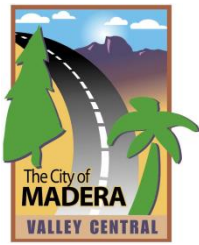
Planning Department FY 2021/22 Operating Budget

	Actual 2018/19	Actual 2019/20	Budgeted 2020/21	11Mo Actual 2020/21	Projection 2020/21	Budgeted 2021/22
33-Charges for Services						
4231-Sale of Maps and Publications	-	-	100	-	100	50
4249-Zoning/Land Use/Annex Fees	226,972	208,287	200,000	199,613	200,000	200,000
Total 33-Charges for Services	\$226,972	\$207,051	\$200,100	\$199,613	\$200,100	\$200,050
40-Interfund Charges						
4344-Interfund Chg ProgMgt/ICR	3,548	-	3,548	-	3,548	-
Total 40-Interfund Charges	\$3,548	\$0	\$3,548	\$0	\$3,548	\$0
48-Refunds						
4657-Miscellaneous Revenue	10	10	-	1,345	1,345	3,760
Total 48-Refunds	\$10	\$10	\$0	\$1,345	\$1,345	\$3,760
Total Revenues	\$230,530	\$207,061	\$203,648	\$200,958	\$204,993	\$203,810
50-Salaries & Benefits						
5000-Salaries / Full-Time	277,361	226,895	306,355	270,260	355,712	329,406
5100-Salaries / Overtime	-	36	1,500	5,693	4,650	2,500
5105-Salaries - Leave Payout	2,594	19,187	-	3,604	3,604	5,864
5200-Salaries - Auto & Expense Allo	1,639	-	-	-	-	-
5300-Public Employees Retirement Sy	-	253	41,760	32,707	41,760	35,898
5302-Long Term Disability Insurance	-	7	717	805	717	940
5303-Life Insurance Premiums	-	2	394	330	394	358
5304-Workers Compensation Insurance	28,774	24,880	33,799	28,598	33,799	29,872
5305-Medicare Tax- Employer's Share	4,397	3,792	5,159	4,148	5,159	4,935
5306-Unfunded Accrued Liability	-	28,846	33,317	54,769	47,546	37,702
5307-Deferred Comp/Part-Time	-	50	-	-	-	2,511
5308-Deferred Compensation/Full-tim	-	74	6,829	7,060	6,829	9,298
5309-Unemployment Insurance	-	-	1,109	1,319	1,306	926
5310-Section 125 Benefit Allow.	66,476	45,133	48,275	65,092	55,641	65,448
Total 50-Salaries & Benefits	\$469,173	\$390,396	\$479,214	\$474,385	\$557,117	\$525,658
53-Materials & Services						
6402-Telephone & Fax Charges	2,532	2,914	2,600	5,574	5,108	2,958
6405-Copier Lease/Paper Charges	4,998	2,137	2,300	1,861	2,757	2,300
6411-Advertising/Bids and Notices	7,541	8,425	9,000	13,171	10,453	13,000
6414-Professional Dues	-	727	1,500	-	1,500	1,500
6415-Publications/Subscriptions	374	581	600	1,223	1,203	1,000
6416-Office Supplies/Expendable	-	-	3,000	3,319	3,062	11,400
6418-Postage / Other Mailing Charge	2,159	1,676	4,000	821	4,000	3,000
6440-Contracted Services	-	1,942	442,057	410,940	360,940	250,000
6451-Bank Service Charges	316	1,105	800	1,853	836	1,138
6530-Conference/Training/Ed	679	5,516	10,000	1,250	10,000	10,000
Total 53-Materials & Services	\$21,048	\$26,722	\$475,857	\$440,012	\$399,859	\$296,296
54-Interfund Charges						
6900-Interfund Chg Facility Maint.	11,359	11,155	11,359	11,359	11,359	11,155
6902-Interfund Chg Central Supply	-	228	-	152	152	228
6918-Interfund Chg Comp Maint	25,772	26,236	25,772	25,772	25,772	26,236
6920-Interfund Chg Computer Replace	5,619	5,619	5,619	5,619	5,619	5,619
6924-Interfund Chg Motor Rental	-	1,047	-	-	-	800
Total 54-Interfund Charges	\$42,750	\$44,285	\$42,750	\$42,902	\$42,902	\$44,038
58-Special Payments						
6570-Settlements	801,345	-	-	-	-	-
Total 58-Special Payments	\$801,345	\$0	\$0	\$0	\$0	\$0
60-Capital Outlay						
6447-Cap/Master/Other Plan Updates	-	9	-	-	-	-
Total 60-Capital Outlay	\$0	\$9	\$0	\$0	\$0	\$0

