

**REGULAR MEETING
OF THE MADERA CITY COUNCIL**
205 W. 4th Street, Madera, California 93637

NOTICE AND AGENDA

**Wednesday, January 17, 2018
6:00 p.m.**

**Council Chambers
City Hall**

CALL TO ORDER

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

INVOCATION: Pastor John Pursell, Believers Church of Madera

PLEDGE OF ALLEGIANCE:

PUBLIC COMMENT:

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

PRESENTATIONS – None.

INTRODUCTIONS – None.

A. WORKSHOP

There are no items for this section.

B. CONSENT CALENDAR

- B-1 Minutes – There are no minutes for consideration.
- B-2 Warrant Disbursement Report 12/27/17 – 1/08/18 (Report by Tim Przybyla)
- B-3 Bi-Weekly Water Conservation Report for 12/21/17 – 1/07/18 (Report by David Merchen)
- B-4 Consideration of a Resolution Approving a Contract with Nichols Consulting for the Preparation and Filing of the State Mandated Cost Claims for Period from Execution of the Contract until June 30, 2018 and Authorizing the Mayor to Execute the Contract on Behalf of the City (Report by Tim Przybyla)
- B-5 Consideration of a Resolution Approving the Award of Contract for Well-27 Pipeline Outfall Extension Southwest Corner of Almond Ave. & Pine St. City Project No. W 17-03 in the Amount of \$191,005 to Emmett's Excavation, Inc., Authorizing Construction Contingencies of Up to 10% and Construction Inspection and Management Costs of Up to 10% as Approved by the City Engineer, and Authorizing the Mayor to Execute the Contract on Behalf of the City (Report By Keith Helmuth)
- B-6 Consideration of a Minute Order Rejecting a Claim Filed by Filiberto Trujillo Salazar (Report by Wendy Silva)
- B-7 Consideration of a Minute Order Rejecting a Claim Filed by Rosa Trujillo (Report by Wendy Silva)
- B-8 Consideration of a Resolution Amending the Madera Americans with Disabilities Act Advisory Council Bylaws (Report by Wendy Silva)
- B-9 Consideration of a Resolution Approving an Addition and/or Amendment to Escrow Instructions Related to the Sale and Purchase of Real Estate for Parcel 16 Within the Freedom Industrial Park (Report by David Merchen)
- B-10 Consideration of a Resolution Accepting a Grant Award from the U.S. Department of Justice's Community Oriented Policing Services (COPS) Hiring Program (Report by Ivette Iraheta)
- B-11 Consideration of a Resolution Authorizing the City Administrator or His/Her Designee to Execute Agreement with the California Department of Transportation Related to the Sustainable Communities Grant Award (Report by Ivette Iraheta)
- B-12 Consideration of a Resolution Approving a Lease Agreement with Madera Cab Company for Use of Office Space at the Intermodal Facility and Authorizing the Mayor to Execute all Related Documents (Report by Ivette Iraheta)
- B-13 Informational Report on Emergency Sewer Repairs Completed in 5th Street at Flume Street and Status of Citywide Video Inspection of Sewer Mains (Report by Keith Helmuth)
- B-14 Consideration of a Minute Order Rejecting a Claim Filed Dora Martinez (Report by Wendy Silva)

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

- C-1 Consideration of a Resolution Authorizing the Issuance of Special Tax Refunding Bonds for and on Behalf of the City of Madera Community Facilities District No. 2006-1, Approving and Directing the Execution of a Fiscal Agent Agreement, Approving Sale of Such Bonds on a Private Placement Basis, and Approving Other Related Documents and Actions (Report by Tim Przybyla)

D. WRITTEN COMMUNICATIONS

- D-1 Written Communication from Michael Pistoresi Regarding Water Rates

E. ADMINISTRATIVE REPORTS

- E-1 Consideration of a Resolution Supporting the Dream Act and the Deferred Action for Childhood Arrivals (Mayor Medellin)
- E-2 Discussion and Consideration of Solicitation for Consultant(s) to Perform an Employee Compensation Study and/or Other Services Related to Review Internal City Operations to Address Council Concerns (Mayor Medellin)

F. COUNCIL REPORTS

G. CLOSED SESSION

There are no items for this section.

ADJOURNMENT – Next regular meeting February 7, 2018

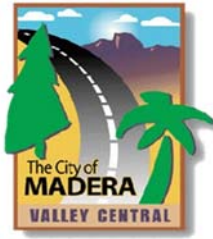
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- Please silence or turn off cell phones and electronic devices while the meeting is in session.
 - Regular meetings of the Madera City Council are held the 1st and 3rd Wednesday of each month at 6:00 p.m. in the Council Chambers at City Hall.
 - Any writing related to an agenda item for the open session of this meeting distributed to the City Council less than 72 hours before this meeting is available for inspection at the City of Madera Office of the City Clerk, 205 W. 4th Street, Madera, California 93637 during normal business hours.
 - The meeting room is accessible to the physically disabled, and the services of a translator can be made available. Request for additional accommodations for the disabled, signers, assistive listening devices, or translators needed to assist participation in this public meeting should be made at least seventy two (72) hours prior to the meeting. Please call the Human Resources Office at (559) 661-5401. Those who are hearing impaired may call 711 or 1-800-735-2929 for TTY Relay Service.
 - Questions regarding the meeting agenda or conduct of the meeting, please contact the City Clerk's office at (559) 661-5405.
 - Para asistencia en Español sobre este aviso, por favor llame al (559) 661-5405.
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I, Sonia Alvarez, City Clerk for the City of Madera, declare under penalty of perjury that I posted the above agenda for the regular meeting of the Madera City Council for January 17, 2018, near the front entrances of City Hall at 4:00 p.m. on January 11, 2018.



Sonia Alvarez, City Clerk



**Madera City Council Agenda 01/17/18
Agenda Item B-1**

There are no minutes for consideration.

City of Madera

Council Meeting Of	January 17th, 2018
Agenda Item No.	B-2

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

From: Office of the Director of Finance

Subject: Listing of Warrants Issued

Date: 01/17/2018

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

December 27th, 2017 to January 8th, 2018

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

General Warrant:	16067-16138	\$	793,505.17
Wire Transfer	Union Bank Payroll and Taxes	\$	643,563.30
Wire Transfer	SDI	\$	1,985.66
Wire Transfer	Cal Pers	\$	455,683.10

Respectfully submitted,



Tim Przybyla
Financial Services Director

CITY OF MADERA
REGISTER OF AUDITED DEMANDS FOR BANK #1-UNION BANK GENERAL ACCOUNT
January 8th, 2018

CHECK	PAY DATE	ISSUED TO	DESCRIPTION	AMOUNT
16067	01/03/2018	CHICAGO TITLE COMPANY	ALTA OWNERS POLICY 2006	5,470.00
16068	01/05/2018	ACRO SERVICE CORPORATION	TEMPORARY DRAFTSMAN: SHAWN GAR	3,029.76
16069	01/05/2018	ANTHEM BLUE CROSS	CITY PAID RETIREE MEDICAL BILL - TAUBERT	136.62
16070	01/05/2018	AT&T	11/17 CALNET 3 SVS 9391026396	2,033.75
16071	01/05/2018	DAVID J. BOYLE	MAX Bus Shelter and Amenities	47,543.50
16072	01/05/2018	CANON FINANCIAL SERVICES	NASPO Contract 3091/7-15-70-23	3,609.99
16073	01/05/2018	CENTEXT LEGAL SERVICES, LLC	COURT REPORTER CSC HEARING	850.00
16074	01/05/2018	CHURCH, MARY	TUITION REIMBURSEMENT	1,800.00
16075	01/05/2018	COMCAST	CITY INTERNET CONNECTION 12/15- 01/14/17	1,372.25
16076	01/05/2018	COMCAST	12/17 SVS 8155500320092096	230.89
16077	01/05/2018	CONCENTRA MEDICAL CENTERS	PRE EMPLOYMENT PHYSICAL	113.50
16078	01/05/2018	CREATIVE COPY	TRANSIT MAP UPDATE (FIXED ROUTE)	54.13
16079	01/05/2018	DIAMOND COMMUNICATIONS	TELEPHONE ANSWERING SERVICE - DEC	230.00
16080	01/05/2018	FIRE SAFETY SOLUTIONS, LLC	FIRE PROTECTION ENG SVS 12/16/17-12/31/17	9,037.50
16081	01/05/2018	FRESNO REPROGRAPHICS	PRINT JOB	713.76
16082	01/05/2018	GOLDEN STATE OVERNIGHT	OVERNIGHT SHIPPING	118.15
16083	01/05/2018	HERC RENTALS	Misc. equipment rental	1,586.95
16084	01/05/2018	JLB TRAFFIC ENGINEERING, INC.	CONDUCT PEDESTRIAN/VEHICULAR SAFETY EVALUATION	404.75
16085	01/05/2018	KEY TRACER SYSTEMS INC.	KEY CONTROL SYSTEM; VEHICLES	6,720.00
16086	01/05/2018	LARS ANDERSEN & ASSOCIATES, INC.	PROFESSIONAL ENGINEERING SERVICE	1,206.25
16087	01/05/2018	LEAGUE OF CALIFORNIA CITIES	MEMBERSHIP DUES DIVISION LOCC	411.18
16088	01/05/2018	LEANO, BIANEY	PER DIEM TRAINING FOR BACKFLOW ASSEMBLY TESTERS	320.00
16089	01/05/2018	LINCOLN FINANCIAL	LIFE AND LTD JANUARY 2018	8,268.31
16090	01/05/2018	LIVE OAK ASSOCIATES, INC.	Bridge Maintenance	132.50
16091	01/05/2018	MADERA CLEANERS & LAUNDRY	YOUTH CENTER MAT SERVICE	32.30
16092	01/05/2018	MADERA COUNTY	AMTRAK 50% SHARE BILL JUL - SEP 2017	570.34
16093	01/05/2018	MADERA COUNTY TREASURER	NOVEMBER 2017 PARKING PENALTIES	171.00
16094	01/05/2018	MADERA TRIBUNE	ADVERTISEMENT FOR RFP 201718-05	76.50
16095	01/05/2018	MADERA TRIBUNE	ADVERTISEMENT FOR BIDS	388.70
16096	01/05/2018	MADERA TRIBUNE	ADVERTISEMENT FOR BIDS	605.02
16097	01/05/2018	MID VALLEY DISPOSAL INC.	WASTE DISPOSAL SERVICE NOVEMBER 2017	309,211.26
16098	01/05/2018	NOLAN MCGUIRE CONSTRUCTION	14-CalHome-9862 529 S. C St.	20,331.00
16099	01/05/2018	NUNEZ, MARK	ENROLLMENT AND TRAINING MANUAL	120.55
16100	01/05/2018	NUNEZ, PAULA	TUITION REIMBURSEMENT	1,800.00
16101	01/05/2018	BROWN, GERI	TURF REPLACEMENT REBATE	2,009.25
16102	01/05/2018	MONTALVO, PORFIRIO	TURF REPLACEMENT REBATE	729.00
16103	01/05/2018	OVERLAND, PACIFIC & CUTLER LLC	PREPARE RELOCATION PLAN - OLIVE AVE WIDENING	2,330.00
16104	01/05/2018	PACIFIC GAS & ELECTRIC	11/17 SVS 9920095153-3	224,810.74
16105	01/05/2018	HERNANDEZ, DONNA	FACILITY DEPOSIT REFUND	100.00
16106	01/05/2018	PHOENIX GROUP INFO SYS	CITATIONS NOVEMBER 2017	253.70
16107	01/05/2018	PRINCIPAL LIFE INSURANCE COMPANY	JANUARY 2018 DENTAL INSURANCE	17,644.96
16108	01/05/2018	PROFORCE	TASERS AND ACCESSORIES	30,939.80
16109	01/05/2018	PROVOST & PRITCHARD CONSULTING GROUP	PROFESSIONAL ENGINEERING DESIGN	635.87
16110	01/05/2018	REGENCE BLUECROSSS BLUESHIELD OF UTAH	CITY PD RETIREE PRES BILL CHUMLEY JANUARY 2018	148.50
16111	01/05/2018	REINARD W. BRANDLEY CONSULTING	Cat Ex Drainage Project	20,900.00
16112	01/05/2018	SEABURY, COPELAND & ANDERSON	POLICY RENEWAL- CRIME POLICY	4,477.00
16113	01/05/2018	SPARKLETTES	LAB & DRINKING WATER	118.44
16114	01/05/2018	STATE WATER RESOURCES CONTROL BOARD	DISTRIBUTION RE-EXAM FEE - SOLIS	30.00
16115	01/05/2018	STATE WATER RESOURCES CONTROL BOARD	GRADE 2 WATER DISTRIBUTION CERTIFICATE FEE -GARCIA	65.00
16116	01/05/2018	SUPERIOR VISION INC.	JANUARY 2018 VISION INSURANCE	2,528.88
16117	01/05/2018	TESEI PETROLEUM, INC.	FUEL CHARGES 12/11-12/20	34,638.36
16118	01/05/2018	TESEI PETROLEUM, INC.	FUEL	393.42
16119	01/05/2018	TESEI PETROLEUM, INC.	PROPANE	2,815.13
16120	01/05/2018	ALAPISCO MARIA OR CITY OF MADERA	Utility Billing Credit Refund	149.68
16121	01/05/2018	CASILLAS DIEGO	Utility Billing Credit Refund	261.18
16122	01/05/2018	CITY OF MADERA OR AGUIRRE GLORIA	Utility Billing Credit Refund	151.83
16123	01/05/2018	DMP DEVELOPMENT	Utility Billing Deposit Refund	80.21
16124	01/05/2018	DVP LP	Utility Billing Credit Refund	168.40
16125	01/05/2018	FRAGA MARTHA	Utility Billing Deposit Refund	86.52
16126	01/05/2018	GENUINE PARTS CO ATTN AP CENTER NAPA FRE C/O GPC	Utility Billing Credit Refund	478.69
16127	01/05/2018	KLAIR JASPAL OR CITY OF MADERA C/O JACQUE AND COMP	Utility Billing Deposit Refund	23.00
16128	01/05/2018	KROEGER JANET	Utility Billing Deposit Refund	1.72
16129	01/05/2018	MARTIN STEVEN	Utility Billing Deposit Refund	111.73
16130	01/05/2018	MUNOZ RICHARD JR OR CITY OF MADERA	Utility Billing Credit Refund	150.99
16131	01/05/2018	Q-S TOZER AVE LLC C/O SIEGAL	Utility Billing Deposit Refund	42.19
16132	01/05/2018	SINGH MALKIT OR THE CITY OF MADERA	Utility Billing Credit Refund	151.83
16133	01/05/2018	STEESE REALTY C/O GEORGE STEESE	Utility Billing Credit Refund	142.96
16134	01/05/2018	TARLTON ESTATE AND ASSET MANAGEMENT	Utility Billing Deposit Refund	10.90
16135	01/05/2018	TARLTON ESTATE AND ASSET MANAGEMENT INC	Utility Billing Deposit Refund	88.03

16136 01/05/2018 WEAVER GEARY
16137 01/05/2018 WEST VALLEY CONSTRUCTION CO., INC.
16138 01/05/2018 YAMABE & HORN ENGINEERING

Utility Billing Deposit Refund	40.56
EMERGENCY REPAIR OF SEWER FAIL	14,164.29
PROVIDE SURVEYING SERVICES	2,932.00
Bank # 1 - Union Bank General Account Total	793,505.17

REPORT TO CITY COUNCIL

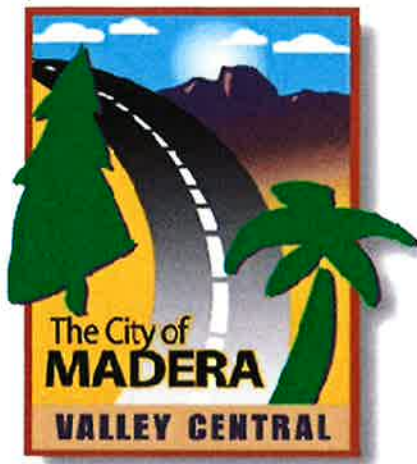
MEETING DATE: January 17, 2018

AGENDA ITEM NUMBER: B-3

Approved By:


COMMUNITY DEVELOPMENT
PUBLIC WORKS DIRECTOR


INTERIM CITY ADMINISTRATOR

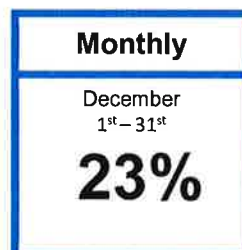
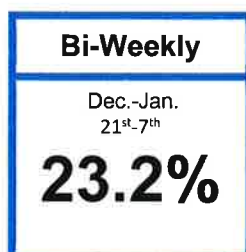


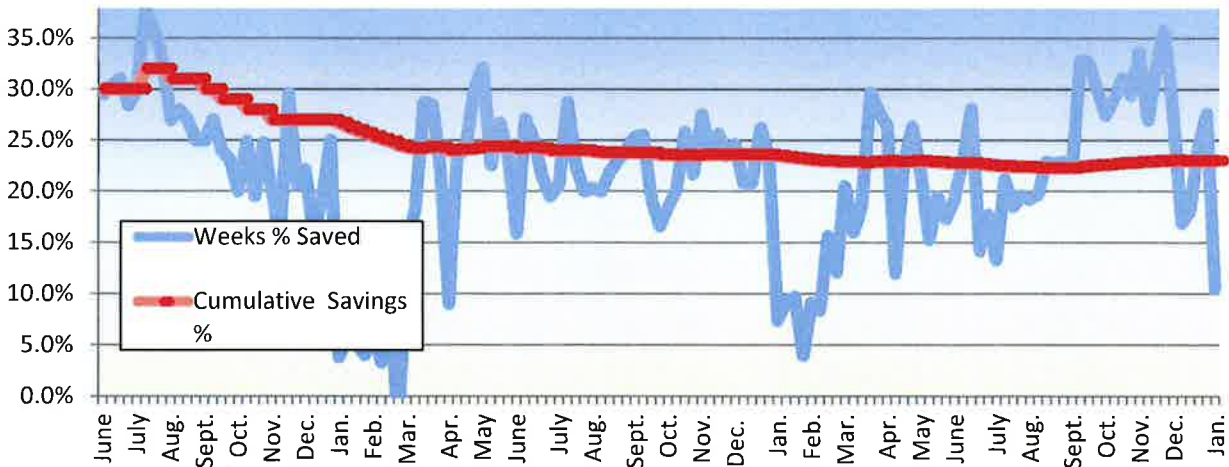
SUBJECT: Bi-Weekly Water Conservation Report for December 21st through January 7th

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

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

WATER CONSERVATION: As illustrated in the chart, the City's average bi-weekly water conservation rate remained consistent for this reporting period. The monthly conservation rate for December finished down slightly from 23.6 % in 2016 to 23% in 2017. Below is the most current water conservation data.





WATER PATROL: The water patrol staff made a total of 45 individual public contacts. The enforcement data is dramatically reduced since we are now in non-peak watering season. Below is the most current enforcement data.

ENFORCEMENT			
Individual Contacts	45	1 st offenses (\$75)	6
Verbal Warnings	5	2 nd offenses (\$200)	0
Correction Notices	8	3 rd or more offense (\$500)	0

WATER METERS:

The department has continued to work with Sensus to troubleshoot and address meters that were not reading in the automatic read system. Sensus Tech Support has completed the repairs to fix the issue discovered within the interval reading data software. This department is analyzing and troubleshooting the remaining few meters identified for repairs in the field.

In addition, the water meter staff performed various repairs and/or replacements at 30 properties. Customer concern investigations were conducted at 6 properties. The investigations resulted in discovery of leaks at 4 properties and notifications of large usage due to irrigation issues at 2 properties.

REBATE PROGRAM:

Since last reporting period the Water Conservation Department continues to have a significant increase of inquiries and participation in the program. The department has received and processed approximately 20 new applications for various rebates at the new rates since December 21st. We anticipate a continued increase in response and applications in the weeks and months to come.

SYSTEM CAPACITY: Attached is a table which shows the daily quantity of water pumped and performance of the City's system of water wells and its ability to provide fire flow between December 25th and January 7th. The system has continued to produce adequate flows to meet our peak demand and maintain reserve fire flow capacity.

FINANCIAL IMPACT: The expenses for implementing and administering these water conservation activities occur within the Water Fund and do not impact the General Fund.

CONSISTENCY WITH THE VISION MADERA 2025 PLAN: The report is consistent with the Madera Vision Plan, specifically Strategy 434: Water Quality and Usage: ensure continued water supplies to meet the demands of all Maderans through innovative reclamation, conservation and education on water use.

STATUS REPORT DECEMBER 25 2017 TO JANUARY 7 2017
WATER PRODUCTION AND RESERVE FIRE FLOW CAPABILITY

Dates	Day	Peak Temp	MG Pumped	Peak Hour	Lowest Pressure*	Lowest Tank Storage **	Wells Available	During Peak Hours	Reserve During Peak	Reserve GPM at Peak	Reserves Meets Fire flow for Residential 1,500 GPM Commercial Industrial : Hospital			
12/25/2017	Mon		4.192	1pm-2pm	47	520,000	14	4	10	12891	Yes	Yes	Yes	Yes
12/26/2017	Tues		4.323	12pm-1pm	46	780,000	14	3	11	13372	Yes	Yes	Yes	Yes
12/27/2017	Wed		4.763	7pm-8pm	46	780,000	14	4	10	12529	Yes	Yes	Yes	Yes
12/28/2017	Thurs		5.332	8pm-9pm	43	680,000	14	5	9	11516	Yes	Yes	Yes	Yes
12/29/2017	Fri		4.709	7pm-8pm	46	780,000	14	4	10	12426	Yes	Yes	Yes	Yes
12/30/2017	Sat		6.035	10pm-11pm	46	780,000	14	5	9	11516	Yes	Yes	Yes	Yes
12/31/2017	Sun		5.724	12pm-1pm	46	780,000	14	4	10	12337	Yes	Yes	Yes	Yes
1/1/2018	Mon		4.432	1pm-2pm	46	780,000	14	3	11	13247	Yes	Yes	Yes	Yes
1/2/2018	Tues		5.449	9pm-10pm	46	780,000	14	4	10	12337	Yes	Yes	Yes	Yes
1/3/2018	Wed		5.349	10pm-11pm	46	780,000	14	4	10	12337	Yes	Yes	Yes	Yes
1/4/2018	Thurs		4.668	1pm-2pm	45	780,000	14	3	11	13247	Yes	Yes	Yes	Yes
1/5/2018	Fri		4.498	1pm-2pm	45	780,000	14	4	10	13341	Yes	Yes	Yes	Yes
1/6/2018	Sat		5.327	10pm-11pm	45	780,000	14	5	9	13421	Yes	Yes	Yes	Yes
1/7/2018	Sun		5.127	10pm-11pm	45	780,000	14	5	9	12431	Yes	Yes	Yes	Yes

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

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

19 Total Wells

4 Wells Not Available

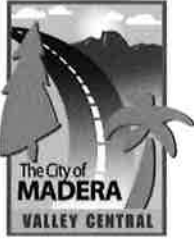
#33 VFD Drive Failed (6am 9/2/17), Being Replaced

#16 Being Retrofitted for Submersible Pump to Gain 500 gpm

#20 Pump Pulled for Casing Rehabilitation and Bowl Adjustments

#27 Being Retrofitted for Nitrate Monitoring and Discharge Line

15 Number of Wells Available



REPORT TO CITY COUNCIL

Council Meeting of: January 17, 2018

Agenda Item No.: B- 4

Approved by:



Tim Przybyla, Director of Finance



Steve Frazier, Interim City Administrator

SUBJECT:

Consideration of a Resolution Approving a Contract with Nichols Consulting for the Preparation and Filing of the State Mandated Cost Claims for the period from execution of Contract until June 30, 2018 and authorizing the Mayor to sign the Contract on behalf of the City.

RECOMMENDATION:

Staff recommends that the City Council of the City of Madera adopt the resolution approving a contract with Nichols Consulting for preparation and filing of state mandated cost claims and authorizing the Mayor to sign the Contract on behalf of the City.

DISCUSSION/BACKGROUND:

Section 6 of Article XIII B of the State Constitution requires that whenever the Legislature or any state agency mandates a new program or higher level of service on local government, the state must provide a subvention of funds to reimburse the associated costs, with certain exceptions. To implement section 6 of Article XIII B, the Legislature enacted Government Code Section 17500, under Chapter 1459, Statutes of 1984. Under Government Code section 17500, the State Controller's Office releases Claiming Instructions for SB90/State Mandated Cost Claims. Local Government Agencies have 120 days to file timely claims, and for up to a year after the deadline, a claim will be accepted as a "late" claim with a 10% penalty.

Nichols Consulting has prepared the State Mandated Cost Claims for the City of Madera for the past several years with excellent results. Nichols proposed fee for the current agreement is a fixed fee of \$2,400 to prepare the claims. The Finance Department has reviewed this cost as well as considering what it would cost to have this work done by others and find the cost as proposed by Nichols Consulting to be both fair and reasonable. Staff would, therefore recommend approval of the resolution allowing the contract with Nichols Consulting to prepare the State Mandated Cost Claims related to Fiscal Year 2016/2017. The due date for the request to be filed is February 15, 2018.

The scope of services to be performed under this agreement includes the preparation of claims for eligible costs related to:

- Driving Under Influence (DUI) - Administrative License Suspension
- Domestic Violence Calls – Reimbursable programs include: Domestic Violence Arrest Policies and Standards, Domestic Violence Arrests and Victim Assistance
- Peace Officer Procedural Bill of Rights (POBOR) - Reimbursement is based on the number of Full-Time Sworn Officers employed by the City
- Local Government Employee Relations
- All other opportunities for which the City is able to claim eligible costs.

FISCAL IMPACT:

The Cost to prepare the claims is a fixed fee of \$2,400, and an appropriation has been set up in the Finance Departments budget under Contracted Services. These claims are expected to generate revenues of approximately \$20,000 for the City of Madera.

CONSISTENCY WITH THE VISION MADERA 2025 PLAN:

Although approval of this item is not specifically addressed in the Vision or Action Plans, the requested action, resulting in financial gain to the City, will assist in the achieving the Vision Statement of a Well-Planned City.

RESOLUTION NO. _____

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MADERA, CALIFORNIA,
APPROVING A SPECIAL SERVICES AGREEMENT BETWEEN THE CITY OF MADERA AND
NICHOLS CONSULTING AND AUTHORIZING THE MAYOR TO EXECUTE THE AGREEMENT**

WHEREAS, the City of Madera (the "City") is eligible to be reimbursed for certain state mandated costs in accordance with Senate Bill 90 (SB90); and

WHEREAS, the City of Madera has not submitted claims for such reimbursements for Fiscal Year 2016/2017; and

WHEREAS, the City of Madera would like to obtain consulting services for the completion and filing of SB90 state mandated cost reimbursement claims related to Fiscal Year 2016/2017; and

WHEREAS, City staff has worked with Nichols Consulting since 2013, and Nichols Consulting has a good working knowledge of the City; and

WHEREAS, City staff has determined that Nichols Consulting's pricing for these services in the amount of \$2,400.00 is very reasonable.

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

1. The Special Services Agreement between the City of Madera and Nichols Consulting in an amount not to exceed \$2,400, a copy of which is on file in the office of the City Clerk and referred to for particulars, is hereby approved.
2. The Mayor is hereby authorized to execute the Special Services Agreement with Nichols Consulting.
3. The resolution is effective immediately upon adoption.

Nichols Consulting

CONTRACT FOR PROFESSIONAL SERVICES

This Contract is made and entered into this seventeenth day of January 2018, by and between the **City of Madera**, a city under the laws of the State of California (hereinafter referred to as "City") and Nichols Consulting, a sole-proprietor (hereinafter referred to as "Consultant").

RECITALS

- A. City has the authority to seek reimbursement for certain costs from the State of California pursuant to California Government Code Section 17550 et seq.
- B. City has the authority to contract for the preparation of said Claims through a designated individual or entity.
- C. Consultant is qualified to provide the service of preparing said Claims in consideration for the fees, expenses, and costs stipulated in this Contract.

Therefore, the parties to this Contract agree as follows:

I. CONSULTANT'S RESPONSIBILITIES

- A. Consultant shall review all eligible claiming opportunities and prepare all Claims whose State-imposed timely and late deadlines, for reimbursement, fall between the time of execution of this Contract and June 30, 2018. Consultant shall collect, document and process the information necessary for Consultant to file the claims on behalf of the City.
- B. Consultant will provide City with a copy of Claims and supporting documentation prepared pursuant to this Contract. The copy will be provided following the state imposed deadline for said Claims.
- C. Consultant shall implement a Claims monitoring and documentation process in the course of Consultant's duties.
- D. Consultant agrees not to exceed the amount of the fee proposal set forth in Appendix A to this Contract without prior written authorization of the City.

- E. Consultant will make good faith effort to file Claims in accordance with existing laws, regulations and applicable written guidelines but does not warrant the reimbursable nature or likelihood of success of reimbursement of any particular Claim.
- F. Consultant shall advise City of all official action which is necessary under applicable federal and state constitutional provisions, state statutes and regulations, and any other applicable provisions, in order that City may fulfill its responsibilities as set forth in Section II, paragraph C of this Contract for Services.

II. CITY'S RESPONSIBILITIES

- A. City will provide Consultant with all the documents, records and information necessary to prepare Claims in a timely manner.
- B. City agrees to pay Consultant, a fee of \$2,400 for services rendered. Consultant's fee is due and payable in two (2) separate and equal installments of \$1,200.00. The dates of these installment payments are: January 31, 2018, and March 31, 2018. Consultant's fee is not-to-exceed \$2,400.00, unless approved by City in writing. The payment of Consultant fee is not dependent on the amount of Claims ultimately reimbursed by the State of California.
- C. City agrees to take that official action which is necessary under applicable federal and state constitutional provisions, state statutes and regulations, and any other applicable provisions, to perform its obligations under this Contract in a timely manner.

III. MODIFICATIONS

This Contract may be modified only by a written amendment to this Contract, executed by both parties.

IV. TERMINATION OF CONTRACT

This Contract may be terminated by mutual written consent or by either party, provided that the terminating party gives ninety (90) days written notice to the other party, without cause. Upon receipt of a Notification of Termination, Consultant shall promptly discontinue all services affected. Consultant shall provide the City with all work products completed up to the date of termination. In the event of termination, City shall reimburse Consultant for all direct service hours on work-in-process at \$125.00 per hour. However, in no event shall City be obligated to pay more than the total amount of the Contract.

V. ATTORNEY'S FEES AND COSTS

In any litigation, arbitration or other proceeding by which one party either seeks to enforce its rights under this Contract (whether in contract, tort, or both) or seeks a declaration of any rights or obligations under this Contract, each party shall bear its own attorney fees, together with any costs and expenses to resolve the dispute and to enforce the final judgment.

VI. SEVERABILITY

If any term of this contract is held by a court of competent jurisdiction to be void or unenforceable, the remainder of this Contract shall remain in full force and effect and shall not be affected.

VII. NOTICES

All notices that are required to be given by one party to the other under this Contract shall be in writing and shall be deemed to have been given if delivered personally or enclosed in a properly addressed envelope postage prepaid and deposited with an overnight delivery service or with a United States Post Office for delivery by first class and certified mail addressed to the parties at the following addresses, unless such addresses are changed by notice, in writing, to the other party.

**City of Madera
Attn: Financial Services Manager
205 West Fourth Street
Madera, CA 93637**

**Nichols Consulting
1857 44th Street
Sacramento, CA 95819**

VIII. AUTHORITY

The individuals executing this Contract represent and warrant that they have the legal power and authority to this contract and to contractually bind their respective entities.

IX. GOVERNING LAW

The validity of this Contract and each of its terms and provisions, as well as the rights and duties of the parties under this Contract, shall be construed pursuant to and in accordance with the laws of the State of California.

X. INDEMNITY

Contractor shall indemnify, defend, and hold harmless the City, and its officers, employees, and agents ("City indemnitees"), from and against any and all causes of action, claims, liabilities, obligations, judgments, or damages, including reasonable legal counsels' fees and costs of litigation ("claims"), arising out of the Contractor's performance of its obligations under this agreement or out of the operations conducted by Contractor, including the City's active or passive negligence, except for such loss or damage arising from the sole negligence or willful misconduct of the City. In the event the City indemnitees are made a party to any action, lawsuit, or other adversarial proceeding arising from Contractor's performance of this agreement, the Contractor shall provide a defense to the City indemnitees, or at the City's option, reimburse the City indemnitees their costs of defense, including reasonable legal counsels' fees, incurred in defense of such claims.

XI. INSURANCE

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

Minimum Scope and Limits of Insurance

Consultant shall maintain limits no less than:

- ☐ \$1,000,000 General Liability (including operations, products and completed operations) per occurrence, \$2,000,000 general aggregate, for bodily injury, personal injury and property damage, including without limitation, blanket contractual liability. Coverage shall be at least as broad as Insurance Services Office (ISO) Commercial General Liability coverage form CG 00 01. General liability policies shall be endorsed using ISO form CG 20 10 that the City and its officers, officials, employees and agents shall be additional insureds under such policies.
- ☐ \$1,000,000 Automobile Liability combined single limit per accident for bodily injury or property damage at least as broad as ISO Form CA 00 01 for all activities of Consultant arising out of or in connection with Work to be performed under this Agreement, including coverage for any owned, hired, non-owned or rented vehicles. Automobile Liability policies shall be endorsed to provide that the City and its officers, officials, employees and agents shall be additional insureds under such policies.
- ☐ Worker's Compensation as required by the State of California and \$1,000,000 Employer's Liability per accident for bodily injury or disease. Consultant shall submit to the City, along with the certificate of insurance, a Waiver of Subrogation endorsement in favor of the City, its officers, agents, employees, and volunteers.

Fixed Fee - \$2,400

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

Maintenance of Coverage

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

Proof of Insurance

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

Acceptable Insurers

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

Waiver of Subrogation

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

Enforcement of Contract Provisions (non estoppel)

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

Specifications not Limiting

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

Notice of Cancellation

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

Self-insured Retentions

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

Timely Notice of Claims

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

Additional Insurance

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

XII. ENTIRE AGREEMENT

This Contract, which includes the "Proposal for Contract for Professional Services" set forth as Appendix A, supersedes any and all other agreements, whether oral or in writing, between the parties with respect to the subject of this Contract. This Contract contains all of the covenants and agreements between the parties with respect to the subject of this Contract, and each party acknowledges that no representatives, inducements, promises, or agreements embodied in this Contract. No agreement, statement, or promise not contained in this Contract shall be valid or binding on the parties with respect to the subject of this Contract.

Executed at _____, California, on the day and year set forth above.

_____, **President**

F. Andy Nichols

**Nichols Consulting
1857 44th Street
Sacramento, CA 95819**

_____, **Title** _____

_____, **Print Name**

**City of Madera
205 West Fourth Street
Madera, CA 93637**

APPENDIX A

PROPOSAL FOR CONTRACT FOR SERVICES

This proposal for the **City of Madera** is to provide the services set forth under Paragraph I of the Contract for Professional Services relating to the preparation of Claims for reimbursement pursuant to California Government Code Section 17550 et seq.

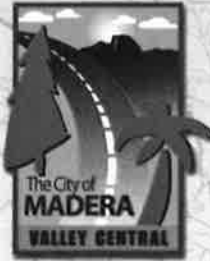
Consultant's fee shall be \$2,400.00, for claims prepared on behalf of the City beginning with the time of execution of this Contract and ending June 30, 2018. Consultant's fee is due and payable in two (2) separate and equal installments of \$1,200.00. The dates of these installment payments are: January 31, 2018, and March 31, 2018

This Proposal is **valid until January 31, 2018** unless extended in writing by Consultant.

January 17, 2018

_____, President
F. Andy Nichols

Nichols Consulting
1857 44th Street
Sacramento, CA 95819



REPORT TO CITY COUNCIL

Approved By:

Council Meeting of January 17, 2018

Agenda Item Number B-5

For:


Department Director


City Administrator

SUBJECT:

CONSIDERATION OF A RESOLUTION APPROVING THE AWARD OF CONTRACT FOR WELL-27 PIPELINE OUTFALL EXTENSION SOUTHWEST CORNER OF ALMOND AVE. & PINE ST. CITY PROJECT NO. W 17-03 IN THE AMOUNT OF \$191,005 TO EMMETT'S EXCAVATION, INC, AUTHORIZING CONSTRUCTION CONTINGENCIES OF UP TO 10% AND CONSTRUCTION INSPECTION AND MANAGEMENT COSTS OF UP TO 10% AS APPROVED BY THE CITY ENGINEER, AND AUTHORIZING THE MAYOR TO EXECUTE THE CONTRACT ON BEHALF OF THE CITY

RECOMMENDATION:

1. That the City Council approves Resolution No. 18-____
 - a. Approving the award of the contract for Well-27 Pipeline Outfall Extension Southwest Corner of Almond Ave. & Pine St. City Project NO. 17-03 in the amount of \$191,005 to Emmett's Excavation, Inc.
 - b. Authorizing Construction Contingencies of up to 10% as approved by the City Engineer.
 - c. Authorizing Construction Inspection and Management, including Testing Costs of up to 10% as approved by the City Engineer.
 - d. Authorizing the Mayor to execute the contract on behalf of the City.

SUMMARY:

The City received bids for the Well-27 Pipeline Outfall Extension Southwest Corner of Almond Ave. & Pine St. City Project NO. 17-03. Emmett's Excavation, Inc., submitted the second lowest bid in the amount of \$191,005. The low bidder JT2, Inc., DBA Todd Companies bid was non-responsive due to a bid item that is not in conformance with the project specifications. The contractor also failed to disclose that the company is under investigation for civil wage and penalty assessments by the State of California, Department of Industrial Relations, Labor Commissioners Office on multiple cases including debarment proceedings. It is recommended that the City Council award the project to Emmett's Excavation, Inc.

Engineering

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

www.cityofmadera.ca.gov

SITUATION:

Work for the proposed project consists of saw-cutting AC pavement and concrete for trenching to install a recycled water-outfall 8 inch PVC water main including tees, gate valves and appurtenances as required by the Plans and Specifications. The work also includes boring and jacking a 24-inch steel casing under the existing Union Pacific Railroad (UPRR) spur track. The work is subject to UPRR permit included in the specifications.

This project precedes two other planned work activities; both of which are reliant upon the results of this project which provides for the ability to flush the well.

This water well feeds into a Granular Activated Carbon Adsorption filter system designed to remove Ethylene Dibromide (EDB) and Dibromochloropropane (DBCP) and other elements.

Based on tests completed by City staff on March 10, 2011, Well 27 was found to contain elevated nitrate levels on the activated carbon during system operation. Unless addressed, the buildup of nitrates can cause problems in the water streams due to nitrate sloughing. Well 27 was then de-commissioned and put out of operation until such time as City staff was able to identify a cost effective solution to keeping the well in service.

A typical method to mitigate the elevated nitrate problem is to perform periodic flushing of the system by pumping and disposing it to waste until the nitrate levels in the discharge pipe falls below the Maximum Contaminant Level (MCL). This method requires a drainage system to convey all the waste out of the facility. In order to accomplish this a discharge pipeline will be connected to the effluent pipes that come out of the Granular Activated Carbon (GAC) vessels, extend and cross underneath the Union Pacific railroad tracks (UPRR) and terminate in a drop inlet box where the water with elevated nitrate levels will bubble up and discharge into the street gutter and gravity flow to the Evapco West basin.

Additionally, the well casing perforations for this well are almost 100% plugged. As such, this well will require rehabilitation to open the perforations before it can be put back on-line. There will also need to be a step discharge test (well performance test) after it is rehabilitated. The well will be pumped between 1,000 and 1,750 gallons per minute for approximately 8 hours.

The "Notice Inviting Bids" for the project was duly noticed in the Madera Tribune Newspaper. The construction and bidding documents (plans and specifications) were distributed to Builders Exchanges in Fresno, Modesto and Visalia. The plans and specifications were also posted on EBidBoard.com, a projects online listing service for contractors accessible from the City's website. The Blue Book Network also listed the City project making the project known to contractors and subcontractors using their system.

On December 12, 2017, the City received nine (9) bids. The bids were checked for accuracy with the bidding requirements of the specifications and for validity of contractor licenses and bid security.

The qualified bidders and bids received are listed below:

JT2, Inc., DBA Todd Companies	\$158,326.00 (bid was non-responsive)
Emmett's Excavation	\$191,005.00
Steve Dovali Construction	\$207,890.00
Floyd Johnston Construction	\$225,497.50
Dawson-Mauldin Construction	\$227,610.00
West Valley Construction	\$233,560.00
Advanced Chemical Transport	\$263,960.00
Rolfe Construction	\$264,703.00

RTC Construction	\$290,149.00
Engineers Opinion of Cost	\$212,000.00

The bid submitted by Emmett's Excavation is the lowest responsive and responsible bid that meets the contract requirements. The bid is approximately 10% below the Engineers opinion of cost.

This project, similar to most other projects in the City, is managed by City staff relative to insuring construction standard are met and all requirements that the plans and specifications are fulfilled. Materials testing is typically performed by consultants. Those consultants are hired on a rotational basis; the cost is included in the construction management portion of the cost.

CONSISTENCY WITH THE VISION MADERA 2025 PLAN:

Strategy 434 – Water Quality and Usage: Ensure continued water supplies to meet the demands of all Maderans through innovative reclamation, conservation and education on water-use.

FINANCIAL IMPACT:

Funding for the project is programmed in FY2017/18 Budget, Water System Utility Fund, Org Code 20303830.

Construction of the project will not have a financial impact on the City's General Fund.

RESOLUTION NO. 18-__

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MADERA, CALIFORNIA, APPROVING THE AWARD OF CONTRACT FOR WELL-27 PIPELINE OUTFALL EXTENSION SOUTHWEST CORNER OF ALMOND AVE. & PINE ST. CITY PROJECT NO. W 17-03 IN THE AMOUNT OF \$191,005 TO EMMETT'S EXCAVATION, INC, AUTHORIZING CONSTRUCTION CONTINGENCIES OF UP TO 10% AND CONSTRUCTION INSPECTION AND MANAGEMENT COSTS OF UP TO 10% AS APPROVED BY THE CITY ENGINEER, AND AUTHORIZING THE MAYOR TO EXECUTE THE CONTRACT ON BEHALF OF THE CITY

WHEREAS, The Engineering Department advertised a solicitation for bids for the Well-27 Pipeline Outfall Extension Southwest Corner of Almond Ave. & Pine St. City Project No. W 17-03, hereinafter referred to as "the Project"; and

WHEREAS, Sealed bids were received on December 12, 2017, and opened by the City Engineer; and

WHEREAS, Funding for the Well-27 Pipeline Outfall Extension Southwest Corner of Almond Ave. & Pine St. City Project No. W 17-03 is programmed in the Capital Improvement Projects Budget, Water Division Fund for FY 2017/18.

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

1. The above recitals are true and correct.
2. The City Council has reviewed and considered all of the information presented including the report to the City Council from the Engineering Department.
3. The City finds that Emmett's Excavation, Inc., is the lowest responsible and responsive bidder.
4. The contract for Well-27 Pipeline Outfall Extension Southwest Corner of Almond Ave. & Pine St. City Project No. W 17-03, in the amount of \$191,005 with Emmett's Excavation, Inc., a copy of which is on file in the Office of the City Clerk and referred to for particulars, is approved.
5. Construction Contingencies of up to 10% and Construction Inspection, Management, including Testing Costs of up to 10%, as approved by the City Engineer are hereby authorized.
6. The Mayor is hereby authorized to execute the contract on behalf of the City.
7. This Resolution is effective immediately upon adoption.

AGREEMENT

THIS AGREEMENT, made this 17th day of January 2018, between the City of Madera, hereinafter called "**OWNER**", and Emmett's Excavation, Inc., doing business as (an individual), or (a partnership), or (a corporation), hereinafter called "**CONTRACTOR**".

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

1. The **CONTRACTOR** shall commence and complete all **WORK** required for the "**Well-27 Pipeline Outfall Extension Southwest Corner of Almond Ave. & Pine St. City of Madera Project No. W 17-03**"

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

3. The **CONTRACTOR** shall commence the **WORK** required by the **CONTRACT DOCUMENTS** within 10 calendar days after the date of the **NOTICE TO PROCEED** and will complete the same within the time period set forth in the **CONTRACT DOCUMENTS**. The **CONTRACTOR** shall submit a Payment Bond and Performance Bond in the amount of \$191,005, each and Insurance Certificates as specified in the **CONTRACT DOCUMENTS** prior to commencing any **WORK**.

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

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

- (A) Advertisement for Bids
 - (B) Information for Bidders
 - (C) Bid Proposal
 - (D) Bid Bond
 - (E) Agreement
 - (F) Payment Bond
 - (G) Performance Bond
 - (H) Insurance Requirements for Contractors
 - (I) General Conditions
 - (J) Special Conditions
 - (K) State Standard Plans and Specifications ISSUE MAY 2015
 - (L) PLANS and SPECIFICATIONS prepared or issued by CITY OF MADERA, entitled "**Well-27 Pipeline Outfall Extension Southwest Corner of Almond Ave. & Pine St. City of Madera Project No. W 17-03**", **October 2017**. Project Plans prepared or issued by the City of Madera Engineering Department, Explanation of Bid Items, Technical Specifications, City of Madera Standard Specifications and Drawings
- Addenda Nos. 1, dated 11/13/17
Addenda Nos. 2, dated 12/05/17
Addenda Nos. 3, dated 12/07/17

6. In the event the **CONTRACTOR** does not complete the **WORK** within the time limit specified herein or within such further time as authorized, the **CONTRACTOR** shall pay to the **OWNER** liquidated damages in the amount of **Four Hundred Dollars (\$400.00)** per day for each and every calendar day delay in finishing the **WORK** beyond the completion date so specified.

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

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

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

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

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

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

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

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

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

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

Section 1777.5 provides, in part, as follows:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

18. Contractor must comply with the insurance requirements as described in the section called "INSURANCE REQUIREMENTS FOR **CONTRACTOR**", pages 36-37 of the Contract Documents.

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

20. Termination.

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

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

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

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

Notice of termination shall be mailed to the City:

City of Madera
205 W. 4th Street
Madera, Ca 93637

To the Contractor Emmett's Excavation, Inc.

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

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

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

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

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

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

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

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

27. Independent Contractor. In performance of the work, duties, and obligations assumed by the Contractor under this Agreement, it is mutually understood and agreed that the City, including any and all of City's officers, agents and employees will, at all times, be acting and performing as an independent contractor, and shall act in an independent capacity and not as an officer, agent, servant, employee, joint venturer, partner, or associate of **City**. Furthermore, **City**

shall have no right to control or supervise or direct the manner or method by which City shall perform its work and functions. The City shall comply with all applicable provisions of law and the rules and regulations, if any, of governmental authorities having jurisdiction over the subject matter hereof.

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

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

29. Assignment-Neither the Emmett's Excavation, Inc. nor City will assign its interest in this Agreement without the written consent of the other.

30. During the performance of this Agreement, the Contractor assures that no otherwise qualified person shall be excluded from participation or employment, denied program benefits, or be subjected to discrimination based on race, color, national origin, sex, age, or handicap, under any program or activity funded by this contract, as required by Title VI of the Civil Rights Act of 1964, Title I of the Housing and Community Development Act of 1974, as amended, and the Age Discrimination Act of 1975, and all implementing regulations.

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

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

City of Madera
Herein Called OWNER

By: _____
Andrew J. Medellin, Mayor

APPROVE AS TO FORM:

J. Brent Richardson, City Attorney

ATTEST:

Sonia Alvarez, City Clerk

BY: _____
Herein Called CONTRACTOR

BY: _____

Federal Tax I.D. No.

Contractor License Number

DIR Registration Number

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

ACKNOWLEDGMENT

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

State of California)

County of _____)

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

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

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

WITNESS my hand and official seal.

Signature _____ (Seal)

INSURANCE REQUIREMENTS FOR CONTRACTORS

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

Minimum Scope and Limits of Insurance

Contractor shall maintain limits no less than:

- **\$2,000,000 General Liability** (including operations, products and completed operations) per occurrence, \$4,000,000 general aggregate, for bodily injury, personal injury and property damage, including without limitation, blanket contractual liability. Coverage shall be at least as broad as Insurance Services Office (ISO) Commercial General Liability coverage form CG 00 01. General liability policies shall be endorsed using ISO forms CG 20 10 and CG 20 37 to provide that the City and its officers, officials, employees and agents shall be additional insureds under such policies.
- **\$1,000,000 Automobile Liability** combined single limit per accident for bodily injury or property damage at least as broad as ISO Form CA 00 01 for all activities of Contractor arising out of or in connection with Work to be performed under this Agreement, including coverage for any owned, hired, non-owned or rented vehicles. Automobile Liability policies shall be endorsed to provide that the City and its officers, officials, employees and agents shall be additional insureds under such policies.
- **Worker's Compensation** as required by the State of California and **\$1,000,000 Employer's Liability** per accident for bodily injury or disease. Contractor shall submit to the City, along with the certificate of insurance, a Waiver of Subrogation endorsement in favor of the City, its officers, agents, employees, and volunteers.

Maintenance of Coverage

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

Proof of Insurance

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

Acceptable Insurers

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

Waiver of Subrogation

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

Enforcement of Contract Provisions (non estoppel)

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

Specifications not Limiting

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

Notice of Cancellation

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

Self-insured Retentions

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

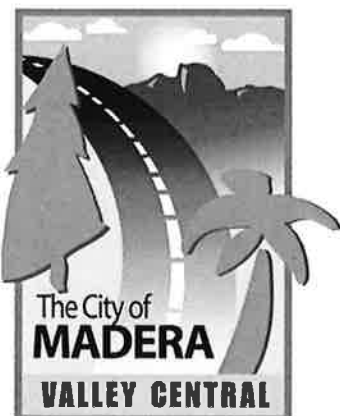
Timely Notice of Claims

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

Additional Insurance

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

REPORT TO CITY COUNCIL



Council Meeting of January 17, 2018

Agenda Item Number B-6

Approved by:

Wendy Salas
Department Director

Steve Kronen
City Administrator

Consideration of a Minute Order Rejecting a Claim filed by Filiberto Trujillo Salazar

RECOMMENDATION

It is recommended Council reject the claim filed by Filiberto Trujillo Salazar. The City will send a rejection notice to Mr. Salazar.

HISTORY

A claim was filed on December 6, 2017, by Filiberto Trujillo Salazar. The claimant is alleging battery and violation of his Fourth Amendment Rights under the Constitution.

SITUATION

On June 12, 2017, the Madera Police Department responded to a possible domestic disturbance. During the course of events once officers were on the scene, Mr. Salazar became physical with the officers and was tased while officers attempted to effectuate his arrest.

Suzanne Johnson, AIMS, investigated the claim. Ms. Johnson reviewed the Police Report as well as the Use of Force Review that was conducted by the Madera Police Department and concluded the use of force used against Mr. Salazar was objectively reasonable and within training and policy. Ms. Johnson is recommending the claim be taken to Council for consideration of rejection. Staff concurs with her recommendation.

CONSISTENCY WITH THE VISION MADERA 2025 PLAN

Rejection of claims filed under Government Code §910 is not addressed in the vision or action plan; the requested action is also not in conflict with any of the actions or goals contained in that plan.

CLAIM FORM

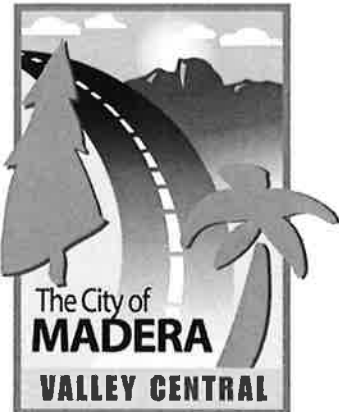
City of Madera City Clerk

Date: 12/6/17

(Name of Entity)

Relationship to Claimant _____

REPORT TO CITY COUNCIL



Council Meeting of January 17, 2018

Agenda Item Number B-7

Approved by:

Wendy Steele
Department Director

Steve Engler
City Administrator

Consideration of a Minute Order Rejecting a Claim filed by Rosa Trujillo.

RECOMMENDATION

It is recommended Council reject the claim filed by Rosa Trujillo. The City will send a rejection notice to Ms. Trujillo.

HISTORY

A claim was filed on December 6, 2017, by Rosa Trujillo. The claimant is alleging battery and violation of her Fourth Amendment Rights Under the Constitution.

SITUATION

On June 12, 2017, the Madera Police Department responded to a possible domestic disturbance. As officers were attempting to subdue a subject, Ms. Trujillo physically interfered by pulling on the officers even though she was ordered to stay back. Ms. Trujillo fell during the course of events.

Suzanne Johnson, AIMS, investigated the claim and based on her investigation she is recommending the claim be taken to Council for consideration of rejection. Staff concurs with her recommendation.

CONSISTENCY WITH THE VISION MADERA 2025 PLAN

Rejection of claims filed under Government Code §910 is not addressed in the vision or action plan; the requested action is also not in conflict with any of the actions or goals contained in that plan.

CITY OF MADERA

CLAIM FORM

(Please Type Or Print)

RECEIVED

City of Madera City Clerk

By: PalvarzDate: 12/6/17CLAIM AGAINST CITY OF MADERA, OFFICER SANTYO and OFFICER HUERTA

(Name of Entity)

Claimant's name: ROSA TRUJILLOTelephone Number () SS#: DOB: Gender: Male Female XClaimant's address: Address where notices about claim are to be sent, if different from above: Date of incident/accident: JUNE 12, 2017Date injuries, damages, or losses were discovered: JUNE 12, 2017Location of incident/accident: 825 TERRACE PLACE, MADERA, CALIFORNIAWhat did entity or employee do to cause this loss, damage, or injury? BATTERY TO MS. TRUJILLO ANDVIOLATION OF HER FOURTH AMEDEMMENT RIGHT UNDER THE US CONSTITUTION

(Use back of this form or separate sheet if necessary to answer this question in detail.)