(10204100)

Planning

	Actual 2018/19	Actual 2019/20	Budgeted 2020/21	11Mo Actual 2020/21	Projection 2020/21	Budgeted 2021/22
63-Transfer Out						
8200-Transfer Out	-	-	-	31,570	-	-
Total 63-Transfer Out	\$0	\$0	\$0	\$31,570	\$0	\$0
Total Expenses	\$1,334,316	\$461,412	\$997,821	\$988,869	\$999,878	\$865,992
Total 10204100-Planning Net Surplus/(Deficit)	(\$1,103,786)	(\$254,351)	(\$794,173)	(\$787,911)	(\$794,885)	(\$662,182)



REPORT TO CITY COUNCIL

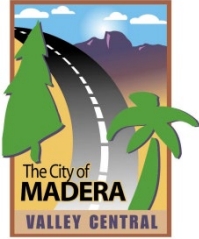
DATE: October 13, 2022

TO: Mayor and City Council Members

FROM: Will Tackett, Community Development Director

SUBJECT: Item D-2: Consideration of an Appropriation of Funds from the General Fund for Purposes of the Planning Department Personnel Support Contracted Services Account

For the October 19, 2022 Council meeting, staff is preparing a report requesting consideration of an appropriation of funds for purposes of the Planning Department personnel support Contracted Services Account. Due to a need to further review the fund amounts requested for the appropriation, additional time is needed, and the report will be delivered on Friday, October 14, 2022.



REPORT TO CITY COUNCIL

Approved by:

Council Meeting of: October 19, 2022

Joseph Hebert

Joseph Hebert, Parks & Community Services Director

Agenda Number: E-1

Arnoldo Rodriguez

Arnoldo Rodriguez, City Manager

SUBJECT:

Lions Town & Country Park Trail Update

RECOMMENDATION:

This report is submitted to provide the City Council an informational update on the Lions Town & Country Park trail system conditions and rehabilitation plans and there is no action requested

SUMMARY:

Lions Town & Country Park (LTC), bound by Howard Rd., S. Schnoor Ave., W. Industrial Ave., and S. Granada Dr. is the City's largest park and consist of approximately 50 acres. One of the park's amenities includes its trail system spanning over one mile. The Parks Maintenance division is responsible for the maintenance of the trail system at LTC, as well as all other trails in the City.

The LTC trail is in need of repairs. Specifically, the LTC trail is made up of decomposed granite (DG). This material is a common and popular material found across gardens, pathways, walking trails, etc., and can be compacted to create a beautiful, natural surface while remaining firm and permeable. Although DG is a common material, it also presents a series of issues over time. Some of these include the lack of solid surfacing DG can ultimately provide, especially with the amount of foot traffic the trail experiences. This means DG needs to be regularly refilled, as the DG shifts and rearranges from the activity it is privy to. Parks staff fully spread the DG at a minimum three times annually and patch in areas of concern as needed. Over time, loose DG easily erodes and becomes muddy when wet. This then results in uneven solid surfacing that can lead to potholes and poor drainage. This combination together results in wet, muddy areas of puddles in the potholes.

It should be noted that a very small portion of the trail system on the south side of Industrial Avenue does consist of a mixture of concrete and some asphalt surfacing.

DISCUSSION:

To address the needed rehabilitation of the LTC trail, in 2020 staff began an estimate of probable construction costs for the trail, taking into consideration the desired end-results of the project. This included such work needed as clearing and grubbing, subgrade preparation, install of asphalt concrete, striping, and earthwork excavation, to name a few. The engineer's estimate of probable construction costs placed the project cost at \$772,820. The project became tracked as Capital Improvement Project (CIP) PK-00071. However, funding for the project was, and remains, undetermined.

Given the undetermined funding for the project, the rehabilitation of the trail was placed on pause; although staff continuously seeks potential funding opportunities, such as grants. Regardless of the lack of funding to rehabilitate the trail, Parks staff continued their regular maintenance on the trail, doing their best to upkeep a safe trail for the community.