What are the names of the entity's employees who caused this injury, damage, or loss (if known)? ADRIAN SANTYO and ELISABETH HUERTAWhat specific injuries, damages, or losses did claimant receive? SOFT TISSUE INJURIES AND ARRESTIN VIOLATION OF MS. TRUJILLO'S CIVIL RIGHTS.

(Use back of this form or separate sheet if necessary to answer this question in detail.)

What amount of money is claimant seeking or, if the amount is in excess of \$10,000, which is the appropriate court of jurisdiction. Note: If Superior and Municipal Courts are consolidated, you must represent whether it is a "limited civil case" [see Government Code 910(f)] UNLIMITED JURISDICTION.How was this amount calculated (please itemize)? DAMAGES AND VIOLATION OF RIGHTS

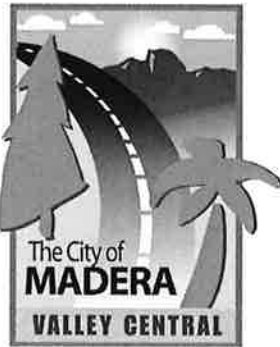
(Use back of this form or separate sheet if necessary to answer this question in detail.)

Date Signed: 12/6/17 Signature: Rosa Trujillo

If signed by representative:

Representative's Name Address Telephone # Relationship to Claimant

Report to City Council



Council Meeting of January 17, 2018

Agenda Item Number B-8

Approved by:



Department Director



City Administrator

Consideration of a Resolution Amending the Madera Americans with Disabilities Act Advisory Council Bylaws

RECOMMENDATION

Staff recommends Council adopt the resolution amending the Madera Americans with Disabilities Act (ADA) Advisory Council bylaws.

HISTORY

In April 2006, the City Council gave formal direction to staff for appointing representatives to the newly formed ADA Advisory Council. On May 17, 2006, the City Council approved bylaws for the ADA Advisory Council.

SITUATION

The ADA Advisory Council desires to change their regular meeting time from 2:00pm on the third Tuesday of each month to 3:30pm on the same day. The Advisory Council members voted unanimously at their December 2017 meeting to recommend this change to the City Council for consideration.

A copy of the proposed bylaws are included with this report. The proposed bylaws capture the recommended new meeting time.

FISCAL IMPACT

None.

CONSISTENCY WITH THE VISION MADERA 2025 PLAN

The Madera ADA Advisory Council is a key player in helping the City meet its vision goals relating to accessibility for all members of the public. Amending the Advisory Council's bylaws is not included in the vision plan, nor is it in conflict with the plan.

RESOLUTION No. _____

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MADERA
AMENDING THE MADERA AMERICANS WITH DISABILITIES ACT
ADVISORY COUNCIL BYLAWS

WHEREAS, the City of Madera (City) has made a commitment to its citizens relating to accessibility of City programs and facilities in the Vision Madera 2025 plan; and

WHEREAS, the City Council previously took action to form and recognize the Madera Americans with Disabilities Act (ADA) Advisory Council and adopt bylaws for the Advisory Council to assist the City in meeting its commitment; and

WHEREAS, the current members of the Madera ADA Advisory Council desire to change the Advisory Council's standard meeting time and staff has prepared revised bylaws that capture this change.

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

1. The above recitals are true and correct.
2. The Madera ADA Advisory Council has a need to amend their bylaws.
3. The proposed changes to the bylaws are approved and the revised bylaws are on file with the office of the City Clerk and referred to for more particulars.
4. This resolution is effective immediately upon adoption.

* * * * *

CITY OF MADERA

Bylaws of the Madera ADA Advisory Council

SECTION 1. Membership

The ADA Advisory Council of the City of Madera shall consist of members who shall be appointed by the City Council as provided herein. The total number of positions on the ADA Advisory Council shall equal the total number of positions on the City Council, inclusive of the elected Mayor. The composition of the ADA Advisory Council shall be as diverse as possible to include a cross-section of the community in the City of Madera (i.e. members representing general public, elderly, disabled, students) and shall be appointed for the terms of office provided herein, unless the appointment is made to fill an early vacancy on the ADA Advisory Council, in which case the appointment shall be for the unexpired term of the member who is replaced. Each member must be a resident of the City of Madera at the time of their appointment and while serving on the Council. All ADA Advisory Council member terms of office and filling of vacancies shall thereafter be as follows:

- A. The members of the ADA Advisory Council shall be appointed by individual members of the City Council subject to confirmation by the entire City Council. Each nominee shall be appointed upon the adoption of a resolution of appointment approved by at least a simple majority of the City Council. Any vacancy created by the resignation, removal, or end of the term of office of an ADA Advisory Council member shall be filled as outlined above. Should the Council member who made the original nomination no longer be serving as a Council member, then such nominations shall be made by a Council member who has not yet made his/her opportunity to nominate a person to serve on the ADA Advisory Council.
- B. Each ADA Advisory Council member shall serve a term of four (4) years or until the Council member who nominated such ADA Advisory Council member is no longer serving as a Council member, whichever period is less.

Members of the ADA Advisory Council shall serve without compensation. However, payment for any necessary expenses incurred in the conduct of pertinent business may be paid if previously authorized in writing by the City Administrator.

Additionally, bus fares to and from ADA Advisory Council meetings may be paid by the City when included as a City budgeted item.

SECTION 2. Duties and Responsibilities

- A. The ADA Advisory Council serves in an advisory capacity to the City Council and staff on ADA matters. ADA Advisory Council duties shall include the following:

1. Promote pedestrian safety and access to all public streets.
2. Promote ADA compliance in all public buildings and facilities, services, programs and activities.
3. Promote inclusion of the disabled community in the City's emergency and disaster preparedness plans.
4. Develop disability awareness and educational outreach programs.
5. Work with various City of Madera Departments to ensure that all public buildings and facilities, remodeled and newly constructed, are in compliance with current laws guaranteeing access for all people with disabilities.
6. Promote affordable and accessible housing in the community.
7. Work collaboratively with the City of Madera on recommendations regarding unmet transit needs.
8. Ensure grievance procedures are followed and enforced as described in Section 6.

B. Attendance

1. The ADA Advisory Council shall meet one time per month on the third Tuesday of each month. Special meetings may be called by the chair or a majority of the ADA Advisory Council when necessary.
2. ADA Advisory Council members should attend all regular monthly meetings of the ADA Advisory Council. If an ADA Advisory Council member knows that he or she may not be able to attend a meeting, an effort should be made to contact the Secretary prior to the meeting.
3. In order for the ADA Advisory Council to function properly, attendance is required and three consecutive absences by the ADA Advisory Council member shall be deemed an automatic resignation. A significant pattern of absences may also be considered grounds for removal from the ADA Advisory Council. A significant pattern of absences may include such things as continually arriving late and/or leaving early from a majority of meetings, missing more than 4 meetings in any calendar year, or an ongoing inability to participate in ADA Advisory Council activities. This list is provided as an example only, and is not intended to be exhaustive.
4. If any member of the ADA Advisory Council wishes to discuss the removal of another member in accordance with Section 1 due to attendance, the member must notify the Secretary to include the item on the next ADA Advisory Council Agenda.

SECTION 3. Chairperson, Vice-Chairperson

- A. The officers of the ADA Advisory Council shall be a Chairperson and a Vice-Chairperson, who shall be members of the ADA Advisory Council elected by the ADA Advisory Council by a majority vote of a quorum annually in the month of January.

1. In the absence of the Chairperson and Vice-chairperson, the most senior member of the ADA Advisory Council shall call the ADA Advisory Council to order and conduct the meeting.
2. Secretary. There shall also be a Secretary designated by the City Administrator, who shall not be a member of the ADA Advisory Council. The person designated shall be vested with all powers and duties of the Secretary pursuant to these rules and regulations.

SECTION 4. Powers and Duties of Officers

- A. The Chairperson shall preside at all meetings of the ADA Advisory Council. The Vice-Chairperson shall have and perform the powers and duties of the Chairperson in the absence of the Chairperson.
- B. The secretary shall:
 1. Keep and record the minutes of all meetings of the ADA Advisory Council, and furnish a copy of the minutes of each regular and special meeting to each member of the ADA Advisory Council;
 2. Keep complete files of all communications and necessary records of the ADA Advisory Council;
 3. Prepare and coordinate the meeting agenda;
 4. Perform such other duties as the ADA Advisory Council may from time to time prescribe.

SECTION 5. Meetings and Actions

- A. Regular meetings of the ADA Advisory Council shall be held on the third Tuesday of every month at 3:30 p.m. at the City Hall of the City of Madera, or such other place as shall be determined in advance and announced by posting notice thereof on the official bulletin board at City Hall. Whenever a regular meeting date falls on a holiday, such regular meeting shall be held at the same hour on the following day.
- B. A Special meeting may be called at any time by the Chairperson at his/her discretion, and the Chairperson shall call a special meeting at the written request of three members of the ADA Advisory Council. Notice of special meetings shall be given by delivering personally or by mail or written notice thereof to each member of the ADA Advisory Council. The notice shall be delivered at least 24 hours in advance of the special meeting.
- C. A majority of the members of the ADA Advisory Council shall constitute a quorum for the transaction of business.

- D. The actions and decisions of the ADA Advisory Council at any time shall be expressed by a motion.
- E. The ADA Advisory Council shall determine action items and recommendations to be forwarded to the City Council. When action items or recommendations are to be forwarded to the City Council, the Secretary shall make the report. The Chairperson, or in the absence of the Chairperson, the Vice-Chairperson, or other member of the ADA Advisory Council appointed by the Chairperson, may be present at the City Council meetings when deemed advisable by the ADA Advisory Council.
- F. The order of business of the ADA Advisory Council shall be conducted from a written agenda prepared by the Secretary. The agenda shall express the time and location of the meeting and a brief general description of each item of business to be transacted or discussed. No action shall be taken on items not appearing on the agenda.

SECTION 6. ADA Advisory Council Responsibilities for Grievance Procedures

- A. The ADA Advisory Council shall review any ADA grievances forwarded which were not resolved to the satisfaction of the complainant.
- B. The ADA Advisory Council shall discuss and make a final recommendation to the City's ADA Coordinator for resolution of grievance(s).
- C. The final recommendation(s) of the ADA Advisory Council shall be forwarded to the City's ADA Coordinator for follow-up action and resolution.

SECTION 7. Bylaws Amendment Process

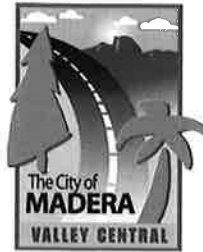
- A. Amendments to these bylaws may be recommended for presentation to the City Council for adoption if done by a majority of all the ADA Advisory Council members present thereof at any regular or special meeting when at least 10 days written notice of the proposed presentation of such amendment has been given to all members of the ADA Advisory Council, or when announcement of the proposed amendment was recorded in the minutes of the previous regular meeting of the ADA Advisory Council.
- B. Amendments may be authored and adopted by the City Council following the process outlined in Section 7.A.

SECTION 8. Bylaw Adoption Process

The original Bylaws of the City of Madera ADA Advisory Council were adopted by the City Council of the City of Madera at its regular meeting of May 17, 2006. Said Bylaws were

revised by the City Council at its regular meetings of March 19, 2008; November 3, 2010; February 20, 2013; and January 17, 2018.

REPORT TO THE CITY COUNCIL



COUNCIL MEETING OF:

January 17, 2018

AGENDA ITEM NUMBER:

B-9

Approved By:


COMMUNITY DEVELOPMENT DIRECTOR


INTERIM CITY ADMINISTRATOR

SUBJECT: Consideration of a Resolution Approving an Addition and/or Amendment to Escrow Instructions Related to the Sale and Purchase of Real Estate for Parcel 16 Within the Freedom Industrial Park

RECOMMENDATION:

Staff recommends that the City Council adopt a resolution taking the following actions with regard to the sale of real property within the Freedom Industrial Park:

1. Approving the "Addition and/or Amendment to Escrow Instructions."
2. Authorizing the Mayor to execute the Amendment.
3. Authorizing the City Administrator to take all actions necessary to allow the transfer of title pursuant to the Amended Escrow Instructions.

SUMMARY AND DISCUSSION:

In September of 2017, the City Council approved an agreement with Span Development, LLC, for the sale of Parcel 16 within the Freedom Industrial Park. The escrow instructions specified in the agreement called for a 60 day due diligence period, which expired on November 21st. In December, the Council approved an extension of the due diligence period to December 21st. Because the Span Development is still working to complete due diligence items, the broker and escrow agent are recommending a second extension of the due diligence period through February 1, 2018. Escrow will close upon issuance of a building permit for the proposed industrial shell building, or March 31, 2018, whichever occurs first. All other terms and conditions remain the same.

CONSISTENCY WITH THE VISION MADERA 2025 PLAN

This project supports the realization of vision statements for "Good Jobs and Economic Opportunity", in which Madera is envisioned with a strong and diverse economy, supporting the local tax base and essential community services that provide living wage opportunities for all its community members.

FISCAL IMPACT:

No fiscal impacts will result from approval of the amended escrow instructions. The fair market value and purchase price for the property remains \$320,000. That amount is deferred for 18 months or until the 37,620 square foot building being developed on the site is 50% occupied.

RESOLUTION NO. 18-_____

**A RESOLUTION OF THE COUNCIL OF THE CITY OF MADERA, CALIFORNIA, APPROVING AN
ADDITION AND/OR AMENDMENT TO ESCROW INSTRUCTIONS RELATED TO SALE AND
PURCHASE OF REAL ESTATE FOR PARCEL 16 WITHIN THE FREEDOM INDUSTRIAL PARK**

WHEREAS, on September 6, 2017, the City Council adopted a resolution approving a Standard Offer, Agreement and Escrow Instructions For Purchase of Real Estate For Parcel 16 within the Freedom Industrial Park (the "Agreement") providing for the sale of Parcel 16 to Span Development, LLC; and

WHEREAS, the escrow instructions specified in the agreement called for a 60 day due diligence period, which expired on November 21st; and

WHEREAS, on December 6, 2017, the City Council approved an amendment to the escrow instructions extending the due diligence period to December 21st; and

WHEREAS, upon the scheduled close of the December 21, 2017 due diligence period certain due diligence items remain incomplete; and

WHEREAS, the City and Span Development, LLC, desire to extend the due diligence period to February 1, 2018 and have prepared an Addition and/or Amendment to Escrow Instructions to provide for such extension.

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

1. The above recitals are true and correct.
2. The City Council of the City of Madera approves the Addition and/or Amendment to Escrow Instructions contained in the Standard Offer, Agreement and Escrow Instructions for Purchase of Real Estate for Parcel 16 within the Freedom Industrial Park ("the Agreement"), a copy of which is on file in the Office of the City Clerk and referred to for particulars.
3. The Mayor is authorized to execute the Addition and/or Amendment.
4. The City Administrator is authorized to take all actions necessary to allow the transfer of title pursuant to the Amended Escrow Instructions.
5. This resolution is effective immediately upon adoption.

* * * * *



Chicago Title Company

7330 N. Palm Avenue, Suite 101, Fresno, CA 93711
Phone: (559) 451-3734 • Fax: (559) 431-8936

ADDITION AND/OR AMENDMENT TO ESCROW INSTRUCTIONS

To: Chicago Title Company
Date: December 21, 2017
Escrow No.: 45000740450BC
Property Address: Vacant Land in Freedom Industrial Park, Madera
The Instructions in this escrow are hereby modified, amended and/or supplemented in the following particulars only:

A. The due diligence period is hereby extended to on or before February 1, 2018.

All other terms and conditions remain the same.

BUYER:

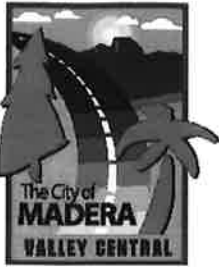
Span Development, LLC,
a Wyoming limited liability company

By: _____
Tim Mitchell, President

SELLER:

City of Madera

By: _____
Andrew J. Medellin, Mayor



REPORT TO THE CITY COUNCIL

COUNCIL MEETING OF January 17, 2018

AGENDA ITEM NUMBER B-10

APPROVED BY

Julie Frabets
GRANT ADMINISTRATOR

Steve Fronjer
CITY ADMINISTRATOR

SUBJECT: CONSIDERATION OF A RESOLUTION ACCEPTING A GRANT AWARD FROM THE U.S. DEPARTMENT OF JUSTICE'S COMMUNITY ORIENTED POLICING SERVICES (COPS) HIRING PROGRAM

RECOMMENDATION:

Staff recommends Council adopt the attached resolution approving the grant award under the COPS Hiring Program.

DISCUSSION:

Twenty years after the Violent Crime Control and Law Enforcement Act of 1994 was signed into law, the U.S. Department of Justice COPS Office continues to support the efforts of law enforcement agencies across the country as they develop creative and innovative ways of dealing with long-standing public safety challenges within their communities. The FY 2017 COPS Hiring Program is designed to advance public safety by enhancing community policing efforts. The grant awards provide up to 75 percent of the approved entry-level salaries and fringe benefits of full-time officers for a 36-month award period. , A minimum 25 percent local cash match is required with a maximum federal share of \$125,000 per officer position. Funding under this program may be used to: 1) hire new officers (including filling existing officer vacancies that are no longer funded in an agency's budget); 2) rehire officers already laid off (at the time of application) as a result of state or local budget reductions unrelated to the receipt of award funding; or 3) rehire officers scheduled to be laid off (at the time of application) on a specific future date as a result of state or local budget reductions unrelated to the receipt of award funding. At the conclusion of the 36 month of federal funding, recipients must retain all sworn officer positions awarded under the COPS Hire Program for a minimum of 12 months.

The City of Madera submitted an application to the U.S. Department of Justice COPS office in June 2017 requesting \$375,000 to fund the proposed three new officer positions. The proposal commits to dedicating a portion of the new hired officers' time to community policing strategies, particularly in addressing youth crime and delinquency

with a focus on reducing teen and pre-teen gang activity. The City of Madera Police Department (MPD) has been successful in the implementation of its Gang Resistance Education and Training (GREAT) program by teaming up with the Madera Unified School District (MUSD) and the Madera County Office of Education (MCOE) to deliver a gang and violence prevention program curriculum to students in 4th thru 6th grade. With the new hires, MPD intends to enhance the partnership and initiate the curriculum into new 4th thru 6th grade classrooms, expand into the middle schools, and pilot the GREAT Summer component for students completing the 8th grade. The department will continue to implement its Parent Project, which is an early intervention 10-16 week program designed for parents raising difficult, out-of-control adolescents ages 10 and up. The grant will also assist the department with its involvement in the Madera Special Investigation Unit (SIU), a multi-jurisdiction anti-gang taskforce, by deploying the funded officers to better coordinate with the multiple agencies in efforts to reduce involvement of pre-teen and teens in gang related activities.

The hired officers under the COPS program will receive the required certification in the GREAT curricula, they will be training in the Parent Project's Parent's Guide to Changing Destructive Adolescent Behavior (CDAB), and will increase face-to-face interactions with the community in an effort to build trust, demonstrate transparency and emphasize crime prevention.

Given the highly competitive nature of this program, Staff believes our community should be particularly gratified by the success of being awarded. Out of sixty-eight (68) local jurisdictions that applied for the funds in California, City of Madera was only one of eight applicants that were funded. The City has previously been awarded a COPS Hire Program grant and has successfully managed the award activities. Therefore, staff urges Council to accept the COPS Hire Program grant in the amount of \$375,000.

FINANCIAL IMPACT:

Acceptance of the COPS Hire award will provide \$375,000 in funding to support our community's law enforcement services. It will assist in defraying costs within the Police Departments expenditures for the hiring of three new officers.

VISION MADERA 2025 CONSISTENCY:

The COPS Hire Program grant supports the objectives of **Strategy 115** by seeking sufficient economic resources to provide adequate City services and prepare for future growth and **Strategy 115.3** Seek and retain grants.

RESOLUTION NO. 18-

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MADERA, CALIFORNIA, ACCEPTING A GRANT AWARD FROM THE U.S. DEPARTMENT OF JUSTICE'S COMMUNITY ORIENTED POLICING SERVICES (COPS) HIRING PROGRAM

WHEREAS, the City of Madera Police Department (MPD) is responsible for the safety of the citizens of the community; and

WHEREAS, the MPD expends considerable resources in its efforts to provide frontline law enforcement services to the community; and

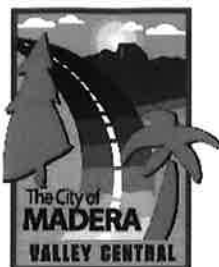
WHEREAS, the MPD requires adequate resources in order to perform its responsibilities; and

WHEREAS, the Council of the City of Madera supports the efforts of the police department to develop innovative community policing strategies, particularly in addressing youth crime and delinquency; and

WHEREAS, the Congress of the United States has awarded \$375,000 through the Department of Justice Community Oriented Policing Services (COPS) HIRE Program to the City of Madera.

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

1. The above recitals are true and correct.
2. The Grants Department is directed to accept the grant award in the amount of \$375,000.
3. The City Administrator, or his/her designee, is hereby authorized to execute all documents required for the acceptance and implementation of grant award.
4. This resolution shall be effective immediately upon adoption.



REPORT TO THE CITY COUNCIL

COUNCIL MEETING OF January 17, 2018

AGENDA ITEM NUMBER B-11

APPROVED BY

Luella Frabets
GRANT ADMINISTRATOR

Steve Frayser
CITY ADMINISTRATOR

SUBJECT: CONSIDERATION OF A RESOLUTION AUTHORIZING THE CITY ADMINISTRATOR OR HIS/HER DESIGNEE TO EXECUTE AGREEMENT WITH THE CALIFORNIA DEPARTMENT OF TRANSPORTATION RELATED TO THE SUSTAINABLE COMMUNITIES GRANT AWARD

RECOMMENDATION:

Staff recommends Council adopt the attached resolution approving the grant award for a transportation planning process through the California Department of Transportation

SUMMARY:

The City has received a preliminary award of \$272,672 through the Sustainability Communities Grant Program. The Grant Program is administered by Caltrans. The subject of the City's project is a planning effort focusing on enhancing Yosemite Avenue as Main Street in downtown Madera. The City proposes to conduct an analysis of Yosemite Avenue and the surrounding street-network and identify measures that will allow these features to function as well-planned, complete street improvements that create a positive sense of place for vehicles, pedestrians and cyclists. Adoption of the recommended resolution is one of several requirements the City must complete in order to receive the grant funding.

DISCUSSION:

The Sustainable Transportation Planning Grant Program was created to support the California Department of Transportation's (Caltrans) Mission: Provide a safe, sustainable, integrated and efficient transportation system to enhance California's economy and livability. The California Legislature recently passed, and the Governor signed into law, Senate Bill (SB) 1 – The Road Repair and Accountability Act of 2017, a transportation funding bill that will provide a reliable source of funds to maintain and integrate the State's multi-modal transportation system. As a result of this new transportation funding, approximately \$25 million in additional Sustainable Communities

Grant funds became available for (FY) 2017-2018 grant cycle. Metropolitan Planning Organizations (MPOs) are to be distributed \$12.5 million on a formula basis and approximately \$12.38 million are to be distributed through a competitive program to MPOs, Regional Transportation Planning Agencies (RTPAs), Cities and Counties, Transit Agencies, and Native American Tribal Governments. The additional grant funding is intended to support and implement Regional Transportation Plan (RTP) Sustainable Communities Strategies (SCS) (where applicable) and to ultimately achieve the State's greenhouse gas (GHG) reduction target of 40 and 80 percent below 1990 levels by 2030 and 2050, respectively.

In October 2017, City staff submitted a grant application to the Caltrans Division of Transportation Planning, under the Competitive Grants Program. In alignment with the Sustainable Communities Grant Program's overarching objectives - to promote reliable and efficient mobility for people, goods, and services, while meeting the state's GHG emission reduction goals, preserving the State's natural and working lands, and preserving the unique character and livability of California's communities; the City of Madera proposed its *State Route 145 (Yosemite Avenue) as Downtown Main Street* project.

The City of Madera lacks a plan to effectively guide the development and redevelopment of the downtown district towards the vibrant, multi-cultural hub envisioned by Vision Madera 2025 and the City's General Plan. Through this grant, the City seeks to begin developing the elements of a downtown masterplan, beginning with a focus on State Route 145 (Yosemite Avenue) as this roadway traverses downtown. In many ways, Yosemite Avenue serves as the community's "Main Street." The proposed work effort will utilize the Caltrans Smart Mobility Framework, Complete Streets elements, and build on other community-based planning efforts, including those associated with the cultural arts center project spearheaded by the Arts Council. All components will be combined through a 19-month planning process by diverse leaders, residents, and organizations to result in Yosemite Avenue and the surrounding street-network unifying to serve as a well-planned complete street concept providing a sense of place for vehicles, pedestrians and cyclists.

Given the highly competitive nature of this program, staff believes our community should be particularly gratified by the success of being awarded. The total proposed project cost is \$308,000. The award of \$272,672 requires a local contribution of \$35,328, which may include in-kind match; such as staff time, use of facility space, equipment and materials. The City has identified the resources that can be utilized to provide the local match contribution. Therefore, staff urges Council to accept the grant and authorize the City Administrator to execute all documents to accept and execute the grant activities.

FINANCIAL IMPACT:

Acceptance of the Caltrans Sustainable Communities Grant award will provide \$272,672 in funding to support the City's transportation planning activities. It will require a local match of \$35,328 in City resources, which can be provided from cash and in-kind sources. The City has identified staffing and the resources which will be committed to provide the local match requirement.

VISION MADERA 2025 CONSISTENCY:

The Caltrans Sustainable Communities Grant supports the objectives of **Strategy 115** by seeking sufficient economic resources to provide adequate City services and prepare for future growth and **Strategy 115.3** Seek and retain grants.

RESOLUTION NO. 18-_____

**A RESOLUTION AUTHORIZING THE CITY ADMINISTRATOR OR HIS/HER
DESIGNEE TO EXECUTE AGREEMENT TO EXECUTE AGREEMENT WITH THE
CALIFORNIA DEPARTMENT OF TRANSPORTATION FOR THE STATE ROUTE 145
(YOSEMITE AVENUE) AS DOWNTOWN MAIN STREET PROJECT**

WHEREAS, THE City Council of the City of Madera is eligible to receive State funding to develop *State Route 145 (Yosemite Avenue) as Downtown Main Street* transportation planning plans through the California Department of Transportation; and

WHEREAS, the Conditional Grant Agreement is needed to be executed with the California Department of Transportation before such funds can be claimed through the Transportation Planning Grant Programs; and

WHEREAS, the Council of the City of Madera supports efforts to develop Complete Streets and Multi-modal transportation improvements as well as a Downtown Specific Plan; and

WHEREAS, the City of Madera wishes to delegate authorization to execute these agreements and any amendments thereto; and

NOW THEREFORE, THE COUNCIL OF THE CITY OF MADERA authorize the City Administrator to execute all Restricted Grant Agreements and any amendments thereto with the California Department of Transportation; and hereby find, resolve, and order:

1. The above recitals are true and correct.
2. The Grants Department is directed to accept the grant award in the amount of \$272,672.
3. The City Administrator, or his/her designee, is hereby authorized to execute all documents required for the acceptance and implementation of grant award.
4. This resolution shall be effective immediately upon adoption.