To bring urgency back to the needed rehabilitation of the LTC trail, earlier this year, on April 17, 2022, staff submitted a funding allocation request through Congressman Jim Costa's Office under the FY 2023 Transportation, Housing and Urban Development Appropriations Community Project for \$850,000. The amount took into consideration the last project estimated cost was completed in 2020, and cost for materials, labor, etc., have increased since then. At the time of writing this report, staff has not been notified if requested funding has been awarded.

In addition, discussions on available internal funding have been ongoing, precisely to the possibility of utilizing development fees funding. Specifically, discussions around the possibility of utilizing Development Impact Fees (DIF) funding, after committed DIF funds have been accounted, utilizing the balance to cover additional projects like the rehabilitation of the LTC trail. DIF funding stems from "a monetary exaction other than a tax or special assessment, which is charged by a local governmental agency to an applicant in connection with approval of a development project." This means, as local developers apply for construction of residential subdivisions, the city can require the dedication of land for parks or that the developer pay fees in lieu of land dedication as part of the Quimby Act. Any impact fees collected can be used to pay for park land, park improvements, community centers, recreation facilities, trails, open space, etc. As of writing of this report, the City's DIF funds include a balance of \$3,833,155.62. It should be noted this includes committed funds for new park construction, as recent developers have opted to donate land versus paying fees in lieu of. The table below provides a summary of the City's DIF funding amount and the amount committed to fund projects, which include several new parks:

Table 1: Development Impact Fees Balance Breakdown Chart		
<i>Project Inventory</i>	<i>Comments</i>	<i>Amount*</i>
Sunrise Rotary Sports Complex	Funds committed as match for the completion of landscaping and irrigation, as part of the Affordable Housing and Sustainable Communities Program.	\$150,000
India Park	Funds committed for demolishing of building on site, one well and two septic systems, as part of the contract with MAG Engineering, Inc.	\$91,913
Almond Park	Funds committed for the construction of the City's newest completed park located in the Joe Crown subdivision near Stadium Road and Almond Avenue.	\$658,341
Tozer/Sunrise Park	Funds committed for the construction of a park to be in the Joe Crown subdivision near Tozer 28 and Sunrise Avenue. Note that staff is anticipating applying for a grant to add amenities to this park. The grant requires a 50 percent local match. Regardless of the status of the grant, the City previously committed to constructing this park as part of the subdivision.	\$790,353
Rancho Santa Fe Park	Funds committed for the construction of a park to be in the KB Homes subdivision near Cleveland Avenue and Encantada Avenue.	\$1,068,435
Pecan Square Park	Funds committed for the construction of a park to be in the DR Horton subdivision near Pecan Avenue and S. Madera Avenue.	\$286,081
Total Committed Funds		\$3,045,124
Total DIF Funding		\$3,833,156
Balance		\$788,032
<i>*All figures rounded to the nearest dollar. Totals may not add up due to rounding.</i>		

With the total DIF funding available as of writing of this report set at \$3,833,155.62, and the committed funds totaling \$3,045,123.96, this leaves a remaining balance of \$788,031.66 in DIF funds. This does not account for additional impact fees to be collected in the future.

Staff has initiated plans to apply for the Outdoor Recreation Legacy Partnership (ORLP) Program grant opportunity. The grant opportunity does require several eligibility criteria and requirements such as the project site being in a census tract with certain poverty levels,

committed funding for match purposes, type of project, number of recreation features proposed, and recreation priorities. Staff plans to submit the Tozer/Sunrise Park Site as the proposed project, for which the site meets census tract poverty levels. Staff hopes to submit a competitive grant for the new park development and be able to minimize the amount of committed DIF funds towards this park, thus increasing the available DIF funds balance, and in turn consider utilizing DIF funds to cover the full rehabilitation of the LTC trail. The ORLP grant is due December 15, 2022, with award notification planned for January 2023.

FINANCIAL IMPACT:

No financial impact associated with the presentation of this informational report.

CONSISTENCY WITH THE VISION MADERA 2025 PLAN:

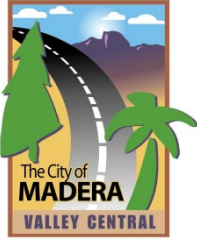
- *Strategy #113: Promote greater accessibility of City facilities and services to meet the needs of various cultural, socioeconomic and disabled groups.*
- *Strategy # 202: Develop/expand and promote community gathering places that reflect the multicultural community in Madera.*
- *Strategy #411: Enhance and expand recreational activities available in Madera.*

ALTERNATIVES:

This report is for informational purposes only.

ATTACHMENTS:

None



REPORT TO CITY COUNCIL

Approved by:

Council Meeting of: October 19, 2022

Joseph Hebert

Agenda Number: E-2

Joseph Hebert, Parks & Community Services Director

Arnoldo Rodriguez

Arnoldo Rodriguez, City Manager

SUBJECT:

Round 6 State of California Outdoor Recreation Legacy Partnership Program

RECOMMENDATION:

This report is submitted as an informational report on the Round 6 State of California Outdoor Recreation Legacy Partnership Program funding opportunity. Staff intends to apply for funding for a future park near Tozer Street, north of Sunrise Avenue

SUMMARY:

The Outdoor Recreation Legacy Partnership (ORLP) is a federal National Park Service (NPS) grant program. ORLP involves two competitive layers. Applications are first competitively reviewed by California's Department of Parks and Recreation. Applications selected by the state are then forwarded to National Park Service to compete in the nationwide competition.

On July 29, 2022, National Park Service released their Notice of Funding Opportunity (NOFO) for Round 6. National Park Service established two application opportunities through Round 6, named Round 6A and 6B. States are required to conduct an internal competitive review process and select applications that best meet the ORLP intent, based on the federal guidelines, prior to submitting applications to National Park Service for the nationwide competition. As such, California has established two initial application deadlines: Round 6A – September 1, 2022, and Round 6B – December 15, 2022.

ORLP focuses on communities with little to no access to publicly available, close-by, outdoor recreation opportunities in urban areas. ORLP funds the acquisition or development of new parks, or substantially renovate parks in economically disadvantaged cities or towns of at least 30,000 people.

DISCUSSION

With the Round 6A deadline passed, staff plans to apply for this funding opportunity meeting the deadline of December 15, 2022. The grant funding has several eligibility screenings factors that include:

1. Completion of Section 106 and NEPA
2. Project Site Location in City/Town with at least 30,000 people
3. Committed Funds
4. Timeline Confirmation
5. Confirmation of Land Ownership for Public Outdoor Recreation in Perpetuity

As well as a project selection criterion as follows:

- Criteria 1: Poverty Level and Park Space
 - 1.A – Percentage of Persons Below the Poverty Line
 - 1.B – Existing Park Space within a Half-Mile Radius
- Criteria 2: Type of Project
 - 2.A – Type of Project
 - 2.B – New Outdoor Recreation Features
 - 2.C – Green Space
- Criteria 3: SCORP Priorities

For Round 6B, applications are due December 15, 2022. California's ORLP Team will conduct its internal competitive review process. Applications will be selected by February 2023.

From February 2023 through May 2023, applicants with the most competitive applications will receive guidance from California's ORLP Team in consultation with NPS on how to complete the full federal application. NPS requires that all states submit their selected applications for the national competition by NPS' May 31, 2023 deadline. NPS review committee's estimated award date is January 1, 2024. Applicants should plan to complete their projects by Fall 2026.

Staff plans to submit an application for the new park to be located in the new Iveywood I Subdivision off Tozer/Road 28 and Sunrise Avenue. Currently the park is set to be paid for by Development Impact Fees (DIF) funds, with an estimated cost of \$790,352.64. The ORLP funding opportunity does have a 50% match requirement. If awarded, the funding would alleviate the DIF funds the City would be committed to pay, as OLRP funding could help pay for 50% of the total project cost.

FINANCIAL IMPACT:

An anticipated financial impact is associated with the completion of the grant application environmental review requirements. Staff has begun consultation with QK, Inc. for their assistance. The City has a current Professional Services Agreement, not to exceed \$50,000, for professional planning and environmental review services agreement with QK, Inc.

The Parks & Community Services Department FY 2022-23 approved budget, #10206000, did account \$15,000 for consultant services that may be used to offset the cost of applying for this grant opportunity.