REPORT TO THE CITY COUNCIL

COUNCIL MEETING OF January 17, 2018

AGENDA ITEM NUMBER B-12

APPROVED BY

Julie Shabets
GRANT ADMINISTRATOR

Steve Fronzier
CITY ADMINISTRATOR

SUBJECT: CONSIDERATION OF A RESOLUTION APPROVING A LEASE AGREEMENT WITH MADERA CAB COMPANY FOR USE OF OFFICE SPACE AT THE INTERMODAL FACILITY AND AUTHORIZING THE MAYOR TO EXECUTE ALL RELATED DOCUMENTS

RECOMMENDATION:

Staff recommends Council adopt the attached resolution approving a lease agreement with Madera Cab Company for its use of office space at the Intermodal Facility and authorizing the Mayor to execute all related documents.

DISCUSSION:

In December of 2005, the Madera Cab Company entered into a 3-year Agreement with the City to lease office space at the Intermodal Facility. This Agreement provided the use of 160 square feet of the Intermodal Facility and allowed for annual extensions upon the mutual consent of both parties. The original term of the contract expired on November 30, 2008 and Council has previously approved six annual extensions. The last extension set a monthly rate of \$175 per month and expired on November 30, 2017.

Staff recommends that Council approve a new Lease Agreement (See Attachment A) with Madera Cab Company for a one-year lease of the Intermodal Facility at a monthly rate of \$175 for 160 square feet of space. The term of the new Agreement is to be from January 1, 2018 through December 31, 2018. The new Agreement has been revised to update insurance and indemnity language that reflect current City standards. The City has not experienced any significant problems with Lessee and considers that the Madera Cab Company provides a valuable service for residents of the City of Madera. Therefore, staff recommends the proposed Council action.

FINANCIAL IMPACT:

The Madera Cab Company's lease at the Intermodal Facility will generate \$2,100 for the Transit Program during a 12-month period. This revenue will not impact the General Fund because this activity falls exclusively within the transportation budgets.

VISION MADERA 2025 CONSISTENCY:

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

RESOLUTION NO. 2018-_____

A RESOLUTION OF THE CITY COUNCIL, OF THE CITY OF MADERA, CALIFORNIA, APPROVING AND AUTHORIZING THE MAYOR TO EXECUTE ON BEHALF OF THE CITY A LEASE AGREEMENT WITH THE MADERA CAB COMPANY FOR USE OF THE INTERMODAL FACILITY

Whereas, the City entered into a 3-year agreement effective December 1, 2005 to lease space at the Intermodal Facility to the Madera Cab Company, and

Whereas, this agreement allowed for annual extensions of this lease beyond the term of the contract upon the mutual consent of both parties, and

Whereas, the original agreement expired on November 30, 2008 and the most recent annual extension expired on November 30, 2017, and

Whereas, the City and Madera Cab Company now desire to enter into a new lease agreement for a 1-year term under similar terms with amended conditions to the original agreement.

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

1. The above recitals are true and correct.
2. The Lease Agreement with Madera Cab Company ("Agreement"), a copy of which is on file in the office of the City Clerk and referred to for more particulars, is hereby approved.
3. The Mayor is authorized to execute the Lease Agreement on behalf of the City.
4. This resolution is effective immediately upon adoption.

ATTACHMENT A

LEASE AGREEMENT BETWEEN CITY OF MADERA AND MADERA CAB COMPANY

Recorded at the Request of:

When Recorded Return to:

City of Madera

City Clerk

205 W. 4th Street

Madera, CA 93637

(Fee waived per Section 27383 of the Government Code, no fee due, no document tax due)

LEASE AGREEMENT

THIS LEASE, made this _____ day of _____, by and between the **City of Madera**, a municipal corporation ("Lessor"), and **Madera Cab Company** ("Lessee").

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

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

1. DEFINITIONS

- a. Building. "Building" is defined as that certain building known as the Madera Intermodal Transportation Facility building consisting of one story and a total of approximately 2,840 square feet of floor space, located at 123 North "E" Street, in Madera, California, as shown on the attached Exhibits.
- b. Facility. "Facility" shall be defined as the area of 160 square feet within the Building reserved for the exclusive use of Lessee, and labeled Facility on the attached Exhibit 'A'.
- c. Common Area. "Common Area" shall be defined as a portion of the waiting area, restroom facilities and entryways of the Building located inside the Building and labeled Common Area on the attached Exhibit 'A'.
- d. Cab Parking Area. "Parking Area" shall be defined as the driveways and cab parking areas as outlined and labeled on the attached Exhibit 'B'.

2. FACILITY

The Lessor hereby leases to Lessee and Lessee leases from Lessor for the term, at the rental, and upon all the conditions set forth herein that certain part of the Building labeled Facility in Exhibit 'A', which is attached hereto and made a part hereof, situated in the City of Madera, County of Madera, State of California, containing approximately 160 square feet of Building Area, together with all improvements thereon and appurtenances thereto, excepting therefrom

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

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

3. TERM

The term of this lease shall be 12 months, commencing January 1, 2018, concluding on December 31, 2018.

4. RENT

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

Rent from January 1, 2018 through December 31, 2018 shall be at \$175 per month.

5. USE

During the term of this Lease, and any renewal hereof, Lessee shall use the Facility as its only cab terminal in Madera, California. The Lessee shall have the right of reasonable access to the Common Area, Galleria, and Cab Parking Area during normal business hours for the life of this Lease. Other tenants in the "building" shall have reasonable access to the Common Area and Galleria.

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

6. LESSOR'S WARRANTY OF TITLE

Lessor represents and warrants that:

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

7. QUIET ENJOYMENT

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

8. REPAIRS, MAINTENANCE AND UTILITIES

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

For the purpose of this Lease:

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

The "Facility Area" shall mean the square footage of the Facility equaling 160 square feet.

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

9. ALTERATIONS AND IMPROVEMENTS

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

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

10. MECHANIC'S LIENS

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

11. DAMAGE/DESTRUCTION

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

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

12. INSURANCE

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

Minimum Scope and Limits of Insurance

Lessee shall maintain limits no less than:

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

form CG 00 01. General liability policies shall be endorsed to provide that the Lessor and its officers, officials, employees and agents shall be additional insureds under such policies.

- **\$1,000,000 Automobile Liability** combined single limit per accident for bodily injury or property damage at least as broad as ISO Form CA 00 01 for all activities of Lessee arising out of or in connection with operations conducted at the Leased Building, including coverage for any owned, hired, non-owned or rented vehicles. Automobile Liability policies shall be endorsed to provide that the Lessor and its officers, officials, employees and agents shall be additional insureds under such policies.
- **Worker's Compensation** as required by the State of California and **\$1,000,000 Employer's Liability** per accident for bodily injury or disease. Lessee shall submit to the Lessor, along with the certificate of insurance, a Waiver of Subrogation endorsement in favor of the Lessor, its officers, agents, employees, and volunteers.
- Property insurance against all risks of loss to any Lessee improvements or betterments. Policy should be for full replacement cost with no coinsurance penalty provision.

Maintenance of Coverage

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

Proof of Insurance

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

Acceptable Insurers

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

Waiver of Subrogation

All insurance coverage maintained or procured pursuant to this agreement shall be endorsed to waive subrogation against the Lessor, its elected or appointed officers, agents, officials, employees, and volunteers, or shall specifically allow

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

Enforcement of Contract Provisions (non estoppel)

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

Specifications not Limiting

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

Notice of Cancellation

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

Self-insured Retentions

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

Timely Notice of Claims

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

Additional Insurance

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

13. SIGNS

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

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

14. TAXES

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

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

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

15. VENDING

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

16. ASSIGNMENT AND SUBLETTING

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

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

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

17. PUBLIC ACCESS

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

18. TERMINATION OF LEASE

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

19. COMPLIANCE WITH LAWS

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

20. DEFAULT/REMEDIES

Lessee:

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

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

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

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

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

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

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

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

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

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

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

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

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

21. DEFAULT REMEDIES

Lessor:

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

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

22. CONDEMNATION

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

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

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

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

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

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

23. SEVERABILITY; CHOICE OF LAW

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

24. BINDING EFFECT

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

25. ASSUMPTION BY NEW OWNER

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

26. SURRENDER

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

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

27. INDEMNITY

Lessee shall indemnify, defend, and hold harmless the City, and its officers, employees, and agents ("City indemnitees"), from and against any and all causes of action, claims, liabilities, obligations, judgments, or damages, including reasonable legal counsels' fees and costs of litigation ("claims"), arising out of the Lessee's performance of its obligations under this agreement or out of the operations conducted by Lessee, including the City's active or passive negligence, except for such loss or damage arising from the sole negligence or willful misconduct of the City. In the event the City indemnitees are made a party to any action, lawsuit, or other adversarial proceeding arising from Lessee's performance of this agreement, the Lessee shall provide a defense to the City indemnitees, or at the City's option, reimburse the City indemnitees their costs of defense, including reasonable legal counsels' fees, incurred in defense of such claims.

28. COVENANTS AGAINST DISCRIMINATION

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

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

29. NOTICES

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

Lessor:	City of Madera c/o City Administrator 205 W. 4 th Street Madera, CA 93637
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Lessee:	Madera Cab Co. 305 North E. Street Suite 103 Madera, CA 93638
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30. ENTIRE AGREEMENT

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

31. TAXES, UTILITIES AND MECHANIC'S LIENS

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

32. MISCELLANEOUS

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

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

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

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

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

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

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

33. SUBORDINATION

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

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

ATTEST:

CITY OF MADERA
a Municipal Corporation

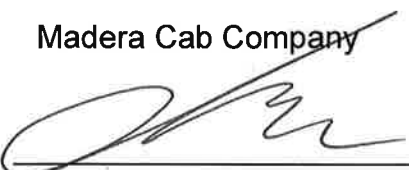
By: _____
Sonia Alvarez
City Clerk

By: _____
Andrew Medellin
Mayor

APPROVED AS TO FORM:

Madera Cab Company

By: _____
Brent Richardson
City Attorney

By: 
Title: ABRAHAM CABALLERO
owner

94-1242188
(Tax Payer I.D. Number)
Madera Cab Company

CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

CIVIL CODE §1189

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

State of California)

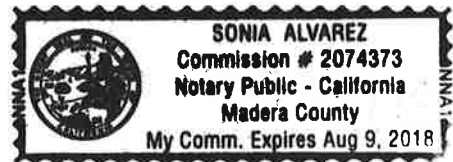
County of Madera)

On 12/29/17 before me, Sonia Alvarez, Notary Public, personally appeared **Abraham V. Caballero**, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/~~are~~ subscribed to the within instrument and acknowledged to me that he/~~she~~/~~they~~ executed the same in his/~~her~~/~~their~~ authorized capacity(ies), and that by his/~~her~~/~~their~~ signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

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

WITNESS my hand and official seal.

Signature Sonia Alvarez (Seal)



DESCRIPTION OF ATTACHED DOCUMENT (OPTIONAL)

Title or Type of Document: Lease Agreement

Document Date:

Number of Pages:

Signer(s) Other Than Named Above:

CAPACITY(IES) CLAIMED BY SIGNER(S)

Signer's Name:

Signer's Name:

Title:

Title:

EXHIBIT "A" MADERA INTERMODAL TRANSPORTATION FACILITY BUILDING

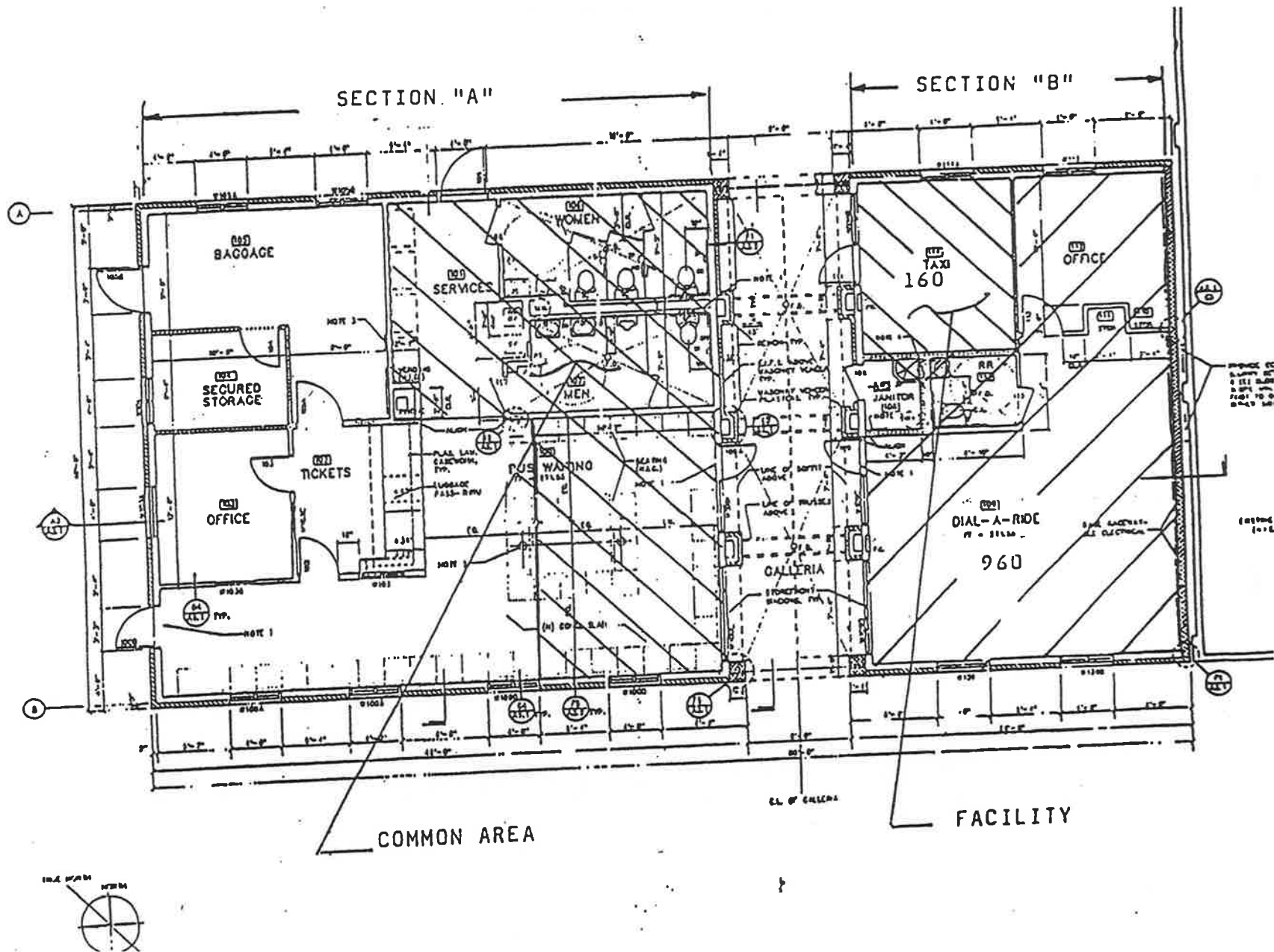
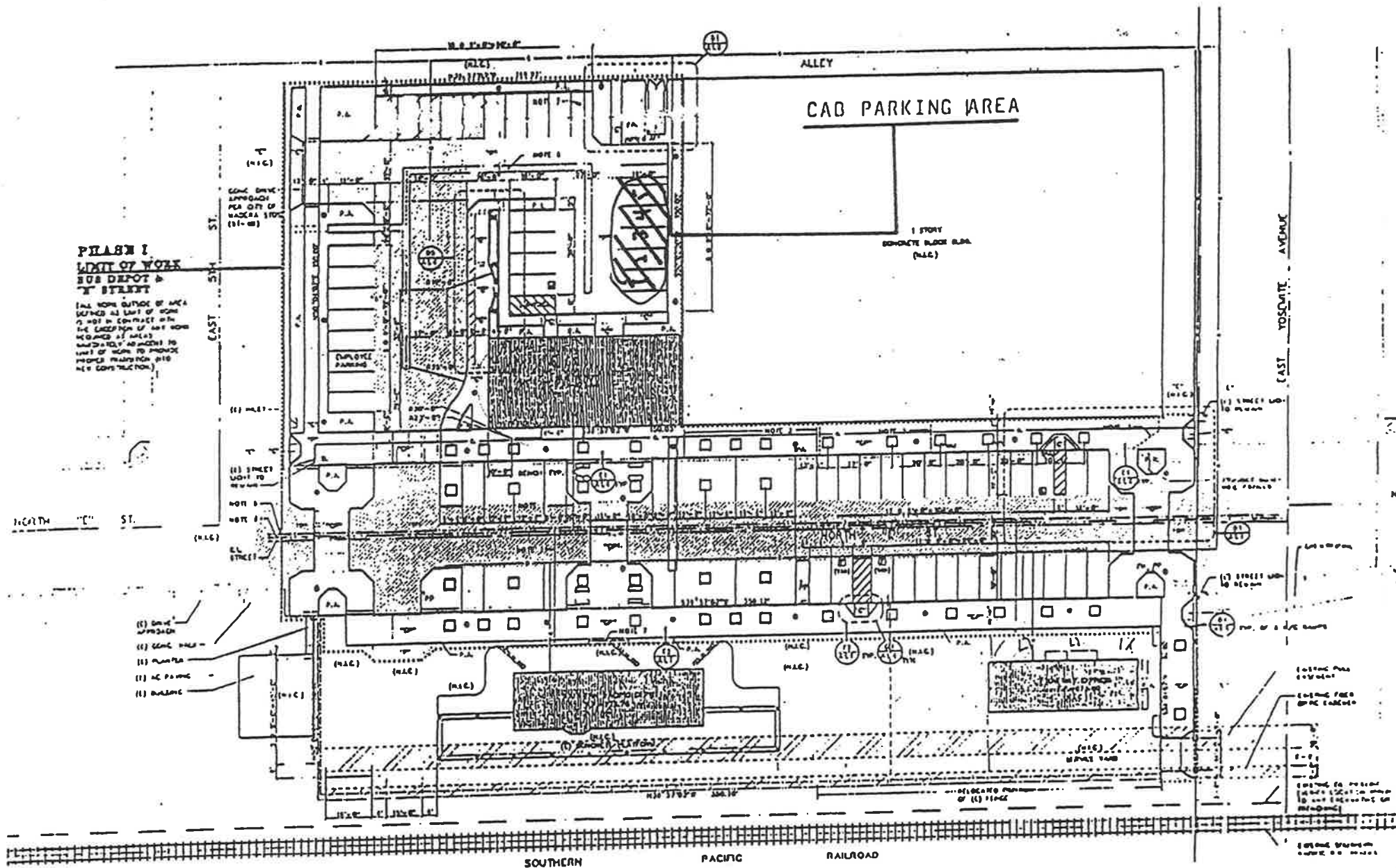


EXHIBIT "B"

MADERA INTERMODAL TRANSPORTATION FACILITY





REPORT TO CITY COUNCIL

Approved By:

Council Meeting of January 17, 2018

for: 

Department Director


City Administrator

Agenda Item Number B-13

SUBJECT: INFORMATIONAL REPORT ON EMERGENCY SEWER REPAIRS COMPLETED IN 5TH STREET AT FLUME STREET AND STATUS OF CITYWIDE VIDEO INSPECTION OF SEWER MAINS

RECOMMENDATION:

That the City Council receive and consider this informational report.

SUMMARY:

During video inspection of the City's sewer mains, a significant void in and above the 6-inch pipeline in 5th Street east of Flume Street was discovered, near the John Wells Youth Center. City crews were not able to make the repairs due to the depth of the excavation and unknown condition of adjacent pipe. Given the risk potential, Engineering secured West Valley Construction to make the emergency repair to the pipeline. This report summarizes the details of the emergency expenditure in accordance with the City's purchasing policy and provides an update on the citywide sewer video inspection currently underway.

BACKGROUND:

The current citywide video inspection program is part of the consultant agreement with Akel Engineering for comprehensive Condition Assessments for both the Water System and the Sewer System. The purpose of the Assessments is to identify potential risks to public health and safety, threats to core functionality of the utilities, and to help Council and Staff make decisions regarding the highest priorities and most efficient programming of the capital expenditures. The initial phase of the contract included an allowance for

Engineering

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

www.cityofmadera.ca.gov

video inspection of one-third (1/3) of the City's sewer mains and manholes. 60 miles of sewer mains that carry the greatest risk in the event of failure (i.e. the mains that carry the highest flows, are in higher traffic volume streets and/or may be compromised due to age or material) have been selected.

DISCUSSION:

On July 26, 2017 City Council received an informational email from Wendy Silva (in the City Administrator's absence) regarding a small section of sewer pipe on 5th Street just east of Flume that had failed as noted from a sewer video inspection. It was reported that the roadway had not collapsed nor was there any indication that there was immediate danger of such an occurrence. The area was coned off to prevent any traffic over the pipeline until further investigation of the video footage. Upon recommendation by the consulting engineer, Akel Engineering, on contract for the Sewer and Water Condition Assessments, Engineering proceeding with an emergency repair of a section of approximately 4 feet of pipe requiring excavation of about 10 feet of the road be repaired immediately to eliminate the risk. West Valley Construction had recently posted the proper insurance with the City on another project and was able to allocate a foreman and crews to this emergency repair within a couple days. The excavation and repairs were made August 3rd and the pavement was restored on August 4th. The total cost for this emergency repair based on time and materials billing was \$14,164.29.

The first phase of the sewer video inspection is approximately 65% complete. Akel Engineering oversees this task with assistance from Engineering and Public Works. Results of defects are coded during inspection using standardized methods for direct input to condition assessment software that models existing conditions, risk of failure, consequence of failure, and the anticipated remaining service life of individual components of the sewer system. Additionally, the consultant reviews all pipelines video inspected as part of this initial phase.

To date, there have been four (4) locations that we would classify as priority repairs and three others that are in the queue for further engineering. Each of these locations was immediately reviewed and evaluated by the consultant engineering team led by Akel Engineering, Public Works, and Engineering Staff. Only the location at 5th & Flume has warranted emergency repair. The other locations as well as inspected pipeline segments that are reported to be in very poor condition have been catalogued. Repairs will be prioritized and packaged into projects for standard bidding procedures beginning this spring. New projects will be introduced into the Capital Improvement Program (CIP) for Fiscal Year 18/19.

FISCAL IMPACT:

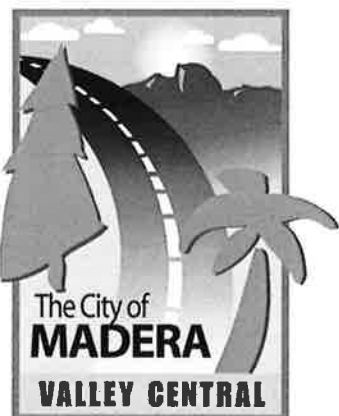
The cost for the emergency repair was paid for out of the Sewer Condition Assessment Video Inspection budget line item. Future repair and rehabilitation projects generated from this process will be programmed in Sewer Utility Funds generated by the sewer rates. Project costs have not been developed but there was an expectation built into the

rate structure of approximately \$1.4 million per year for repairs, replacement and rehabilitation of the aging sewer infrastructure.

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.

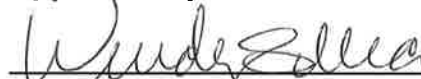
REPORT TO CITY COUNCIL



Council Meeting of January 17, 2018

Agenda Item Number B-14

Approved by:



Department Director



City Administrator

Consideration of a Minute Order Rejecting a Claim filed by Dora Martinez.

RECOMMENDATION

It is recommended Council reject the claim filed by Dora Martinez. The City will send a rejection notice to Scott E. Spell, the Attorney representing the claimant.

HISTORY

A claim was filed on January 4, 2018, by Dora Martinez. The claimant is alleging she suffered compensatory (special and general) and punitive damages.

SITUATION

The claimant alleges her claim arises from an officer involved shooting that occurred June 16, 2017 on Wessmith Way in Madera. Ms. Martinez alleges as a result of her son's death which she witnessed she allegedly suffered serious emotional distress, a reaction beyond that which would be anticipated in a disinterested witness and which was not an abnormal response to the circumstances.

A claim was filed to reflect the claimant suffered compensatory (special and general) and punitive damages. The amount claimed exceeds \$10,000.00. The claim, if filed in State Court, would not be a limited civil case.

Suzanne Johnson, AIMS, is recommending the claim be taken to council for consideration of rejection based on her investigation. Staff concurs with his recommendation.

CONSISTENCY WITH THE VISION MADERA 2025 PLAN

Rejection of claims filed under Government Code §910 is not addressed in the vision or action plan; the requested action is also not in conflict with any of the actions or goals contained in that plan.

LAW OFFICE OF
SCOTT E. SPELL
A PROFESSIONAL CORPORATION

12100 WILSHIRE BOULEVARD, SUITE 1520
LOS ANGELES, CALIFORNIA 90025
TELEPHONE (310) 773-4930 FACSIMILE (310) 773-4931
E-MAIL SCOTT@SPELL-LAW.COM

January 4, 2018

VIA FAX (559) 673-1655 AND UPS NEXT DAY 1Z126RY52210000606

City of Madera
Office of the City Clerk
205 West 4th Street
Madera, California 93637

Re: Amendment to Claim for Damages of Dora Martinez

Dear Sir or Madam:

Enclosed for filing is an Amendment to Claim for Damages for Dora Martinez. I ask that you file the original and endorse and return the copy to me in the envelope provided.

Thank you for your anticipated assistance. Of course, please feel free to contact me with any questions or comments.

Very truly yours,



Scott E. Spell

RECEIVED

City of Madera City Clerk

By: 

Date: 1/4/18

AMENDMENT TO CLAIM FOR DAMAGES TO CITY OF MADERA

Re: Dora Martinez

The December 22, 2017 notice of insufficiency states "The Claim does not comply with Government Code §910(f) as to the amount sought or the court of appropriate jurisdiction."

Government Code §910(f) states in pertinent part as follows: "... If the amount claimed exceeds ten thousand dollars (\$10,000), no dollar amount shall be included in the claim. However, it shall indicate whether the claim would be a limited civil case.

The Claim states: "Claimant suffered compensatory (special and general) and punitive damages. The claimed damages total \$20,000,000 and are in the jurisdiction of the United States District Court for the Eastern District of California and the Madera County Superior Court."

The Claim is amended to state: "Claimant suffered compensatory (special and general) and punitive damages. The amount claimed exceeds \$10,000. The claim, if filed in state court, would not be a limited civil case.