CONSISTENCY WITH THE VISION MADERA 2025 PLAN:

- *Strategy #113: Promote greater accessibility of City facilities and services to meet the needs of various cultural, socioeconomic and disabled groups.*
- *Strategy # 202: Develop/expand and promote community gathering places that reflect the multicultural community in Madera.*
- *Strategy #411: Enhance and expand recreational activities available in Madera.*

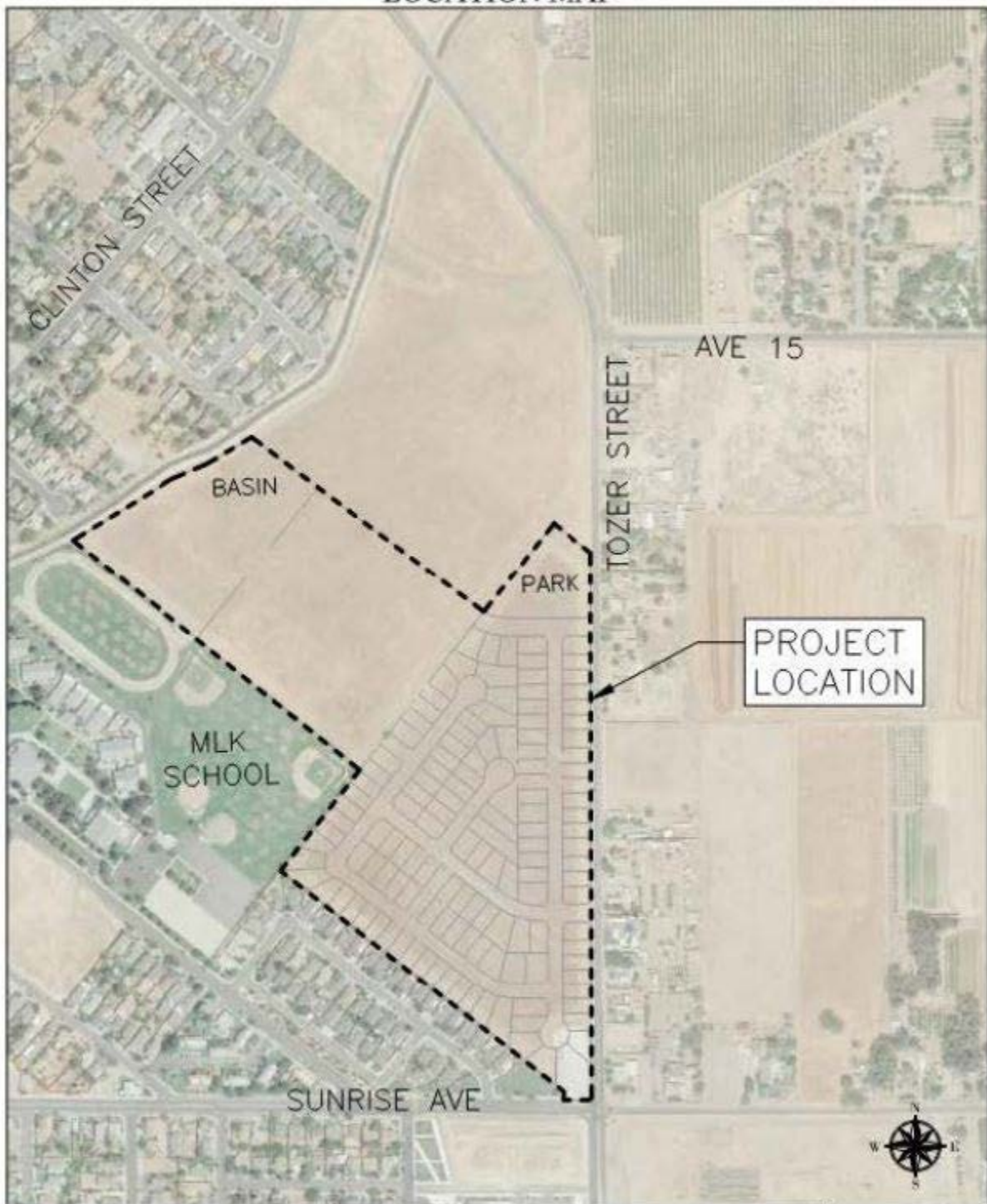
ALTERNATIVES:

This report is for informational purposes only.

ATTACHMENTS:

1. Iveywood I Tract Map with Proposed Park Location

LOCATION MAP



CITY OF MADERA
ENGINEERING DEPARTMENT
428 E. YOSEMITE AVE
MADERA, CA 93638

IVEYWOOD I
TRACT 19-S-03

DR BY: **EP**
CH BY: **TL**
DATE: **11/02/20**
SCALE: **NTS**
SHT **1** OF **1**