DATED: January 4, 2018



SCOTT E. SPELL

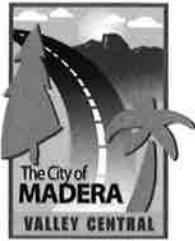
Attorney for Claimant, DORA MARTINEZ

RECEIVED

City of Madera City Clerk

By: 

Date: 1/4/18



REPORT TO CITY COUNCIL

Approved by:

Department Director

City Administrator

Council Meeting of: January 17, 2018

Agenda Number: C-1

SUBJECT

CONSIDERATION OF A RESOLUTION AUTHORIZING THE ISSUANCE OF SPECIAL TAX REFUNDING BONDS FOR AND ON BEHALF OF THE CITY OF MADERA COMMUNITY FACILITIES DISTRICT NO. 2006-1, APPROVING AND DIRECTING THE EXECUTION OF A FISCAL AGENT AGREEMENT, APPROVING SALE OF SUCH BONDS ON A PRIVATE PLACEMENT BASIS, AND APPROVING OTHER RELATED DOCUMENTS AND ACTIONS

RECOMMENDED ACTION

Staff recommends that the City Council adopt a resolution approving certain documents and authorizing the City Administrator or Director of Financial Services to take certain actions required to complete the refunding.

BACKGROUND

City Staff and the City's Municipal Advisor have identified an outstanding bond issue that could be refinanced for significant debt service savings:

Issue	Original Amount	Outstanding Amount	Final Maturity	Remaining Interest Rates
Community Facilities District No. 2006-1	\$2,885,000	\$2,600,000	9/1/2036	4.50-5.00%

In 2006 the City approved the issuance of the Community Facilities District No. 2006-1, Special Tax Bonds, Series 2006 (the "2006 Bonds"). The 2006 Bonds are secured by special taxes paid on the property tax bill by property owners within the District. Proceeds from the 2006 Bonds constructed and acquired certain facilities of benefit to the District, funded a reserve fund, funded capitalized interest through and including September 1, 2007 and paid the costs of issuing the 2006 Bonds.

In October 2017, the Director of Financial Services requested a detailed look at the City's debt portfolio for potential refunding opportunities. The Municipal Advisor identified several refunding transactions, including refunding the 2006 Bonds.

In November 2017, to determine the preferred method of sale, the Municipal Advisor and Placement Agent analyzed the refunding as both a public offering and direct placement. A public offering is a sale to both retail and institutional investors sold during a public order period. The primary marketing document is an official statement describing details about the bonds and the district. A direct placement is a sale to a commercial bank or other lender that purchases the obligation for their own account. The interest rates on a public offering are generally lower than that of a direct placement. However, a public offering requires much higher costs to issue, including fees paid to a Disclosure Counsel to prepare the official statement and a much longer time to market, increasing the risk of a move in interest rates. A direct placement was recommended given the shorter time to execute and the slightly higher total and annual savings when all costs were considered.

At the direction of the City, the Municipal Advisor and Placement Agent developed a term sheet which serves as the RFP for direct placement lenders. The term sheet was mailed to twenty-one (21) potential lenders with a deadline to respond of December 12, 2017.

On December 12, 2017, the City received two (2) qualified responses. The Municipal Advisor recommended working with the low bidder, Western Alliance Bank at a rate of 3.85%. The cover (2nd place) bid was from Municipal Finance Corporation at a rate of 3.98%. Western Alliance Bank was then notified of being the low bidder. They offered to lock the interest rate to January 25, 2018 at 3.83% (vs. the 3.85% from their original proposal).

At the direction of the City, the Municipal Advisor solicited proposals from firms to act as Bond Counsel on the transaction. The City subsequently received four (4) responses. The Municipal Advisor recommended working with the low bidder Jones Hall.

On January 3, 2018, the City Council adopted a resolution directing staff to engage Jones Hall as Bond Counsel, Hilltop Securities as Placement Agent, Del Rio Advisors, LLC as Municipal Advisor and directed staff to bring the transaction back to the City Council for formal approval.

DISCUSSION

The purpose of the proposed issuance is to refinance (aka "refund") the 2006 Bonds at a lower interest rate to realize significant savings. The action up for consideration tonight will approve certain documents related to the transaction and direct the City Administrator or Director of Financial Services to take all necessary actions to complete the refunding.

The documents under consideration include:

Fiscal Agent Agreement: sets forth the terms and conditions of the proposed issue including the statutory authority to issue, covenants of the city and governs the actions of Bank of New York Mellon as Fiscal Agent including the investment of funds, modification of the agreement and

events of default and remedies. The document also reflects the requirements of Western Alliance Bank as direct placement lender.

Escrow Agreement: sets forth the terms and conditions pursuant to which funds will be deposited and held by Bank of New York Mellon for the redemption of the 2006 Bonds on March 1, 2018.

FINANCIAL IMPACT:

The 2006 Bonds are currently outstanding in the amount of \$2,885,000 and have a final term of 2036 with interest rates ranging from 4.50% to 5.00%. Assuming the refunding transaction (the “2018 Bonds”) closes on or before January 25, 2018, the locked interest rate of 3.83% and a true interest cost of 4.21% (including all costs), the proposed results of the refunding are as follows:

Prior Issue Total Debt Service (*)	Proposed Issue Total Debt Service (*)	Total Savings (*)	Average Annual Savings (*)	NPV Savings (*)	NPV as % of Bonds Refunded (*)
\$3,875,572	\$3,480,309	\$395,263	\$21,913	\$288,181	11.08%

(*) Net of reserve fund corpus used to pay the final year of debt service on both the 2006 Bonds and the 2018 Bonds. All numbers assume \$80,000 in costs of issuance and are factored into all savings calculations.

Issuing the 2018 Bonds in the approximate amount of \$2,467,651 to refund the 2006 Bonds will produce significant savings. Over the life of the 2018 Bonds, the property owners are estimated to save \$395,263 in total payments, averaging \$21,913 per year through 2035 or \$72 per parcel per year. In today’s dollars, this translates to \$288,181 in net present value savings equal to 11.08% of the principal amount of the refunded bonds (*).

(*) Generally net present value savings more than 3.00% are considered significant. The Government Finance Officers Association, in their best practices white paper titled “Analyzing and Issuing Refunding Bonds” from February 2011, reports that “one test often used by issuers to assess the appropriateness of a refunding is the requirement specifying the achievement of a minimum net present value (NPV) savings. A common threshold is that the savings (net of all issuance costs and any cash contribution to the refunding), as a percentage of the refunding bonds exceeds 3-5%.”

Signed into law on October 9, 2017 and effective January 1, 2018, SB 450 requires certain disclosures to a governing body considering the issuance of debt. The following tables and statements are included to satisfy those requirements.

The total estimated payment amounts by the City on behalf of the CFD are set forth in the table below under the column “Total P+I”. These numbers will be finalized following Council approval of the financing documents and a determination of the final bond amount.

Estimated Savings

Date	Total P+I	DSR	Net New D/S	Old Net D/S	Savings
09/01/2018	97,051.09	-	97,051.03	118,965.00	21,913.97
09/01/2019	163,540.78	-	163,540.78	185,455.00	21,914.22
09/01/2020	170,841.38	-	170,841.38	192,755.00	21,913.62
09/01/2021	172,620.82	-	172,620.82	194,535.00	21,914.18
09/01/2022	174,095.90	-	174,095.90	196,010.00	21,914.10
09/01/2023	180,256.12	-	180,256.12	202,170.00	21,913.88
09/01/2024	185,936.10	-	185,936.10	207,850.00	21,913.90
09/01/2025	191,136.10	-	191,136.10	213,050.00	21,913.90
09/01/2026	190,856.58	-	190,856.58	212,770.00	21,913.42
09/01/2027	195,336.64	-	195,336.64	217,250.00	21,913.36
09/01/2028	204,086.72	-	204,086.72	226,000.00	21,913.28
09/01/2029	207,085.80	-	207,085.80	229,000.00	21,914.20
09/01/2030	209,585.88	-	209,585.88	231,500.00	21,914.12
09/01/2031	216,586.48	-	216,586.48	238,500.00	21,913.52
09/01/2032	222,835.88	-	222,835.88	244,750.00	21,914.12
09/01/2033	223,336.40	-	223,336.40	245,250.00	21,913.60
09/01/2034	233,336.18	-	233,336.18	255,250.00	21,913.82
09/01/2035	237,336.02	-	237,336.02	259,250.00	21,913.98
09/01/2036	51,915.00	(47,467.20)	4,447.80	5,262.00	814.20
Total	\$3,527,775.87	(47,467.20)	\$3,480,308.61	\$3,875,572.00	\$395,263.39

The “Estimated Savings” numbers shown in the table above include factoring in \$80,000 in total costs of issuance (sometimes referred to as finance charges). The total costs of issuance are not expected to exceed this amount. The current estimated budget is shown in the table below and the bond numbers will be adjusted to reflect any final changes to the budget.

Line Item	Estimated Budget
Bond Counsel	\$20,000
Municipal Advisor	\$17,500
Municipal Advisor Expenses	\$750
Placement Agent	\$10,000
Bank Counsel	\$8,500
Special Tax Consultant	\$5,000
Staff Administration	\$5,000
Verification Report	\$2,500
Trustee / Escrow Agent	\$5,000
CDIAC	\$617
Miscellaneous	\$2,500
Total	\$77,367

The total amount of proceeds received by the City on behalf of the CFD for the purpose of refunding the 2006 Bonds is \$2,387,651 (which is equal to the estimated total amount of the 2018 Bonds, less the estimated costs of issuance).

CONSISTENCY WITH THE VISION MADERA 2025 PLAN:

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

ATTACHMENTS

- Resolution
- Fiscal Agent Agreement
- Escrow Agreement

RESOLUTION NO. _____

**A RESOLUTION AUTHORIZING THE ISSUANCE OF SPECIAL TAX
REFUNDING BONDS FOR AND ON BEHALF OF THE CITY OF MADERA
COMMUNITY FACILITIES DISTRICT NO. 2006-1, APPROVING AND
DIRECTING THE EXECUTION OF A FISCAL AGENT AGREEMENT,
APPROVING SALE OF SUCH BONDS ON A PRIVATE PLACEMENT BASIS,
AND APPROVING OTHER RELATED DOCUMENTS AND ACTIONS**

WHEREAS, the City Council of the City of Madera (the "City") has conducted proceedings under and pursuant to the Mello-Roos Community Facilities Act of 1982, as amended, Chapter 2.5 of Part 1 of Division 2 of Title 5, commencing at Section 53311, of the California Government Code (the "Act"), to form City of Madera Community Facilities District No. 2006-1 (the "District"), to authorize the levy of special taxes upon the land within the District, and to issue bonds secured by said special taxes for the purpose of providing moneys for the construction and acquisition of authorized improvements for the District; and

WHEREAS, the City, for and on behalf of the District, previously issued the \$2,885,000 City of Madera Community Facilities District No. 2006-1 Special Tax Bonds, Series 2006 (the "Prior Bonds"); and

WHEREAS, the Prior Bonds are subject to optional redemption by the City on March 1, 2018 and interest payment dates thereafter at a redemption price equal to the aggregate principal amount of bonds to be redeemed, plus accrued interest thereon to the redemption date, without premium, and the City desires to refund the Prior Bonds by issuing refunding bonds for the District, and, after due investigation and deliberation the City has determined that it is in the interests of the City and the District at this time for the City Council, as legislative body of the District, to authorize a series of special tax bonds as refunding bonds for the District designated City of Madera Community Facilities District No. 2006-1 Special Tax Refunding Bonds Series 2018 (the "2018 Bonds"); and

WHEREAS, there has been submitted to the City Council a form of Fiscal Agent Agreement (the "Fiscal Agent Agreement") between the City and The Bank of New York Mellon Trust Company, N.A., as fiscal agent, providing for the issuance of the 2018 Bonds, and the City Council, with the aid of City staff, has reviewed the Fiscal Agent Agreement and found it to be in proper order, and now desires to approve the Fiscal Agent Agreement and the issuance of the 2018 Bonds, for and on behalf of the District; and

WHEREAS, the City proposes to sell the 2018 Bonds to Western Alliance Bank or an affiliate thereof (the "Purchaser"), said Purchaser providing the lowest interest cost to the City pursuant to a solicitation of interest in the purchase of the 2018 Bonds made by the City with the help of its municipal advisor, Del Rio Advisors LLC, and its placement agent, Hilltop Securities Inc.; provided, that an alternative purchaser may be selected by City staff so long as the parameters set forth in this Resolution are satisfied; and

WHEREAS, in accordance with Section 5852.1 of the California Government Code, the City Council has obtained and disclosed the information described therein;

WHEREAS, all conditions, things and acts required to exist, to have happened and to have been performed precedent to and in the issuance of the 2018 Bonds as contemplated by

this Resolution and the documents referred to herein exist, have happened and have been performed in due time, form and manner as required by the laws of the State of California, including the Act.

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

1. **Recitals.** The above recitals are true and correct and are a substantive part of this Resolution.

2. **Findings.** The City Council finds and determines that it is prudent in the management of its fiscal affairs and in the best interests of the City and the District to issue the 2018 Bonds for the purpose of providing moneys for the refunding of the Prior Bonds to achieve interest cost savings and that, pursuant to the Act, the 2018 Bonds are not a part of the maximum bonded authorization of the District.

3. **Bonds Authorized.** Pursuant to the Act, this Resolution, and the Fiscal Agent Agreement, special tax bonds of the City for the District designated as "City of Madera Community Facilities District No. 2006-1 Special Tax Refunding Bonds Series 2018" in an aggregate principal amount not to exceed the par amount set forth in Section 5 are hereby authorized to be issued for the purpose of refunding the Prior Bonds. The 2018 Bonds shall be executed in the form set forth in, and otherwise as provided in, the Fiscal Agent Agreement approved pursuant to Section 4.

In accordance with the requirements of Section 53345.8 of the Act, the City Council, as legislative body of the District, hereby determines that the value of the real property in the District subject to the special tax to pay debt service on the 2018 Bonds is at least three times the principal amount of the 2018 Bonds and the principal amount of all other bonds outstanding that are secured by a special tax levied pursuant to the Act or a special assessment levied on property within the District. This determination is based on the full cash value of such property as shown on the last equalized County Assessor's assessment roll.

The City hereby finds that the 2018 Bonds constitute "refunding bonds" within the meaning of the Act because the proceeds thereof will be used to refund the Prior Bonds. For the purposes of these proceedings for the issuance of the 2018 Bonds, the City hereby determines, based on preliminary calculations, that the total net interest cost to maturity on the 2018 Bonds, plus the principal amount of the 2018 Bonds is less than the total net interest cost to maturity of the Prior Bonds plus the principal amount of the Prior Bonds to be refunded.

4. **Fiscal Agent Agreement.** The City Council hereby approves the Fiscal Agent Agreement in the form presented to the City Council at this meeting. The City Manager (whether serving on an interim basis or not), Director of Financial Services and such other person or persons as either of them may designate (collectively, the "Authorized Officers"), each acting alone or together with any other Authorized Officer, are each hereby authorized and directed to execute the Fiscal Agent Agreement, for and in the name and on behalf of the City and the District, in such form, together with any additions thereto or changes therein deemed necessary or advisable by the Authorized Officer executing such document upon consultation with Jones Hall, A Professional Law Corporation, as bond counsel to the City ("Bond Counsel"). The proceeds of the 2018 Bonds shall be applied by the City for the purposes and in the amounts as set forth in the Fiscal Agent Agreement. The City Council hereby authorizes the delivery and performance by the City of the Fiscal Agent Agreement.

For purposes of Section 53363.2 of the Act, the City Council, as legislative body of the District, hereby further finds and determines that: (i) it is expected that the purchase of the 2018 Bonds will occur on the Closing Date (as such term is defined in the Fiscal Agent Agreement); (ii) the date, denomination, interest rate, final maturity date, places of payment and form of the 2018 Bonds shall be as set forth in the Fiscal Agent Agreement, as executed; and (iii) the designated costs of issuing the 2018 Bonds shall be as described in Section 53363.8 of the Act, and as otherwise described in the Fiscal Agent Agreement, and the closing certificates for the 2018 Bonds.

5. Approval of Sale of 2018 Bonds. The City Council hereby approves the sale of the 2018 Bonds on a private placement basis to the Purchaser or an alternative purchaser selected by an Authorized Officer; provided, that the aggregate principal amount of 2018 Bonds shall not exceed \$2,600,000 and net present value savings shall be equal to at least 3.00%. Subject to the foregoing parameters, the principal amount of the 2018 Bonds may be more than, less than, or the same as the principal amount of the Prior Bonds being refunded, and an Authorized Officer is hereby authorized and directed to execute a commitment letter, term sheet and/or similar agreement setting forth the terms of the sale of the 2018 Bonds.

6. Actions Authorized. All actions heretofore taken by the officers, employees and agents of the City with respect to the sale and issuance of the 2018 Bonds are hereby approved, confirmed and ratified, and the Authorized Officers of the City are hereby authorized and directed to do any and all things and take any and all actions and execute any and all certificates, agreements and other documents (including, without limitation, an escrow agreement or irrevocable refunding instructions for the redemption of the Prior Bonds), which they, or any of them, may deem necessary or advisable in order to consummate the lawful issuance and delivery of the 2018 Bonds in accordance with this Resolution, and any certificate, agreement, and other document described in the documents herein approved. All actions to be taken by a specified Authorized Officer as specified herein, may be taken by the Authorized Officer (including any person holding such office on an interim basis) or any designee, with the same force and effect as if taken by such Authorized Officer.

7. Effectiveness. This Resolution is effective immediately upon adoption.

FISCAL AGENT AGREEMENT

by and between

CITY OF MADERA

and

**THE BANK OF NEW YORK MELLON TRUST COMPANY, N.A.,
as Fiscal Agent**

Dated as of January 1, 2018

Relating to:

**\$ _____
City of Madera
Community Facilities District No. 2006-1
Special Tax Refunding Bonds
Series 2018**

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FISCAL AGENT AGREEMENT

THIS FISCAL AGENT AGREEMENT (the "Agreement") is made and entered into as of January 1, 2018, by and between the City of Madera, a general law city and public body, corporate and politic, organized and existing under and by virtue of the Constitution and laws of the State of California (the "City") for and on behalf of the City of Madera Community Facilities District No. 2006-1 (the "District"), and The Bank of New York Mellon Trust Company, N.A., as fiscal agent (the "Fiscal Agent").

WITNESSETH:

WHEREAS, the City Council of the City has formed the District under the provisions of the Mello-Roos Community Facilities Act of 1982, as amended (constituting Section 53311 *et seq.* of the California Government Code) (the "Act") and Resolution No. 06-274 of the City Council adopted on September 6, 2006; and

WHEREAS, the City Council, as the legislative body of the District, is authorized under the Act to levy special taxes to pay for the costs of facilities within the District and to authorize the issuance of bonds secured by said special taxes under the Act; and

WHEREAS, the City Council, as the legislative body of the District, previously issued the \$2,885,000 City of Madera Community Facilities District No. 2006-1 Special Tax Bonds, Series 2006 (the "Prior Bonds"); and

WHEREAS, under the provisions of the Act, on January 17, 2018, the City Council adopted its Resolution No. _____ (the "Resolution"), which resolution authorized the issuance of the City of Madera Community Facilities District No. 2006-1 Special Tax Refunding Bonds Series 2018 to refund the Prior Bonds; and

WHEREAS, it is in the public interest and for the benefit of the City, the District, the persons responsible for the payment of special taxes and the Owners of the Bonds (as defined herein) that the City enter into this Agreement to provide for the issuance of the Bonds, the disbursement of proceeds of the Bonds, the disposition of the special taxes securing the Bonds and any additional bonds authorized to be issued hereunder and the administration and payment of the Bonds; and

WHEREAS, the City has determined that all things necessary to cause the Bonds, when authenticated by the City for the District and issued as in the Act, the Resolution and this Agreement provided to be legal, valid and binding and special obligations of the City for the District in accordance with their terms, and all things necessary to cause the creation, authorization, execution and delivery of this Agreement and the creation, authorization, execution and issuance of the Bonds, subject to the terms hereof, have in all respects been duly authorized.

NOW, THEREFORE, in consideration of the covenants and provisions herein set forth and for other valuable consideration the receipt and sufficiency of which are hereby acknowledged, the parties hereto do hereby agree as follows:

ARTICLE I

STATUTORY AUTHORITY AND DEFINITIONS

Section 1.01. Authority for this Agreement. This Agreement is entered into pursuant to the provisions of the Act and the Resolution.

Section 1.02. Agreement for Benefit of Bondowners. The provisions, covenants and agreements herein set forth to be performed by or on behalf of the City shall be for the equal benefit, protection and security of the Owners. All of the Bonds, without regard to the time or times of their issuance or maturity, shall be of equal rank without preference, priority or distinction of any of the Bonds over any other thereof, except as expressly provided in or permitted by this Agreement. The Fiscal Agent may become the Owner of any of the Bonds in its own or any other capacity with the same rights it would have if it were not Fiscal Agent.

Section 1.03. Definitions. Unless the context otherwise requires, the terms defined in this Section 1.03 shall, for all purposes of this Agreement, of any Supplemental Agreement, and of any certificate, opinion or other document herein mentioned, have the meanings herein specified. All references herein to "Articles," "Sections" and other subdivisions are to the corresponding Articles, Sections or subdivisions of this Agreement, and the words "herein," "hereof," "hereunder" and other words of similar import refer to this Agreement as a whole and not to any particular Article, Section or subdivision hereof.

"Additional Bonds" means any series of bonds other than the 2018 Bonds issued pursuant to Section 5.17 hereof.

"Administrative Expenses" means any or all of the following: the fees and expenses of the Fiscal Agent (including any fees or expenses of its counsel), the expenses of the City in carrying out its duties hereunder (including, but not limited to, the levying and collection of the Special Taxes, and the foreclosure of the liens of delinquent Special Taxes) including the fees and expenses of its counsel, an allocable share of the salaries of City staff directly related thereto and a proportionate amount of City general administrative overhead related thereto, any amounts paid by the City from its general funds pursuant to Section 6.02, and all other costs and expenses of the City or the Fiscal Agent incurred in connection with the issuance and administration of the Bonds and/or the discharge of their respective duties hereunder (including, but not limited to, the calculation of the levy of the Special Taxes, foreclosures with respect to delinquent taxes, and the calculation of amounts subject to rebate to the United States) and, in the case of the City, in any way related to the administration of the District. Administrative Expenses shall include any such expenses incurred in prior years but not yet paid, and any advances of funds by the City under Section 6.02 hereof.

"Agreement" means this Fiscal Agent Agreement, as it may be amended or supplemented from time to time by any Supplemental Agreement.

"Annual Debt Service" means, for each Bond Year and each Series of Outstanding Bonds, the sum of (i) the interest due on the respective Series of Outstanding Bonds in such Bond Year, assuming that such Outstanding Bonds are retired as scheduled, and (ii) the principal amount of the respective Series of Outstanding Bonds, including any mandatory sinking fund payments, due in such Bond Year.

"Authorized Officer" means the City Administrator, Director of Financial Services, City Attorney or any other officer or employee authorized by the City Council of the City or by an Authorized Officer to undertake the action referenced in this Agreement as required to be undertaken by an Authorized Officer.

"Bond Counsel" means any attorney or firm of attorneys acceptable to the City and nationally recognized for expertise in rendering opinions as to the legality and tax-exempt status of securities issued by public entities.

"Bond Fund" means the fund by that name established pursuant to Section 4.02(A) hereof.

"Bond Year" means each twelve-month period beginning on September 2 in any year and extending to the next succeeding September 1, both dates inclusive; except that the first Bond Year shall begin on the Closing Date and end on September 1, 2018.

"Bonds" means the 2018 Bonds and any Additional Bonds.

"Business Day" means any day other than (i) a Saturday or a Sunday or (ii) a day on which banking institutions in the state in which the Principal Office of the Fiscal Agent is located are authorized or obligated by law or executive order to be closed.

"CDIAC" means the California Debt and Investment Advisory Commission of the office of the State Treasurer of the State of California or any successor agency or bureau thereto.

"City" means the City of Madera, California, and any successor thereto.

"Closing Date" means, with respect to the 2018 Bonds, January 25, 2018, the date upon which there is a physical delivery of the 2018 Bonds in exchange for the amount representing the purchase price of the 2018 Bonds by the Original Purchaser.

"Code" means the Internal Revenue Code of 1986 as in effect on the date of issuance of the Bonds or (except as otherwise referenced herein) as it may be amended to apply to obligations issued on the date of issuance of the Bonds, together with applicable temporary and final regulations promulgated, and applicable official public guidance published, under the Code.

"Cost of Issuance" means items of expense payable or reimbursable directly or indirectly by the City and related to the authorization, sale and issuance of the Bonds, which items of expense shall include, but not be limited to, printing costs, costs of reproducing and binding documents, closing costs, filing and recording fees, initial fees, expenses and charges of the Fiscal Agent, including its first annual administration fee, and expenses and fees of counsel to the Fiscal Agent, expenses incurred by the City in connection with the issuance of the Bonds, financial advisor fees, Bond underwriting fee or placement fees, legal fees and charges, including bond counsel, charges for execution, transportation and safekeeping of the Bonds and other costs, charges and fees in connection with the foregoing.

"Costs of Issuance Fund" means the fund by that name established pursuant to Section 3.05(A) hereof.

"Debt Service" means the scheduled amount of interest and amortization of principal payable on the Bonds during the period of computation, excluding amounts scheduled during such period which relate to principal which has been retired before the beginning of such period.

[[*"Determination of Taxability"* means and shall be deemed to have occurred on the first to occur of the following:

(i) on that date when the City files any statement, supplemental statement or other tax schedule, return or document which discloses that an Event of Taxability has occurred;

(ii) on the date when the Original Purchaser notifies the City that it has received a written Opinion from Bond Counsel to the effect that an Event of Taxability has occurred, which notice shall be accompanied by a copy of such Opinion of Bond Counsel, unless, within 180 days after receipt by the City of such notification and copy of such opinion from the Original Purchaser, the City shall deliver to the Original Purchaser a ruling or determination letter issued to or on behalf of the City by the Commissioner or any District Director of the Internal Revenue Service (or any other governmental official exercising the same or a substantially similar function from time to time) to the effect that, after taking into consideration such facts as form the basis for the opinion that an Event of Taxability has occurred, an Event of Taxability shall not have occurred;

(iii) on the date when the City is advised in writing by the Commissioner or any District Director of the Internal Revenue Service (or any other government official or agent exercising the same or a substantially similar function from time to time) that, based upon any review or audit or upon any other ground whatsoever, an Event of Taxability has occurred; or

(iv) on that date when the City receives notice from the Original Purchaser that the Internal Revenue Service (or any other government official or agency exercising the same or a substantially similar function from time to time) has assessed the interest on the Bonds as includable in the gross income of an Owner or former Owner of the Bonds due to the occurrence of an Event of Taxability, provided that such Owner or former Owner has provided a copy of such amounts to the City;

provided, however, that no Determination of Taxability shall occur under subparagraph (iii) or subparagraph (iv) above unless the City has been afforded the opportunity, at its expense, to contest any such assessment, and, further, no Determination of Taxability shall occur until such contest, if made, has been finally determined; provided further, however, that upon demand from the Original Purchaser following an event listed in subparagraphs (i), (ii), (iii) or (iv), the City shall reimburse an Owner or former Owner of the Bonds for any payments, including any taxes, interest, penalties or other charges, such Owner or former Owner of the Bonds shall be obligated to make to the Internal Revenue Service as a result of the Determination of Taxability.]]

"Director of Financial Services" means the duly acting Director of Financial Services of the City, or if the City has no Director of Financial Services, such officer of the City serving a similar role.

"District" means the City of Madera Community Facilities District No. 2006-1 formed pursuant to the Resolution of Formation.

[[*"Event of Taxability"* means any action taken or failed to be taken by the City which has the effect of causing interest paid or payable on the Bonds to be includable, in whole or in part, in the gross income of the holder of the Bonds for federal income tax purposes.]]

"Escrow Agent" means The Bank of New York Mellon Trust Company, N.A., as escrow agent under the Escrow Agreement.

"Escrow Agreement" means the Escrow Agreement, dated as of January 1, 2018, by and between the City and The Bank of New York Mellon Trust Company, N.A., as escrow agent, related to the Prior Bonds.

"Fair Market Value" means the price at which a willing buyer would purchase the investment from a willing seller in a bona fide, arm's length transaction (determined as of the date the contract to purchase or sell the investment becomes binding) if the investment is traded on an established securities market (within the meaning of Section 1273 of the Code) and, otherwise, the term "Fair Market Value" means the acquisition price in a bona fide arm's length transaction (as referenced above) if (i) the investment is a certificate of deposit that is acquired in accordance with applicable regulations under the Code, (ii) the investment is an agreement with specifically negotiated withdrawal or reinvestment provisions and a specifically negotiated interest rate (for example, a guaranteed investment contract, a forward supply contract or other investment agreement) that is acquired in accordance with applicable regulations under the Code, (iii) the investment is a United States Treasury Security—State and Local Government Series that is acquired in accordance with applicable regulations of the United States Bureau of Public Debt, or (iv) the investment is the Local Agency Investment Fund of the State of California, but only if at all times during which the investment is held its yield is reasonably expected to be equal to or greater than the yield on a reasonably comparable direct obligation of the United States.

"Federal Securities" means any of the following which are non-callable and which at the time of investment are legal investments under the laws of the State of California for funds held by the Fiscal Agent (the Fiscal Agent entitled to rely upon investment direction from the City as a certification that such investment constitutes a legal investment).

(i) Direct general obligations of the United States of America (including obligations issued or held in book-entry form on the books of the United States Department of the Treasury) and obligations, the payment of principal of and interest on which are directly or indirectly guaranteed by the United States of America, including, without limitation, such of the foregoing which are commonly referred to as "stripped" obligations and coupons; or

(ii) Any of the following obligations of the following agencies of the United States of America: (a) direct obligations of the Export-Import Bank, (b) certificates of beneficial ownership issued by the Farmers Home Administration, (c) participation certificates issued by the General Services Administration, (d) mortgage-backed bonds or passthrough obligations issued and guaranteed by the Government National Mortgage Association, (e) project notes issued by the United States Department of Housing and Urban Development, and (f) public housing notes and bonds guaranteed by the United States of America.

"Fiscal Agent" means the Fiscal Agent appointed by the City and acting as an independent fiscal agent with the duties and powers herein provided, its successors and assigns, and any other corporation or association which may at any time be substituted in its place, as provided in Section 7.01.

"Fiscal Year" means the twelve-month period extending from July 1 in a calendar year to June 30 of the succeeding year, both dates inclusive.

"Independent Financial Consultant" means any consultant or firm of such consultants appointed by an Authorized Officer, and who, or each of whom:

(A) is judged by the Authorized Officer to have experience in matters relating to the issuance and/or administration of bonds under the Act;

(B) is in fact independent and not under the domination of the City;

(C) does not have any substantial interest, direct or indirect, with or in the City, or any owner of real property in the District; and

(D) is not connected with the City as an officer or employee of the City, but who may be regularly retained to make reports to the City.

"Interest Payment Dates" means March 1 and September 1 of each year, commencing September 1, 2018.

"Maximum Annual Debt Service" means, for each Series of Outstanding Bonds, the largest Annual Debt Service for any Bond Year after the calculation is made through the final maturity date of the respective Series of Outstanding Bonds.

"Officer's Certificate" means a written certificate of the City signed by an Authorized Officer of the City.

"Ordinance" means any ordinance of the City levying the Special Taxes.

"Original Purchaser" means, with respect to the 2018 Bonds, _____, the first purchaser of the 2018 Bonds from the City.

"Outstanding," when used as of any particular time with reference to Bonds, means (subject to the provisions of Section 8.04) all Bonds except (i) Bonds theretofore canceled by the Fiscal Agent or surrendered to the Fiscal Agent for cancellation; (ii) Bonds paid or deemed to have been paid within the meaning of Section 10.03; and (iii) Bonds in lieu of or in substitution for which other Bonds shall have been authorized, executed, issued and delivered by the City pursuant to the Agreement or any Supplemental Agreement.

"Owner" or "Bondowner" means any person who shall be the registered owner of any Outstanding Bond.

"Permitted Investments" means any of the following, to the extent that they are lawful investments for City funds at the time of investment, and are acquired at Fair Market Value (the Fiscal Agent is entitled to rely upon investment direction from the City as a certification that such investment constitutes a legal investment):

(i) Federal Securities;

(ii) any of following obligations of federal agencies not guaranteed by the United States of America: (a) debentures issued by the Federal Housing Administration; (b) participation certificates or senior debt obligations of the Federal Home Loan Mortgage Corporation or Farm Credit Banks (consisting of Federal Land Banks, Federal Intermediate Credit Banks or Banks for Cooperatives); (c) bonds or debentures of the Federal Home Loan Bank Board established under the Federal Home Loan Bank Act, bonds of any federal home loan bank established under said act and stocks, bonds, debentures, participations and other obligations of or issued by the Federal National Mortgage Association, the Student Loan Marketing Association, the Government National Mortgage Association and the Federal Home Loan Mortgage Corporation; and (d) bonds, notes or other obligations issued or assumed by the International Bank for Reconstruction and Development;

(iii) interest-bearing demand or time deposits (including certificates of deposit) in federal or State of California chartered banks (including the Fiscal Agent and its affiliates), provided that (a) in the case of a savings and loan association, such demand or time deposits shall be fully insured by the Federal Deposit Insurance Corporation, or the unsecured obligations of such savings and loan association shall be rated in one of the top two rating categories by a nationally recognized rating service, and (b) in the case of a bank, such demand or time deposits shall be fully insured by the Federal Deposit Insurance Corporation, or the unsecured obligations of such bank (or the unsecured obligations of the parent bank holding company of which such bank is the lead bank) shall be rated in one of the top two rating categories by a nationally recognized rating service;

(iv) repurchase agreements with a registered broker/dealer subject to the Securities Investors Protection Corporation Liquidation in the event of insolvency, or any commercial bank provided that: (a) the unsecured obligations of such bank shall be rated in one of the top two rating categories by a nationally recognized rating service, or such bank shall be the lead bank of a banking holding company whose unsecured obligations are rated in one of the top two rating categories by a nationally recognized rating service; (b) the most recent reported combined capital, surplus and undivided profits of such bank shall be not less than \$100 million; (c) the repurchase obligation under any such repurchase obligation shall be required to be performed in not more than thirty (30) days; (d) the entity holding such securities as described in clause (c) shall have a pledged first security interest therein for the benefit of the Fiscal Agent under the California Commercial Code or pursuant to the book-entry procedures described by 31 C.F.R. 306.1 *et seq.* or 31 C.F.R. 350.0 *et seq.* and are rated in one of the top two rating categories by a nationally recognized rating service;

(v) bankers acceptances endorsed and guaranteed by banks described in clause (iv) above;

(vi) obligations, the interest on which is exempt from federal income taxation under Section 103 of the Code and which are rated in the one of the top two rating categories by a nationally recognized rating service;

(vii) money market funds which invest solely in Federal Securities or in obligations described in the preceding clause (ii) of this definition, or money market funds which are rated in the highest rating category by S&P Global Ratings or Moody's Investor Service, including such funds for which the Fiscal Agent, its affiliates or subsidiaries provide investment advisory or other management services or for which the Fiscal Agent or an affiliate of the Fiscal Agent serves as investment administrator, shareholder servicing agent, and/or custodian or subcustodian, notwithstanding that (a) the Fiscal Agent or an affiliate of the Fiscal Agent receives and retains a fee for services provided to the fund, (b) the Fiscal Agent collects fees for services rendered pursuant to this Agreement, which fees are separate from the fees received from such funds, and (c) services performed for such funds and pursuant to this Agreement may at times duplicate those provided to such funds by the Fiscal Agent or an affiliate of the Fiscal Agent;

(viii) units of a taxable government money market portfolio comprised solely of obligations listed in (i) and (iv) above, such funds for which the Fiscal Agent, its affiliates or subsidiaries provide investment advisory or other management services or for which the Fiscal Agent or an affiliate of the Fiscal Agent serves as investment administrator, shareholder servicing agent, and/or custodian or subcustodian, notwithstanding that (a) the Fiscal Agent or an affiliate of the Fiscal Agent receives and retains a fee for services provided to the fund, (b) the Fiscal Agent collects fees for services rendered pursuant to this Agreement, which fees are separate from the fees received from such funds, and (c) services performed for such funds and pursuant to this Agreement may at times duplicate those provided to such funds by the Fiscal Agent or an affiliate of the Fiscal Agent;

(ix) any investment which is a legal investment for proceeds of the Bonds at the time of the execution of such agreement, and which investment is made pursuant to an agreement between the City or the Fiscal Agent or any successor Fiscal Agent and a financial institution or governmental body whose long term debt obligations are rated in one of the top two rating categories by a nationally recognized rating service;

(x) commercial paper which at the time of purchase is of "prime" quality of the highest ranking or of the highest letter and numerical rating as provided for by Moody's Investor Service or S&P Global Ratings, of issuing corporations that are organized and operating within the United States and having total assets in excess of five hundred million dollars (\$500,000,000) and having an "AA" or higher rating for the issuer's debentures, other than commercial paper, as provided for by Moody's Investor Service or S&P Global Ratings, and provided that purchases of eligible commercial paper may not exceed 180 days maturity nor represent more than 10 percent of the outstanding paper of an issuing corporation;

(xi) any general obligation of a bank or insurance company whose long term debt obligations are rated in one of the two highest rating categories of a national rating service;

(xii) shares in a common law trust established pursuant to Title 1, Division 7, Chapter 5 of the Government Code of the State which invests exclusively in investments permitted by Section 53635 of Title 5, Division 2, Chapter 4 of the Government Code of the State, as it may be amended;

(xiii) shares in the California Asset Management Program; or

(xiii) the Local Agency Investment Fund established pursuant to Section 16429.1 of the Government Code of the State of California, *provided, however*, that the Fiscal Agent shall be permitted to make investments and withdrawals in its own name and the Fiscal Agent may restrict investments in the such fund if necessary to keep moneys available for the purposes of this Fiscal Agent Agreement.

(xiv) any other lawful investment for City funds.

"Prepayment" means moneys received by the City from the prepayment of Special Taxes as provided in the RMA.

"Prepayment Account" means the account within the Bond Fund by that name established pursuant to Section 4.02(A) hereof.

"Principal Office" means the corporate trust office of the Fiscal Agent set forth in Section 10.06, or such other or additional offices as may be designated by the Fiscal Agent.

"Prior Bonds" means \$2,885,000 City of Madera Community Facilities District No. 2006-1 Special Tax Bonds, Series 2006.

"Qualified Reserve Fund Credit Instrument" means an irrevocable standby or direct-pay letter of credit or surety bond issued by a commercial bank or insurance company and deposited with the Fiscal Agent pursuant to Section 4.03, provided that all of the following requirements are met: (a) the long-term credit rating of such bank or insurance company is rated in the "AA" category (without regard to modifier) or higher by S&P Global Ratings or Moody's Investor Services at the time of issuance; (b) such letter of credit or surety bond has a term of at least twelve (12) months; (c) such letter of credit or surety bond has a stated amount at least equal to the portion of the Reserve Requirement with respect to which funds are proposed to be released pursuant to Section 4.03; and (d) the Fiscal Agent is authorized pursuant to the terms of such letter of credit or surety bond to draw thereunder an amount equal to any deficiencies which may exist from time to time in the Bond Fund for the purpose of making payments required pursuant to Section 4.03.

"RMA" means the rate and method of apportionment of special taxes pursuant to which the Special Tax is levied in the District.

"Record Date" means the fifteenth (15th) day of the month next preceding the month of the applicable Interest Payment Date whether or not such day is a Business Day.

"Regulations" means temporary and permanent regulations promulgated under the Code.

"Reserve Fund" means the fund by that name established pursuant to Section 4.03(A) hereof.

"Reserve Requirement" means (a) with respect to the 2018 Bonds, an amount equal to 20% of Maximum Annual Debt Service on the 2018 Bonds, and (b) with respect to any Additional Bonds, an amount (if any) to be set forth in the Supplemental Agreement setting forth the terms of such Additional Bonds; provided, that (1) in no event shall the City, in connection

with the issuance of Additional Bonds covered by the Reserve Fund be obligated to deposit an amount in the Reserve Fund which is in excess of the amount permitted by the applicable provisions of the Code to be so deposited from the proceeds of tax-exempt bonds without having to restrict the yield of any investment purchased with any portion of such deposit and, in the event the amount of any such deposit into the Reserve Fund is so limited, the Reserve Requirement shall, in connection with the issuance of such Additional Bonds, be increased only by the amount of such deposit as permitted by the Code, and (2) the District may meet all or a portion of the Reserve Requirement by depositing a Qualified Reserve Fund Credit Instrument in the Reserve Fund in accordance with Section 4.03(A).

"Resolution" means Resolution No. ____ adopted by the City Council of the City on January 17, 2018, which resolution authorized the issuance of the Bonds.

"Resolution of Formation" means Resolution No. 06-274, adopted by the City Council of the City on September 6, 2006, establishing the District.

"Series" means a series of Bonds issued under this Fiscal Agent Agreement.

"Special Tax Fund" means the fund by that name established by Section 3.03(A) hereof.

"Special Tax Revenues" means the proceeds of the Special Taxes received by the City, including all scheduled payments and delinquent payments thereof, interest and penalties thereon and proceeds of the redemption or sale of property sold as a result of foreclosure of the lien of the Special Taxes, net of the administration charge of the County of Madera.

"Special Taxes" means the special taxes levied within the District pursuant to the Act, the Ordinance and this Agreement.

"Supplemental Agreement" means an agreement the execution of which is authorized by a resolution which has been duly adopted by the City under the Act and which agreement is amendatory of or supplemental to this Agreement, but only if and to the extent that such agreement is specifically authorized hereunder.

[[*"Taxable Rate"* means ____% per annum.]]

"2018 Bonds" means the City of Madera Community Facilities District No. 2006-1 Special Tax Refunding Bonds Series 2018.

"2018 Reserve Account" means the account within the Reserve Fund by that name established pursuant to Section 4.03(A) hereof.

ARTICLE II

THE 2018 BONDS

Section 2.01. Principal Amount; Designation. The 2018 Bonds in the aggregate principal amount of _____ Dollars (\$_____) are hereby authorized to be issued by the City for the District under and subject to the terms of the Resolution and this Agreement, the Act and other applicable laws of the State of California.

Section 2.02. Terms of the 2018 Bonds.

(A) Form; Denominations. The 2018 Bonds shall be issued as fully registered Bonds without coupons in the denomination of \$250,000 or any integral multiple of \$1 in excess thereof.

(B) Date of the 2018 Bonds. The 2018 Bonds shall be dated the Closing Date.

(C) CUSIP Identification Numbers. "CUSIP" identification numbers shall not initially be imprinted on the 2018 Bonds.

(D) Maturities. The Bonds shall mature and become payable on September 1, 2036, and shall bear interest at the rate per annum, as follows:

Maturity Date (September 1) 2036	Principal Amount \$_____	Interest Rate _____%
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(E) Interest. The 2018 Bonds shall bear interest at the rates set forth above payable on the Interest Payment Dates in each year. Interest shall be calculated on the basis of a 360-day year composed of twelve 30-day months. Each 2018 Bond shall bear interest from the Interest Payment Date next preceding the date of authentication thereof unless

(i) it is authenticated on an Interest Payment Date, in which event it shall bear interest from such date of authentication, or

(ii) it is authenticated prior to an Interest Payment Date and after the close of business on the Record Date preceding such Interest Payment Date, in which event it shall bear interest from such Interest Payment Date, or

(iii) it is authenticated prior to the Record Date preceding the first Interest Payment Date, in which event it shall bear interest from the Closing Date;

provided, however, that if at the time of authentication of a 2018 Bond, interest is in default thereon, such Bond shall bear interest from the Interest Payment Date to which interest has previously been paid or made available for payment thereon.

(F) Method of Payment. Interest on the 2018 Bonds (including the final interest payment upon maturity or earlier redemption) is payable by check of the Fiscal Agent mailed on the Interest Payment Dates by first class mail to the registered Owner thereof at the registered Owner's address as it appears on the registration books maintained by the Fiscal Agent at the close of business on the Record Date preceding the Interest Payment Date, or by wire transfer

to an account within the United States made on such Interest Payment Date upon written instructions of any Owner of \$1,000,000 or more in aggregate principal amount of 2018 Bonds, which shall continue in effect until revoked in writing, or until such Bonds are transferred to a new Owner.

The principal of the 2018 Bonds and any premium on the 2018 Bonds are payable by check in lawful money of the United States of America at the Principal Office of the Fiscal Agent. All Bonds paid by the Fiscal Agent pursuant to this Section shall be canceled by the Fiscal Agent. The Fiscal Agent shall destroy the canceled Bonds and issue a certificate of destruction thereof to the City.

(G) Interest Rate After an Event of Taxability. From and after an Event of Taxability, following a Determination of Taxability, the 2018 Bonds shall bear interest at the Taxable Rate.

Section 2.03. Redemption.

(A) Redemption Dates for 2018 Bonds.

(i) Optional Redemption. The 2018 Bonds are subject to optional redemption by the City, in whole or in part, on any Interest Payment Date on or after September 1, 2025, at the following respective redemption prices (expressed as percentages of the principal amount of the 2018 Bonds to be redeemed), plus accrued interest thereon to the date of redemption:

<u>Redemption Dates</u>	<u>Redemption Price</u>
September 1, 2025 and March 1, 2026	103%
September 1, 2026 and March 1, 2027	102
September 1, 2027 and March 1, 2028	101
September 1, 2028 and Interest Payment Dates thereafter	100

(ii) Mandatory Redemption From Prepayments. The 2018 Bonds are subject to mandatory redemption from Prepayments of the Special Tax by property owners, in whole or in part, on any Interest Payment Date at the following respective redemption prices (expressed as percentages of the principal amount of the 2018 Bonds to be redeemed), plus accrued interest thereon to the date of redemption:

<u>Redemption Dates</u>	<u>Redemption Price</u>
Interest Payment Dates through March 1, 2026	103%
September 1, 2026 and March 1, 2027	102
September 1, 2027 and March 1, 2028	101
September 1, 2028 and Interest Payment Dates thereafter	100

(iii) Mandatory Sinking Payment Redemption. The 2018 Bonds are subject to mandatory sinking payment redemption in part on September 1, 2018, and on each September 1 thereafter to maturity, at a redemption price equal to the principal amount thereof to be redeemed, together with accrued interest to the date fixed for redemption, without premium, from sinking payments as follows:

<u>Redemption Date (September 1)</u>	<u>Sinking Payments</u>
2018	\$
2019	

Redemption Date (September 1)	Sinking Payments
2020	
2021	
2022	
2023	
2024	
2025	
2026	
2027	
2028	
2029	
2030	
2031	
2032	
2033	
2034	
2035	
2036	

The amounts in the foregoing table shall be reduced pro rata as a result of any prior partial optional redemption of the 2018 Bonds under Section 2.03(A)(i) or partial mandatory redemption of the Bonds under Section 2.03(A)(ii), as specified in an Officer's Certificate to the Fiscal Agent.

In lieu of redemption under this Section 2.03, moneys in the Bond Fund may be used and withdrawn by the Fiscal Agent for purchase of Outstanding 2018 Bonds, upon the filing with the Fiscal Agent of an Officer's Certificate requesting such purchase, at public or private sale as and when, and at such prices (including brokerage and other charges) as such Officer's Certificate may provide, but in no event may 2018 Bonds be purchased at a price in excess of the principal amount thereof, plus interest accrued to the date of purchase.

(B) Notice to Fiscal Agent. The City shall give the Fiscal Agent an Officer's Certificate containing notice of its intention to redeem 2018 Bonds pursuant to Section 2.03(A)(i) or Section 2.03(A)(ii) not less than 45 days prior to the applicable redemption date.

(C) Redemption Procedure by Fiscal Agent; Rescission. The Fiscal Agent shall cause notice of any redemption to be mailed by first class mail, postage prepaid, at least 30 days but not more than 60 days prior to the date fixed for redemption, to the respective registered Owners of any 2018 Bonds designated for redemption, at their addresses appearing on the 2018 Bond registration books in the Principal Office of the Fiscal Agent; but such mailing shall not be a condition precedent to such redemption and failure to mail or to receive any such notice, or any defect therein, shall not affect the validity of the proceedings for the redemption of such 2018 Bonds.

Such notice shall state the redemption date and the redemption price and shall state as to any 2018 Bond called in part the principal amount thereof to be redeemed, and shall require that such 2018 Bonds be then surrendered at the Principal Office of the Fiscal Agent for redemption at the said redemption price, and shall state that further interest on such 2018 Bonds will not accrue from and after the redemption date.

The City has the right to rescind any notice of the redemption of 2018 Bonds under Section 2.03(A)(i) by written notice to the Fiscal Agent on or prior to two Business Days prior the date fixed for redemption. Any notice of redemption shall be cancelled and annulled if for any reason funds will not be or are not available on the date fixed for redemption for the payment in full of the 2018 Bonds then called for redemption, and such cancellation shall not constitute an event of default. The City and the Fiscal Agent have no liability to the Owners or any other party related to or arising from such rescission of redemption. The Fiscal Agent shall mail notice of such rescission of redemption in the same manner as the original notice of redemption was sent under this Section.

Whenever provision is made in this Agreement for the redemption of less than all of the 2018 Bonds of a single maturity, the Fiscal Agent shall select the 2018 Bonds of that maturity to be redeemed by lot in any manner which the Fiscal Agent in its sole discretion deems appropriate. For purposes of such selection, the Fiscal Agent shall treat each 2018 Bond as consisting of separate \$1 portions and each such portion shall be subject to redemption as if such portion were a separate 2018 Bond.

Upon surrender of 2018 Bonds redeemed in part only, the City shall execute and the Fiscal Agent shall authenticate and deliver to the registered Owner, at the expense of the City, a new 2018 Bond or 2018 Bonds, of the same series and maturity, of authorized denominations in an aggregate principal amount equal to the unredeemed portion of the 2018 Bond or 2018 Bonds.

(D) Effect of Redemption. From and after the date fixed for redemption, if funds available for the payment of the principal of, and interest and any premium on, the 2018 Bonds so called for redemption shall have been deposited in the Bond Fund, such 2018 Bonds so called shall cease to be entitled to any benefit under this Agreement other than the right to receive payment of the redemption price, and no interest shall accrue thereon on or after the redemption date specified in such notice.

All 2018 Bonds redeemed and purchased by the Fiscal Agent pursuant to this Section shall be canceled by the Fiscal Agent. The Fiscal Agent shall destroy the cancelled 2018 Bonds and issue a certificate of destruction thereof to the City.

Section 2.04. Form of 2018 Bonds. The 2018 Bonds, the form of Fiscal Agent's certificate of authentication and the form of assignment, to appear thereon, shall be substantially in the forms, respectively, set forth in Exhibit A attached hereto and by this reference incorporated herein, with necessary or appropriate variations, omissions and insertions, as permitted or required by this Agreement, the Resolution and the Act.

Section 2.05. Execution of 2018 Bonds. The 2018 Bonds will be initially delivered in the form of a separate single fully registered bond (which may be typewritten) in the aggregate principal amount of the 2018 Bonds, which shall be executed, authenticated and delivered to the Original Purchaser on the Closing Date. Upon initial delivery of 2018 Bonds to the Original Purchaser, the Fiscal Agent shall register the ownership of the 2018 Bonds on the registration books in the name of the Original Purchaser.

The 2018 Bonds shall be signed on behalf of the City by the manual or facsimile signature of the Mayor or Vice-Mayor and by the manual or facsimile signature of the City Clerk or Deputy City Clerk in their capacity as officers of the City. If any one or more of the officers who have signed any of the 2018 Bonds cease to be such officer before the 2018 Bonds so

signed have been authenticated and delivered by the Fiscal Agent (including new bonds delivered pursuant to this provisions hereof with reference to the transfer and exchange of 2018 Bonds or to lost, stolen, destroyed or mutilated 2018 Bonds), such 2018 Bonds shall nevertheless be valid and may be issued as if the person who signed or sealed such 2018 Bonds had not ceased to hold such office.

Only such 2018 Bonds as bear thereon such certificate of authentication duly executed by the Fiscal Agent shall be entitled to any right or benefit under this Agreement, and no 2018 Bond shall be valid or obligatory for any purpose until such certificate of authentication has been duly executed by the Fiscal Agent.

Section 2.06. Transfer of 2018 Bonds. The 2018 Bonds may be transferred in accordance with their terms and with the provisions of the representations of the Original Purchaser attached hereto as Exhibit B and by this reference incorporated herein (the "Letter of Representations"), the delivery of which in the form of a certificate signed by the Original Purchaser is a condition to the issuance of the 2018 Bonds; provided, that the Fiscal Agent shall have no responsibility for monitoring compliance with the provisions of any Letter of Representations. The Original Purchaser of the 2018 Bonds may only transfer the 2018 Bonds to a "Qualified Institutional Buyer" or an "Accredited Investor" within the meaning of the Securities Act of 1933, as amended, following prior written approval of such transfer by the City to the Original Purchaser.

Any 2018 Bond may, in accordance with its terms, be transferred, upon the books required to be kept pursuant to the provisions of Section 2.08 by the person in whose name it is registered, in person or by his duly authorized attorney, upon surrender of such 2018 Bond for cancellation, accompanied by (i) delivery of a duly written instrument of transfer in a form acceptable to the Fiscal Agent and (ii) a duly executed letter of representations substantially in the form of Exhibit B. The cost for any services rendered or any expenses incurred by the Fiscal Agent in connection with any such transfer shall be paid by the City. The Fiscal Agent shall collect from the Owner requesting such transfer any tax or other governmental charge required to be paid with respect to such transfer.

Whenever any 2018 Bond is or 2018 Bonds are surrendered for transfer, the City shall execute and the Fiscal Agent shall authenticate and deliver a new 2018 Bond or 2018 Bonds, for like aggregate principal amount of authorized denominations.

No transfers of 2018 Bonds will be required to be made (i) 15 days prior to the date established by the Fiscal Agent for selection of 2018 Bonds for redemption, (ii) with respect to a 2018 Bond after such 2018 Bond has been selected for redemption, or (iii) between a Record Date and the succeeding Interest Payment Date.

Section 2.07. Exchange of Bonds. Bonds may be exchanged at the Principal Office of the Fiscal Agent for a like aggregate principal amount of Bonds of authorized denominations and of the same maturity. The cost for any services rendered or any expenses incurred by the Fiscal Agent in connection with any such exchange shall be paid by the City. The Fiscal Agent shall collect from the Owner requesting such exchange any tax or other governmental charge required to be paid with respect to such exchange.

No exchanges of Bonds shall be required to be made (i) within fifteen (15) days prior to the date established by the Fiscal Agent for selection of Bonds for redemption or (ii) with respect to a Bond after such Bond has been selected for redemption.

Section 2.08. Bond Register. The Fiscal Agent will keep or cause to be kept, at its Principal Office, sufficient books for the registration and transfer of the Bonds (the "Bond Register"), which books shall show the series number, date, amount, rate of interest and Owner of each Bond and shall at all times be open to inspection by the City during regular business hours upon reasonable notice; and, upon presentation for such purpose, the Fiscal Agent shall, under such reasonable regulations as it may prescribe, register or transfer or cause to be registered or transferred, on said books, the ownership of the Bonds as hereinbefore provided.

Section 2.09. Temporary Bonds. The Bonds may be initially issued in temporary form exchangeable for definitive Bonds when ready for delivery. The temporary Bonds may be printed, lithographed or typewritten, shall be of such denominations as may be determined by the City, and may contain such reference to any of the provisions of this Agreement as may be appropriate. Every temporary Bond shall be executed by the City upon the same conditions and in substantially the same manner as the definitive Bonds. If the City issues temporary Bonds it will execute and furnish definitive Bonds without delay and thereupon the temporary Bonds shall be surrendered, for cancellation, in exchange for the definitive Bonds at the Principal Office of the Fiscal Agent or at such other location as the Fiscal Agent shall designate, and the Fiscal Agent shall authenticate and deliver in exchange for such temporary Bonds an equal aggregate principal amount of definitive Bonds of authorized denominations. Until so exchanged, the temporary bonds shall be entitled to the same benefits under this Agreement as definitive Bonds authenticated and delivered hereunder.

Section 2.10. Bonds Mutilated, Lost, Destroyed or Stolen. If any Bond shall become mutilated, the City shall execute, and the Fiscal Agent shall authenticate and deliver, a new Bond of like tenor and principal amount in exchange and substitution for the Bond so mutilated, but only upon surrender to the Fiscal Agent of the Bond so mutilated. Every mutilated Bond so surrendered to the Fiscal Agent shall be canceled by it and destroyed by the Fiscal Agent who shall deliver a certificate of destruction thereof to the City. If any Bond shall be lost, destroyed or stolen, evidence of such loss, destruction or theft may be submitted to the Fiscal Agent and, if such evidence be satisfactory to it and indemnity for the Fiscal Agent and the City satisfactory to the Fiscal Agent shall be given, the City shall execute, and the Fiscal Agent shall authenticate and deliver, a new Bond of like tenor and principal amount in lieu of and in substitution for the Bond so lost, destroyed or stolen. The City may require payment of a sum not exceeding the actual cost of preparing each new Bond delivered under this Section and of the expenses which may be incurred by the City and the Fiscal Agent for the preparation, execution, authentication and delivery. Any Bond delivered under the provisions of this Section in lieu of any Bond alleged to be lost, destroyed or stolen shall constitute an original additional contractual obligation on the part of the City whether or not the Bond so alleged to be lost, destroyed or stolen is at any time enforceable by anyone, and shall be equally and proportionately entitled to the benefits of this Agreement with all other Bonds issued pursuant to this Agreement.

Section 2.11. Limited Obligation. All obligations of the City under this Agreement and the Bonds shall be special obligations of the City, payable solely from the Special Tax Revenues and the funds pledged therefore hereunder. Neither the full faith and credit nor the taxing power of the City (except to the limited extent set forth herein) or the State of California or any political subdivision thereof is pledged to the payment of the Bonds.

Section 2.12. No Acceleration. The principal of the Bonds shall not be subject to acceleration hereunder. Nothing in this Section 2.13 shall in any way prohibit the prepayment

or redemption of Bonds under Section 2.03 hereof, or the defeasance of the Bonds and discharge of this Agreement under Section 10.03 hereof.

Section 2.13. Registration; No Book-Entry System for 2018 Bonds. The 2018 Bonds shall be initially issued in the form of a single certificated fully registered 2018 Bond. Upon initial issuance, the ownership of the 2018 Bond shall be registered in the Bond Register in the name of the Original Purchaser.

Section 2.14. Provisions Relating to Original Purchaser. Notwithstanding anything herein to the contrary, so long as 2018 Bonds are owned by the Original Purchaser, the following shall apply, unless the Original Purchaser otherwise provides written direction to the Fiscal Agent and the City:

(A) All amounts payable to the Original Purchaser with respect to any 2018 Bonds held by the Original Purchaser shall be made directly to the Original Purchaser, and without any notation of such payment being made thereon, in such manner or at such address in the United States as may be designated by the Original Purchaser in writing to the City and the Fiscal Agent.

(B) The 2018 Bonds are not required to be presented and surrendered to the Fiscal Agent or the City for payment at any time prior to the final maturity thereof.

(C) The Fiscal Agent will pay the principal of, including sinking fund payments, and interest on 2018 Bonds by wire transfer to the Original Purchaser in accordance with wire transfer instructions provided in writing from time to time by the Original Purchaser to the Fiscal Agent.

(D) If any 2018 Bonds are sold or transferred,

(i) the Original Purchaser shall notify the Fiscal Agent and the City in writing of the name and address of the transferee, the effective date of the transfer, the principal amount of the 2018 Bonds transferred and the payment information notated on the 2018 Bonds as hereinafter described, and it will, prior to delivery of such 2018 Bonds, make a notation on such 2018 Bonds of the date to which interest has been paid thereon and of the amount of any redemptions made on account of the principal thereof, and

(ii) No such transfer shall be effective unless the transferee executes and delivers to the Fiscal Agent and the City a Letter of Representations substantially in the form set forth as Exhibit B attached hereto and the other requirements of Section 2.06 are met.

ARTICLE III

ISSUANCE OF BONDS

Section 3.01. Issuance and Delivery of Bonds. At any time after the execution of this Agreement, the City may issue the Bonds for the District in the aggregate principal amount set forth in Section 2.01 (with respect to the 2018 Bonds) or as authorized in any supplemental agreement (with respect to any Additional Bonds) and deliver such Bonds to the Original Purchaser. The Authorized Officers of the City are hereby authorized and directed to deliver any and all documents and instruments necessary to cause the issuance of Bonds in accordance with the provisions of the Act, the Resolution and this Agreement, to authorize the payment of Costs of Issuance of the Bonds from the proceeds of the Bonds and to do and cause to be done any and all acts and things necessary or convenient for delivery of the Bonds to the Original Purchaser.

Section 3.02. Application of Proceeds of Sale of 2018 Bonds.

(a) The proceeds of the purchase of the 2018 Bonds by the Original Purchaser in the amount of \$_____ (representing the principal amount of the 2018 Bonds), shall be paid to the Fiscal Agent, who shall forthwith set aside, pay over and deposit such proceeds on the Closing Date as follows:

(i) \$_____ shall be deposited in the Costs of Issuance Fund.

(ii) \$_____ shall be deposited the 2018 Reserve Account of the Reserve Fund, which is equal to the initial Reserve Requirement.

(iii) \$_____ shall be transferred to the Escrow Agent for deposit in the Escrow Fund established under the Escrow Agreement for the purpose of refunding and defeasing the Prior Bonds.

Section 3.03. Special Tax Fund.

(A) Establishment of Special Tax Fund. There is hereby established as a separate fund to be held by the City, the Community Facilities District No. 2006-1 Special Tax Refunding Bonds Special Tax Fund, to the credit of which the City shall deposit, immediately upon receipt, all Special Tax Revenues received by the City (other than as a result of Prepayments) and any amounts required by Section 3.05(B) to be deposited in the Special Tax Fund, and within such fund, a Surplus Account, to the credit of which the City shall deposit surplus Special Tax Revenues described in Section 3.03(B) below. Moneys in the Special Tax Fund shall be held in trust by the City for the benefit of the City and the Owners of the Bonds, shall be disbursed as provided below and, pending any disbursement, shall be subject to a lien in favor of the Owners of the Bonds.

(B) Disbursements. As soon as practicable after the receipt by the City of any Special Tax Revenues, other than as a result of Prepayments, or the transfer of amounts to the Special Tax Fund pursuant to the terms hereof, but no later than ten (10) Business Days after such receipt or transfer, the Director of Financial Services shall withdraw from the Special Tax Fund and transfer to the Fiscal Agent for deposit: (i) in the Bond Fund, an amount, taking into account any amounts then on deposit in the Bond Fund, such that the amount in the Bond Fund equals the principal, premium, if any, and interest due on the Bonds during the then-

current Bond Year; (ii) in the Reserve Fund, an amount, taking into account amounts then on deposit in the Reserve Fund, so that the amount in the Reserve Fund equals the Reserve Requirement. After the transfers under subsections (i) and (ii) have been made, the City may, on or after September 2nd of each year transfer to the Surplus Account the amount remaining in the Special Tax Fund, whereupon such moneys transferred shall be free of the pledge for payment of the Bonds.

From time to time, the City may withdraw from the Surplus Account of the Special Tax Fund amounts needed to pay Administrative Expenses or the costs of authorized facilities or incidental expenses of the District authorized under the Act. Moneys in the Surplus Account may, at the City's discretion, also be used to pay the principal of, premium, if any, and interest on the Bonds or to replenish the Reserve Fund to the amount of the Reserve Requirement.

(C) Investment. Moneys in the Special Tax Fund shall be invested and deposited in accordance with Section 6.01. Interest earnings and profits resulting from such investment and deposit shall be retained in the Special Tax Fund to be used for the purposes thereof.

Section 3.04. [Reserved].

Section 3.05. Costs of Issuance Fund.

(A) Establishment of Costs of Issuance Fund. There is hereby established as a separate fund to be held by the Fiscal Agent, the Community Facilities District No. 2006-1 Special Tax Refunding Bonds Costs of Issuance Fund, to the credit of which a deposit shall be made as required by Section 3.02. Moneys in the Costs of Issuance Fund shall be held in trust by the Fiscal Agent and shall be disbursed as provided in subsection (B) of this Section for the payment or reimbursement of Costs of Issuance of the 2018 Bonds.

(B) Disbursement. Amounts in the Costs of Issuance Fund shall be disbursed from time to time to pay Costs of Issuance, as set forth in an Officer's Certificate containing respective amounts to be paid to the designated payees, signed by an Authorized Officer or a designee thereof and delivered to the Fiscal Agent. The Fiscal Agent shall pay all Costs of Issuance of the Bonds upon receipt of an invoice from any such payee which requests payment in an amount which is less than or equal to the amount set forth with respect to such payee in such Officer's Certificate, or upon receipt of an Officer's Certificate requesting payment of a Cost of Issuance not listed on the initial Officer's Certificate delivered to the Fiscal Agent on the Closing Date of the Bonds. Each such Officer's Certificate shall be sufficient evidence to the Fiscal Agent of the facts stated therein and the Fiscal Agent shall have no duty to confirm the accuracy of such facts. The Fiscal Agent shall maintain the Costs of Issuance Fund for a period of 3 months, from the Closing Date of the Bonds and then shall transfer any moneys remaining therein, including any investment earnings thereon, to the City for deposit in the Special Tax Fund. Thereafter, every invoice received by the Fiscal Agent shall be submitted to the Director of Financial Services for payment from amounts on deposit in the Special Tax Fund.

(C) Investment. Moneys in the Costs of Issuance Fund shall be invested and deposited in accordance with Section 6.01. Interest earnings and profits resulting from said investment shall be retained by the Fiscal Agent in the Costs of Issuance Fund to be used for the purposes of such fund.

ARTICLE IV

SPECIAL TAX REVENUES; BOND FUND AND RESERVE FUND

Section 4.01. Pledge of Special Tax Revenues and Other Amounts. All of the Special Tax Revenues and all moneys deposited in the Bond Fund, the Reserve Fund and, until disbursed as provided herein, the Special Tax Fund are hereby pledged to secure the repayment of the Bonds. Such pledge shall constitute a first lien on the Special Tax Revenues and said amounts. The Special Tax Revenues and all moneys deposited into such funds (except as otherwise provided herein) are hereby dedicated in their entirety to the payment of the principal of, including any mandatory sinking fund payments, and interest and any premium on, the Bonds as provided herein and in the Act until all of the Bonds have been paid and retired or until moneys or Federal Securities have been set aside irrevocably for that purpose in accordance with Section 10.03.

Amounts in the Costs of Issuance Fund for any Series of Bonds are not pledged to the repayment of the Bonds. The facilities acquired with the proceeds of the Bonds are not in any way pledged to pay the Debt Service on the Bonds. Any proceeds of condemnation, destruction or other disposition of any facilities financed with the proceeds of the Bonds are not pledged to pay the Debt Service on the Bonds and are free and clear of any lien or obligation imposed hereunder.

Section 4.02. Bond Fund.

(A) Establishment of Bond Fund. There is hereby established as a separate fund to be held by the Fiscal Agent, the Community Facilities District No. 2006-1 Special Tax Refunding Bonds Bond Fund, to the credit of which deposits shall be made as required by clause (i)(a) of Section 3.03(B), Section 4.03 and any other amounts required to be deposited therein by this Agreement or the Act. Moneys in the Bond Fund shall be held in trust by the Fiscal Agent for the benefit of the Owners of the Bonds, shall be disbursed for the payment of the principal of, and interest and any premium on, the Bonds as provided below, and, pending such disbursement, shall be subject to a lien in favor of the Owners of the Bonds.

Within the Bond Fund there is hereby established the Prepayment Account, which shall be used exclusively for the administration of any prepayments of Special Taxes to assure the timely redemption of Bonds. Monies in the Prepayment Account shall be used to redeem Bonds on the redemption date specified in the notice to the Fiscal Agent given pursuant to Section 2.03(A)(ii). In the event all of the Special Taxes are prepaid in full, the Prepayment Account shall be closed.

(B) Disbursements. On each Interest Payment Date, the Fiscal Agent shall withdraw from the Bond Fund and pay to the Owners of the Bonds the principal of, and interest and any premium, then due and payable on the Bonds, including any amounts due on the Bonds by reason of the sinking payments set forth in Section 2.03(A)(iii) or any redemption of the Bonds under Section 2.03(A)(i).

In the event that amounts in the Bond Fund are insufficient to pay regularly scheduled payments of principal of and interest on any Series of Bonds, the Fiscal Agent shall withdraw from the respective reserve account within the Reserve Fund established for such Series of Bonds to the extent of any funds therein, the amount of such insufficiency, and the Fiscal Agent shall provide written notice to the Director of Financial Services of the amounts so

withdrawn from the Reserve Fund. Amounts so withdrawn from the Reserve Fund shall be deposited in the Bond Fund.

If, after the foregoing transfer, there are insufficient funds in the Bond Fund to make the payments provided for to pay regularly scheduled payments of principal of and interest on the Bonds, the Fiscal Agent shall apply the available funds first to the payment of interest on the Bonds, then to the payment of principal due on the Bonds other than by reason of sinking payments, and then to payment of principal due on the Bonds by reason of sinking payments. Any sinking payment not made as scheduled shall be added to the sinking payment to be made on the next sinking payment date.

(C) Investment. Moneys in the Bond Fund shall be invested and deposited in accordance with Section 6.01. Interest earnings and profits resulting from such investment and deposit shall be retained in the Bond Fund to be used for the purposes of such fund.

(D) Deficiency. If ten days before any Interest Payment Date it appears to the Fiscal Agent that there is a danger of deficiency in the Bond Fund and that the Fiscal Agent may be unable to pay regularly scheduled debt service on the Bonds in a timely manner, the Fiscal Agent shall report to the Director of Financial Services such fact. The City covenants to increase the levy of the Special Taxes in the next Fiscal Year (subject to the maximum amount authorized by the Resolution of Formation) in accordance with the procedures set forth in the Act for the purpose of curing Bond Fund deficiencies.

If on any Interest Payment Date the Fiscal Agent is unable to pay principal, interest and premium, if any, due on any Interest Payment Date for the Bonds due to insufficient funds in the Bond Fund, or if funds are withdrawn from the Reserve Fund to pay principal and/or interest on the Bonds the Fiscal Agent shall notify the Director of Financial Services in writing of such fact, and the Director of Financial Services shall notify CDIAC of such fact within 10 days of such Interest Payment Date. The Fiscal Agent has no obligation under this Agreement to provide notice or disclosure to the Bondowners of insufficient funds or anticipation of deficiency in the Bond Fund.

Section 4.03. Reserve Fund.

(A) Establishment of Fund. There is hereby established as a separate fund to be held by the Fiscal Agent, the Community Facilities District No. 2006-1 Special Tax Refunding Bonds Reserve Fund, and within the Reserve Fund shall be established a 2018 Reserve Account, to the credit of which a deposit shall be made as required by Section 3.02 and deposits shall be made as provided in Section 3.03(B). For each respective Series of Additional Bonds covered by the Reserve Fund, the Fiscal Agent shall establish a separate subaccount within the Reserve Fund for each such Series. Moneys in each subaccount shall be held in trust by the Fiscal Agent for the benefit of the Owners of all Outstanding Bonds covered by the Reserve Fund as a reserve for the payment of principal of, and interest on, all Outstanding Bonds covered by the Reserve Fund and shall be subject to a lien in favor of the Owners of such Bonds.

The City has the right at any time to cause the Fiscal Agent to release funds from the Reserve Fund, in whole or in part, by tendering to the Fiscal Agent: (1) a Qualified Reserve Fund Credit Instrument, and (2) an opinion of Bond Counsel stating that such release will not, of itself, cause the portion of the interest on the Bonds to become includable in gross income for purposes of federal income taxation. Upon tender of such items to the Fiscal Agent, the

Fiscal Agent will transfer such funds from the Reserve Fund to the City. Prior to the expiration of any Qualified Reserve Fund Credit Instrument, the City is obligated either to replace such Qualified Reserve Fund Credit Instrument with a new Qualified Reserve Fund Credit Instrument, or to deposit or cause to be deposited with the Fiscal Agent an amount of funds such that the funds on deposit in the Reserve Fund together with all Qualified Reserve Fund Credit Instruments held by the Fiscal Agent is at least equal to the Reserve Requirement (which funds may come from a draw by the Fiscal Agent on the Qualified Reserve Fund Credit Instrument prior to its expiration).

(B) Use of Fund. Except as otherwise provided in this Section, all amounts deposited in the Reserve Fund shall be used and withdrawn by the Fiscal Agent solely for the purpose of making transfers to the Bond Fund in the event of any deficiency within five days prior to any Interest Payment Date in the Bond Fund of the amount required for payment of the principal of, and interest on, the respective Series of Bonds on such Interest Payment Date. Whenever transfer is made from the Reserve Fund to the Bond Fund due to a deficiency in the Bond Fund, the Fiscal Agent shall provide written notice thereof to the Director of Financial Services.

To the extent the Fiscal Agent is required to draw on amounts in the Reserve Fund, the Fiscal Agent shall draw on such amounts from any accounts within the Reserve Fund on a pro rata basis based upon the amounts produced by calculating the Reserve Requirement for each Series of Bonds related to such accounts; provided, that because the accounts are established within the Reserve Fund solely for the purpose of complying with federal tax law, nothing in this Section shall be construed to limit the availability of amounts in any account within the Reserve Fund to pay debt service on any Series of Bonds.

(C) Transfer of Excess of Reserve Requirement. Whenever, on the Business Day prior to any Interest Payment Date, the amount in the Reserve Fund exceeds the then applicable Reserve Requirement, the Fiscal Agent shall provide written notice to the Director of Financial Services of the amount of the excess. The Director of Financial Services shall advise the Fiscal Agent in writing of the amount, if any, of any transfer required pursuant to Section 4.03(D) and 6.02 below, and otherwise direct the Fiscal Agent to transfer an amount equal to the excess from the Reserve Fund to the Bond Fund to be used for the payment of the principal of and interest on the Outstanding Bonds covered by the Reserve Fund in accordance with Section 4.02; provided, however, that to the extent that such excess results from the prepayment of Special Taxes and redemption of Bonds as provided in an Officer's Certificate in accordance with Section 2.03(B), such amount shall be transferred to the Prepayment Account and applied to the corresponding redemption of Bonds.

(D) Transfer for Rebate Purposes. Investment earnings on amounts in the Reserve Fund may be withdrawn from the Reserve Fund for purposes of making payment to the federal government to comply with Section 6.02.

(E) Transfer When Balance Exceeds Outstanding Bonds. Whenever the balance in the Reserve Fund exceeds the amount required to redeem or pay the Outstanding Bonds covered by the Reserve Fund, including interest accrued to the date of payment or redemption and premium, if any, due upon redemption, and after making any transfer required under Section 4.03(D) above and upon receipt of an Officer's Certificate directing it to do so, the Fiscal Agent shall transfer the amount in the Reserve Fund to the Bond Fund to be applied, on the next succeeding Interest Payment Date to the payment and redemption, in accordance with Section 4.02 or 2.03 as applicable, of all such Outstanding Bonds. In the event that the

amount so transferred from the Reserve Fund to the Bond Fund exceeds the amount required to pay and redeem the Outstanding Bonds covered by the Reserve Fund, the balance in the Reserve Fund shall be transferred to the City, after payment of any amounts due the Fiscal Agent hereunder, to be used for any lawful purpose of the City.

Notwithstanding the foregoing, no amounts shall be transferred from the Reserve Fund pursuant to this Section 4.03(E) until after the calculation, pursuant to Section 6.02, of any amounts due to the federal government following payment of the respective Series of Bonds and withdrawal of any such amount under Section 4.03(D) for purposes of making such payment to the federal government, and payment of any fees and expenses due to the Fiscal Agent.

(F) Investment. Moneys in the Reserve Fund shall be invested and deposited in accordance with Section 6.01. Interest earnings and profits resulting from such investment and deposit shall be retained in the Reserve Fund to be used and disbursed as provided in this Section 4.03.

ARTICLE V

OTHER COVENANTS OF THE CITY

Section 5.01. Punctual Payment. The City will punctually pay or cause to be paid the principal of, and interest and any premium on, the Bonds when and as due in strict conformity with the terms of this Agreement, and it will faithfully observe and perform all of the conditions covenants and requirements of this Agreement and all Supplemental Agreements and of the Bonds.

Section 5.02. Limited Obligation. The Bonds are limited obligations of the City on behalf of the District and are payable solely from and secured solely by the Special Tax Revenues and the amounts in certain funds created hereunder as, and to the extent, set forth in Section 4.01.

Section 5.03. Extension of Time for Payment. In order to prevent any accumulation of claims for interest after maturity, the City shall not, directly or indirectly, extend or consent to the extension of the time for the payment of any claim for interest on any of the Bonds and shall not, directly or indirectly, be a party to the approval of any such arrangement by purchasing or funding said claims for interest or in any other manner. In case any such claim for interest shall be extended or funded, whether or not with the consent of the City, such claim for interest so extended or funded shall not be entitled, in case of default hereunder, to the benefits of this Agreement, except subject to the prior payment in full of the principal of all of the Bonds then Outstanding and of all claims for interest which shall not have been so extended or funded.

Section 5.04. Against Encumbrances. The City will not encumber, pledge or place any charge or lien upon any of the Special Tax Revenues or other amounts pledged to the Bonds superior to or on a parity with the pledge and lien herein created for the benefit of the Bonds, except as permitted by this Agreement.

Section 5.05. Books and Accounts. The City will keep, or cause to be kept, proper books of record and accounts, separate from all other records and accounts of the City, in which complete and correct entries shall be made of all transactions relating to the expenditure of amounts disbursed from the Special Tax Fund and to the Special Tax Revenues. Such books of record and accounts shall at all times during business hours be subject to the inspection of the Fiscal Agent and the Owners of not less than ten percent (10%) of the principal amount of the Bonds then Outstanding, or their representatives duly authorized in writing.

The Fiscal Agent will keep, or cause to be kept, proper books of record and accounts, separate from all other records and accounts of the Fiscal Agent, in which complete and correct entries shall be made of all transactions relating to the expenditure of amounts disbursed from the Bond Fund, the Reserve Fund and the Costs of Issuance Fund. Such books of record and accounts shall at all times during business hours and upon reasonable prior notice, be subject to the inspection of the City and the Owners of not less than ten percent (10%) of the principal amount of the Bonds then Outstanding, or their representatives duly authorized in writing.

The Fiscal Agent may establish and maintain for so long as is necessary one or more temporary funds and accounts under this Agreement.

Section 5.06. Protection of Security and Rights of Owners. The City will preserve and protect the security of the Bonds and the rights of the Owners, and will warrant and defend their

rights against all claims and demands of all persons. From and after the delivery of any of the Bonds by the City, the Bonds shall be incontestable by the City.

Section 5.07. Compliance with Law. The City shall comply with all applicable provisions of the Act and law in administering the District.

Section 5.08. Private Activity Bond Limitation. The City shall assure that the proceeds of the Bonds are not so used as to cause the Bonds to satisfy the private business tests of Section 141(b) of the Code or the private loan financing test of Section 141(c) of the Code.

Section 5.09. Federal Guarantee Prohibition. The City shall not take any action or permit or suffer any action to be taken if the result of the same would be to cause any of the Bonds to be "federally guaranteed" within the meaning of Section 149(b) of the Code.

Section 5.10. Collection of Special Tax Revenues. The City shall comply with all requirements of the Act so as to assure the timely collection of Special Tax Revenues, including without limitation, the enforcement of delinquent Special Taxes.

On or within five (5) Business Days of each June 1, the Fiscal Agent shall provide the Director of Financial Services with a notice stating the amount then on deposit in the Bond Fund and the Reserve Fund. The receipt of such notice by the Director of Financial Services shall in no way affect the obligations of the Director of Financial Services under the following two paragraphs. Upon receipt of such notice, the Director of Financial Services shall communicate with each other and/or their designees to ascertain the relevant parcels on which the Special Taxes are to be levied, taking into account any parcel splits during the preceding and then current year.

The City shall effect the levy of the Special Taxes each Fiscal Year in accordance with the Ordinance such that the computation of the levy is complete before the final date on which the County Auditor will accept the transmission of the Special Tax amounts for the parcels within the District for inclusion on the next secured real property tax roll. Upon the completion of the computation of the amounts of the levy, the City shall prepare or cause to be prepared, and shall transmit to the Director of Financial Services, such data as the County Auditor requires to include the levy of the Special Taxes on the next secured real property tax roll.

The City shall fix and levy the amount of Special Taxes within the District required for the payment of principal of and interest on any outstanding Bonds of the District becoming due and payable during the ensuing Bond Year, including any necessary replenishment or expenditure of the Reserve Fund for the Bonds and an amount estimated to be sufficient to pay the Administrative Expenses during such year, all in accordance with the RMA and the Ordinance. In any event, the Special Taxes so levied shall not exceed the authorized amounts as provided in the proceedings pursuant to the Resolution of Formation.

The Special Taxes shall be payable and be collected in the same manner and at the same time and in the same installment as the general taxes on real property are payable, and have the same priority, become delinquent at the same times and in the same proportionate amounts and bear the same proportionate penalties and interest after delinquency as do the general taxes on real property. Notwithstanding the foregoing, the Special Taxes may be collected in such other manner as the City shall prescribe if necessary to pay the debt service on the Bonds.

Section 5.11. Further Assurances. The City will adopt, make, execute and deliver any and all such further resolutions, instruments and assurances as may be reasonably necessary or proper to carry out the intention or to facilitate the performance of this Agreement, and for the better assuring and confirming unto the Owners of the rights and benefits provided in this Agreement.

Section 5.12. No Arbitrage. The City shall not take, or permit or suffer to be taken by the Fiscal Agent or otherwise, any action with respect to the gross proceeds of the Bonds which if such action had been reasonably expected to have been taken, or had been deliberately and intentionally taken, on the Closing Date would have caused the Bonds to be "arbitrage bonds" within the meaning of Section 148 of the Code and Regulations.

Section 5.13. Maintenance of Tax-Exemption. The City shall take all actions necessary to assure the exclusion of interest on the Bonds from the gross income of the Owners of the Bonds to the same extent as such interest is permitted to be excluded from gross income under the Code as in effect on the date of issuance of the Bonds.

Section 5.14. Annual State Reports. The following requirements shall apply to the Bonds:

(A) Annual Reporting. Not later than October 30 of each calendar year, beginning with the October 30 first succeeding the date of the Bonds, and in each calendar year thereafter until the October 30 following the final maturity of the Bonds, the City shall prepare and supply the California Debt and Investment Advisory Commission ("CDIAC"), by mail, postage prepaid, with the information required under Section 53359.5(b) of the Act. Not later than January 1 of the year following issuance of the Bonds, and at least once a year thereafter, the Director of Financial Services shall file a report with the City Council in accordance with the requirements of Government Code Section 53411, which report shall contain: (a) the amount of Special Taxes collected and expended; and (b) if applicable, the status of the Project financed by the District. In addition, no later than seven months after the end of the City's fiscal year, the City shall prepare and supply to CDIAC the information required by Section 8855(k) of the Government Code. The annual reporting shall be made using such form or forms as may be prescribed by CDIAC.

(B) Other Reporting. If at any time the Fiscal Agent fails to pay principal and interest due on any scheduled payment date for the Bonds, or if funds are withdrawn from the Reserve Fund to pay principal and interest on the Bonds, the Fiscal Agent shall notify the Director of Financial Services of such failure or withdrawal in writing. An official of the City shall notify CDIAC pursuant to Government Code Section 53359.5(c) within 10 days of the occurrence of any of the following events: (i) the scheduled principal or interest on the Bonds is not paid; or (ii) a draw on the Reserve Fund to pay to pay principal and interest on the Bonds which draw causes the Reserve Fund to be reduced to an amount less than the Reserve Requirement.

(C) Amendment. The reporting requirements of this Section shall be amended from time to time, without action by the City or the Fiscal Agent, to reflect any amendments to the applicable provisions of the Government Code, including the Act.

(D) Reports to Bondowners. The Director of Financial Services shall provide copies of any reports required by this Section to any Bondowner upon the written request of a Bondowner and payment by the person requesting the information of the cost of the City to

photocopy and pay any postage or other delivery cost to provide the same, as determined by the Director of Financial Services. The term "Bondowner" for purposes of this Section shall include any beneficial owner of the Bonds as described in Section 2.12.

(E) No Liability. None of the City and its officers, agents and employees, the Director of Financial Services or the Fiscal Agent shall be liable for any inadvertent error in reporting the information required by this Section.

Section 5.15. Covenant to Foreclose. The City hereby covenants with and for the benefit of the Owners of the Bonds that it will, on or before September 1 of each year, review the public records of the County of Madera relating to the collection of the Special Tax in order to determine the amount of the Special Tax collected in the prior Fiscal Year, and on the basis of such review the City will, not later than December 1 of such year, institute foreclosure proceedings as authorized by the law (i) with respect to Developed Property (as defined in the RMA), against all parcels that are delinquent in the payment of such Special Tax by more than the amount of the most recent semi-annual installment of the Special Tax and (ii) with respect to all other Taxable Property (as defined in the RMA), against all parcels that are delinquent in the payment of any amount of such Special Tax, in either case in order to enforce the lien of all such delinquent installments of such Special Tax, and will diligently prosecute and pursue such foreclosure proceedings to judgment and sale; provided, that the City shall not be obligated to enforce the lien of any delinquent installment of the Special Tax for any fiscal year in which the City shall have received one hundred percent (100%) of the amount of such installment from the County of Madera pursuant to the so called "Teeter Plan," if and to the extent the "Teeter Plan" shall apply to the levy and collection of the Special Taxes.

The Director of Financial Services shall notify legal counsel of any such delinquency of which it is aware, and such legal counsel shall commence, or cause to be commenced, such actions to collect such delinquencies and subsequent foreclosure proceedings in such a manner as such counsel deems appropriate.

Section 5.16. Continuing Disclosure to Owners of 2018 Bonds. The City shall provide the following to the Owner(s) of the 2018 Bonds at the notice address provided by the Owner(s) of the 2018 Bonds:

- (a) within 9 months after the end of each Fiscal Year, the City shall provide:
 - (i) a copy of the City's audited financial statements;
 - (ii) a table presenting the number of parcels, secured assessed values (land and structure values) and value to lien ratios within the District;
 - (iii) a table listing the total amount of Special Taxes levied and total delinquencies within the District in the current Fiscal Year and all prior Fiscal Years with delinquencies;
 - (iv) a statement as to any parcel in the District for which the delinquent Special Taxes represents more than 10% of the aggregate Special Tax levy: the identity of the parcel, the identity of the owner(s) of the parcel, and the aggregate amount of

delinquent property and Special Taxes within the District, including accrued penalties and interest; and

- (v) a statement as to the status of any judicial foreclosure proceedings within the District, including such proceedings initiated by the City as a result of the delinquency in the payment of Special Taxes.

(b) the City shall provide prompt notice of any material impact to the City's financial position which could have an impact on repayment on the 2018 Bonds.

(c) the City shall furnish at the Owner's request such additional information that the Owner may from time to time reasonably request.

Section 5.17. No Additional Bonds Except Refunding Bonds. The City covenants not to issue additional Bonds payable from Special Taxes and by the Special Tax Revenues equally and ratably with Bonds previously issued, except for refunding purposes.

Section 5.18. Yield of the Bonds. In determining the yield of the Bonds to comply with Section 5.12 and 6.02 hereof, the City will take into account redemption (including premium, if any) in advance of maturity based on the reasonable expectations of the City, as of the closing date of the Bonds, without regard to whether or not redemption moneys are received or Bonds are redeemed.

Section 5.19. Reduction of Special Taxes. The City shall not conduct or consent to proceedings with respect to a reduction in the maximum Special Taxes that may be levied in the District on Developed Property (as defined in the RMA) if such proceedings would materially and adversely affect the security for the Bonds. It is hereby acknowledged that Owners are purchasing the Bonds in reliance on the foregoing covenant, and that said covenant is necessary to assure the full and timely payment of the Bonds.

Section 5.20. Limits on Special Tax Waivers and Bond Tenders. The City covenants not to exercise its rights under the Act to waive delinquency and redemption penalties related to the Special Taxes or to declare a Special Tax penalties amnesty program if to do so would materially and adversely affect the interests of Owners of the Bonds and further covenants not to permit the tender of Bonds in payment of any Special Taxes except upon receipt of a certificate of an Independent Financial Consultant that to accept such tender will not result in the City having insufficient Special Tax Revenues to pay the principal of and interest on the Bonds remaining Outstanding following such tender, assuming Special Taxes are levied in the future, as provided hereunder.

Section 5.21. Modifications to the Rate and Method of Apportionment. The City shall not initiate proceedings under the Act to modify the RMA if such modification would adversely affect the security for the Bonds. If an initiative or referendum measure is proposed that purports to modify the RMA in a manner that would materially and adversely affect the security for the Bonds.

ARTICLE VI

INVESTMENTS; DISPOSITION OF INVESTMENT PROCEEDS; LIABILITY OF THE CITY

Section 6.01. Deposit and Investment of Moneys in Funds. Subject in all respects to the provisions of Section 6.02, moneys in any fund or account created or established by this Agreement and held by the Fiscal Agent, shall be invested by the Fiscal Agent in Permitted Investments, as directed pursuant to an Officer's Certificate filed with the Fiscal Agent at least two (2) Business Days in advance of the making of such investments. In the absence of any such Officer's Certificate, the Fiscal Agent shall invest any such moneys in Permitted Investments described in clause (vii) of the definition thereof which by their terms mature prior to the date on which such moneys are required to be paid out hereunder provided, however, that any such investment shall be made by the Fiscal Agent only if, prior to the date on which such investment is to be made, the Fiscal Agent shall have received an Officer's Certificate specifying a specific money market fund and, if no such Officer's Certificate is so received, the Fiscal Agent shall hold such moneys uninvested and notify the Director of Financial Services that it is doing so until further direction is received from the Director of Financial Services. Subject in all respects to the provisions of Section 6.02, moneys in any fund or account created or established by this Agreement and held by the City shall be invested in any lawful investments that the City may make, which by their terms mature prior to the date on which such moneys are required to be paid out hereunder. Obligations purchased as an investment of moneys in any fund shall be deemed to be part of such fund or account, subject, however, to the requirements of this Agreement for transfer of interest earnings and profits resulting from investment of amounts in funds and accounts.

The Fiscal Agent or Director of Financial Services may act as principal or agent in the acquisition or disposition of any investment. Neither the Fiscal Agent nor the Director of Financial Services shall incur any liability for losses arising from any investments made pursuant to this Section. Any losses arising from any investments made pursuant to this Section shall be offset against interest earnings and profits retained in the same fund.

Except as otherwise provided in the next sentence, all investments of amounts deposited in any fund or account created by or pursuant to this Agreement, or otherwise containing gross proceeds of the Bonds (within the meaning of Section 148 of the Code), shall be acquired, disposed of, and valued (as of the date that valuation is required by this Agreement or the Code) at Fair Market Value. Investments in funds or accounts (or portions thereof) that are subject to a yield restriction under applicable provisions of the Code and (unless valuation is undertaken at least annually) investments in the Reserve Fund shall be valued by the City at their present value (within the meaning of Section 148 of the Code). For purposes of any Fair Market Value determination hereunder, the Fiscal Agent shall be entitled to conclusively rely on an Officer's Certificate of the City and shall be fully protected in relying thereon.

Investments in any and all funds and accounts may be commingled in a separate fund or funds for purposes of making, holding and disposing of investments, notwithstanding provisions herein for transfer to or holding in or to the credit of particular funds or accounts of amounts received or held by the Fiscal Agent or the City hereunder, provided that the Fiscal Agent or the City, as applicable, shall at all times account for such investments strictly in accordance with the funds and accounts to which they are credited and otherwise as provided in this Agreement.

The Fiscal Agent or the City, as applicable, shall sell or present for redemption, any investment security whenever it shall be necessary to provide moneys to meet any required payment, transfer, withdrawal or disbursement from the fund or account to which such investment security is credited and neither the Fiscal Agent nor the City shall be liable or responsible for any loss resulting from the acquisition or disposition of such investment security in accordance herewith.

The City acknowledges that to the extent regulations of the Comptroller of the Currency or other applicable regulatory entity grant the City the right to receive brokerage confirmations of security transactions as they occur, the City specifically waives receipt of such confirmations to the extent permitted by law. The Fiscal Agent will furnish the City periodic cash transaction statements which include detail for all investment transactions made by the Fiscal Agent hereunder.

Section 6.02. Rebate of Excess Investment Earnings to the United States. The City covenants to calculate and rebate to the federal government, in accordance with the Regulations, excess investment earnings to the extent required by Section 148(f) of the Code.

The City shall notify the Fiscal Agent of any amounts determined to be due to the federal government, and the Fiscal Agent shall, upon receipt of an Officer's Certificate of the City, withdraw such amounts from the Reserve Fund pursuant to Section 4.03(D), and pay such amounts to the federal government as required by the Code and the Regulations. In the event of any shortfall in amounts available to make such payments under Section 4.03(D), the Fiscal Agent shall notify the Director of Financial Services in writing of the amount of the shortfall and the Director of Financial Services shall make such payment from any amounts available in the Special Tax Fund. Any fees or expenses incurred by the Fiscal Agent or the City under or pursuant to this Section 6.02 shall be Administrative Expenses. The Fiscal Agent may rely conclusively upon the City's determinations, calculations and certifications required by this Section. The Fiscal Agent shall have no responsibility to independently make any calculation or determination or to review the City's calculations hereunder.

In order to provide for the administration of this Section 6.02, the City may provide for the employment of independent attorneys, accountants and consultants compensated on such reasonable basis as the City may deem appropriate.

Section 6.03. Limited Obligation. The City's obligations hereunder are limited obligations of the City on behalf of the District and are payable solely from and secured solely by the Special Tax Revenues and the amounts in the Special Tax Fund, the Bond Fund and the Reserve Fund created hereunder.

ARTICLE VII

THE FISCAL AGENT

Section 7.01. Appointment of Fiscal Agent. The Bank of New York Mellon Trust Company, N.A., at its Principal Office, is hereby appointed Fiscal Agent for the Bonds. The Fiscal Agent undertakes to perform such duties, and only such duties, as are specifically set forth in this Agreement, and no implied covenants or obligations shall be read into this Agreement against the Fiscal Agent.

Any company into which the Fiscal Agent may be merged or converted or with which it may be consolidated or any company resulting from any merger, conversion or consolidation to which it shall be a party or any company to which the Fiscal Agent may sell or transfer all or substantially all of its corporate trust business, provided such company shall be eligible under the following paragraph of this Section, shall be the successor to such Fiscal Agent without the execution or filing of any paper or any further act, anything herein to the contrary notwithstanding.

The City may remove the Fiscal Agent initially appointed, and any successor thereto, and may appoint a successor or successors thereto, but any such successor shall be a bank, national banking association or trust company having a combined capital (exclusive of borrowed capital) and surplus of at least Fifty Million Dollars (\$50,000,000) including, for such purpose, the combined capital and surplus of any parent holding company, and subject to supervision or examination by federal or state authority. If such bank, national banking association or trust company publishes a report of condition at least annually, pursuant to law or to the requirements of any supervising or examining authority above referred to, then for the purposes of this Section 7.01, combined capital and surplus of such bank, national banking association or trust company shall be deemed to be its combined capital and surplus as set forth in its most recent report of condition so published.

The Fiscal Agent may at any time resign by giving written notice to the City and by giving to the Owners notice by mail of such resignation. Upon receiving notice of such resignation, the City shall promptly appoint a successor Fiscal Agent by an instrument in writing. Any resignation or removal of the Fiscal Agent shall become effective upon acceptance of appointment by the successor Fiscal Agent.

If no appointment of a successor Fiscal Agent shall be made pursuant to the foregoing provisions of this Section within thirty (30) days after the Fiscal Agent shall have given to the City written notice or after a vacancy in the office of the Fiscal Agent shall have occurred by reason of its inability to act, the Fiscal Agent or any Bondowner may apply to any court of competent jurisdiction to appoint a successor Fiscal Agent. Said court may thereupon, after such notice, if any, as such court may deem proper, appoint a successor Fiscal Agent.

Section 7.02. Liability of Fiscal Agent. The recitals of facts, covenants and agreements herein and in the Bonds contained shall be taken as statements, covenants and agreements of the City, and the Fiscal Agent assumes no responsibility for the correctness of the same, or makes any representations as to the validity or sufficiency of this Agreement or of the Bonds, or shall incur any responsibility in respect thereof, other than in connection with the duties or obligations herein or in the Bonds assigned to or imposed upon it. The Fiscal Agent shall not be liable in connection with the performance of its duties hereunder, except for its own negligence or willful default. The Fiscal Agent assumes no responsibility or liability for any information,

statement or recital in any offering memorandum or other disclosure material prepared or distributed with respect to the issuance of the Bonds. The Fiscal Agent has no liability regarding the use of the proceeds from the purchase of the Bonds deposited in funds held by the City.

In the absence of bad faith, the Fiscal Agent may conclusively rely, as to the truth of the statements and the correctness of the opinions expressed therein, upon certificates or opinions furnished to the Fiscal Agent and conforming to the requirements of this Agreement, including all Officer's Certificates of the City meeting such requirements; but in the case of any such certificates or opinions by which any provision hereof are specifically required to be furnished to the Fiscal Agent, the Fiscal Agent shall be under a duty to examine the same to determine whether or not they conform to the requirements of this Agreement. Except as provided above in this paragraph, the Fiscal Agent shall be protected and shall incur no liability in acting or proceeding, or in not acting or not proceeding, in good faith, reasonably and in accordance with the terms of this Agreement, upon any resolution, order, notice, request, consent or waiver, certificate, statement, affidavit, or other paper or document which it shall in good faith reasonably believe to be genuine and to have been adopted or signed by the proper person or to have been prepared and furnished pursuant to any provision of this Agreement, and the Fiscal Agent shall not be under any duty to make any investigation or inquiry as to any statements contained or matters referred to in any such instrument.

The Fiscal Agent shall not be liable for any error of judgment made in good faith by a responsible officer unless it shall be proved that the Fiscal Agent was negligent in ascertaining the pertinent facts.

No provision of this Agreement shall require the Fiscal Agent to expend or risk its own funds or otherwise incur any financial liability in the performance of any of its duties hereunder, or in the exercise of any of its rights or powers, if it shall have reasonable grounds for believing that repayment of such funds or adequate indemnity against such risk or liability is not reasonably assured to it.

The Fiscal Agent shall be under no obligation to exercise any of the rights or powers vested in it by this Agreement at the request or direction of any of the Owners pursuant to this Agreement unless such Owners shall have offered to the Fiscal Agent reasonable security or indemnity against the costs, expenses and liabilities which might be incurred by it in compliance with such request or direction.

The Fiscal Agent shall not be considered in breach of or in default in its obligations hereunder or progress in respect thereto in the event of unavoidable delay in the performance of such obligations due to unforeseeable causes beyond its control and without its fault or negligence, including, but not limited to, Acts of God or of the public enemy or terrorists, acts of a government, acts of the other party, fires, floods, epidemics, quarantine restrictions, strikes, freight embargoes, earthquakes, explosion, mob violence, riot, inability to procure or general sabotage or rationing of labor, equipment, facilities, sources of energy, material or supplies in the open market, litigation or arbitration involving a party or others relating to zoning or other governmental action or inaction pertaining to the project, malicious mischief, condemnation, and unusually severe weather or delays of suppliers or subcontractors due to such causes or any similar event and/or occurrences beyond the control of the Fiscal Agent.

The Fiscal Agent may become the owner of the Bonds with the same rights it would have if it were not the Fiscal Agent.

The Fiscal Agent shall not be concerned with or accountable to anyone for the subsequent use or application of any moneys which shall be released or withdrawn in accordance with the provisions hereof.

The permissive right of the Fiscal Agent to do things enumerated in this Agreement shall not be construed as a duty and it shall not be answerable for other than its negligence or willful misconduct.

Section 7.03. Information. The Fiscal Agent shall provide to the City such information relating to the Bonds and the funds and accounts maintained by the Fiscal Agent hereunder as the City shall reasonably request, including but not limited to quarterly statements reporting funds held and transactions by the Fiscal Agent.

Section 7.04. Notice to Fiscal Agent. The Fiscal Agent may rely and shall be protected in acting or refraining from acting upon any Officer's Certificate, notice, resolution, request, consent, order, certificate, report, facsimile transmission, electronic mail, warrant, Bond or other paper or document believed by it to be genuine and to have been signed or presented by the proper party or proper parties and given in accordance with the requirements hereof. The Fiscal Agent may execute any of the powers hereunder or perform any duties hereunder either directly or by or through agents or attorneys and the Fiscal Agent shall not be responsible for any misconduct or negligence on the part of any agent or attorney appointed with due care by it hereunder. The Fiscal Agent may consult with counsel, who may be counsel to the City, with regard to legal questions, and the opinion of such counsel shall be full and complete authorization and protection in respect of any action taken or suffered by it hereunder in good faith and in accordance therewith.

The Fiscal Agent shall have the right to accept and act upon instructions, including funds transfer instructions ("Instructions") given pursuant to this Agreement and delivered using Electronic Means by an Authorized Officer (or his or her designee) ("Electronic Means" shall mean the following communications methods: e-mail, facsimile transmission, secure electronic transmission containing applicable authorization codes, passwords and/or authentication keys issued by the Fiscal Agent, or another method or system specified by the Fiscal Agent as available for use in connection with its services hereunder); provided, however, that the City shall provide to the Fiscal Agent an incumbency certificate for each person with the authority to provide such Instructions and containing specimen signatures of such persons, which incumbency certificate shall be amended by the City whenever a person is to be added or deleted from the listing. If the City elects to give the Fiscal Agent Instructions using Electronic Means and the Fiscal Agent in its discretion elects to act upon such Instructions, the Fiscal Agent's understanding of such Instructions shall be deemed controlling. The City understands and agrees that the Fiscal Agent cannot determine the identity of the actual sender of such Instructions and that the Fiscal Agent shall conclusively presume that directions that purport to have been sent by an Authorized Officer (or designee) listed on the incumbency certificate provided to the Fiscal Agent have been sent by such Authorized Officer (or designee). The City shall be responsible for ensuring that only Authorized Officers (or their designees) transmit such Instructions to the Fiscal Agent and that the City is solely responsible to safeguard the use and confidentiality of applicable user and authorization codes, passwords and/or authentication keys upon receipt by the City. The Fiscal Agent shall not be liable for any losses, costs or expenses arising directly or indirectly from the Fiscal Agent's reliance upon and compliance with such Instructions notwithstanding such directions conflict or are inconsistent with a subsequent written instruction. The City agrees: (i) to assume all risks arising out of the use of Electronic Means to submit Instructions to the Fiscal Agent, including without limitation the risk of the

Fiscal Agent acting on unauthorized Instructions, and the risk of interception and misuse by third parties; (ii) that it is fully informed of the protections and risks associated with the various methods of transmitting Instructions to the Fiscal Agent and that there may be more secure methods of transmitting Instructions than the method(s) selected by the City; (iii) that the security procedures (if any) to be followed in connection with its transmission of Instructions provide to it a commercially reasonable degree of protection in light of its particular needs and circumstances; and (iv) to notify the Fiscal Agent immediately upon learning of any compromise or unauthorized use of the security procedures.

The Fiscal Agent shall not be bound to recognize any person as the Owner of a Bond unless and until such Bond is submitted for inspection, if required, and his title thereto satisfactorily established, if disputed.

Whenever in the administration of its duties under this Agreement the Fiscal Agent shall deem it necessary or desirable that a matter be proved or established prior to taking or suffering any action hereunder, such matter (unless other evidence in respect thereof be herein specifically prescribed) may, in the absence of willful misconduct on the part of the Fiscal Agent, be deemed to be conclusively proved and established by a certificate of the City, and such certificate shall be full warrant to the Fiscal Agent for any action taken or suffered under the provisions of this Agreement or any Supplemental Agreement upon the faith thereof, but in its discretion the Fiscal Agent may, in lieu thereof, accept other evidence of such matter or may require such additional evidence as to it may seem reasonable.

Section 7.05. Compensation, Indemnification. The City shall pay to the Fiscal Agent from time to time reasonable compensation for all services rendered as Fiscal Agent under this Agreement, and also all reasonable expenses, charges, counsel fees and other disbursements, including those of their attorneys, agents and employees, incurred in and about the performance of their powers and duties under this Agreement, but the Fiscal Agent shall not have a lien therefor on any funds at any time held by it under this Agreement. The City further agrees, to the extent permitted by applicable law, to indemnify and save the Fiscal Agent, its officers, employees, directors and agents harmless against any costs, claims, expenses or liabilities, including, without limitation, fees and expenses of its attorneys which it may incur in the exercise and performance of its powers and duties hereunder which are not due to its negligence or willful misconduct. The obligation of the City under this Section shall survive resignation or removal of the Fiscal Agent under this Agreement and payment of the Bonds and discharge of this Agreement.

ARTICLE VIII

MODIFICATION OR AMENDMENT OF THIS AGREEMENT

Section 8.01. Amendments Permitted. This Agreement and the rights and obligations of the City and of the Owners of the Bonds may be modified or amended at any time by a Supplemental Agreement pursuant to the affirmative vote at a meeting of Owners, or with the written consent without a meeting, of the Owners of at least sixty percent (60%) in aggregate principal amount of the Bonds then Outstanding, exclusive of Bonds disqualified as provided in Section 8.04. No such modification or amendment shall (i) extend the maturity of any Bond or reduce the interest rate thereon, or otherwise alter or impair the obligation of the City to pay the principal of, and the interest and any premium on, any Bond, without the express consent of the Owner of such Bond, or (ii) permit the creation by the City of any pledge or lien upon the Special Taxes superior to or on a parity with the pledge and lien created for the benefit of the Bonds (except as otherwise permitted by the Act, the laws of the State of California or this Agreement), or (iii) reduce the percentage of Bonds required for the amendment hereof. No such amendment may modify any of the rights or obligations of the Fiscal Agent without its written consent.

This Agreement and the rights and obligations of the City and of the Owners may also be modified or amended at any time by a Supplemental Agreement, without the consent of any Owners, only to the extent permitted by law and only for any one or more of the following purposes:

(A) to add to the covenants and agreements of the City in this Agreement contained, other covenants and agreements thereafter to be observed, or to limit or surrender any right or power herein reserved to or conferred upon the City;

(B) to make modifications not adversely affecting any outstanding series of Bonds of the City in any material respect;

(C) to make such provisions for the purpose of curing any ambiguity, or of curing, correcting or supplementing any defective provision contained in this Agreement, or in regard to questions arising under this Agreement, as the City and the Fiscal Agent may deem necessary or desirable, and which shall not adversely affect the rights of the Owners of the Bonds;

(D) to make such additions, deletions or modifications as may be necessary or desirable to assure compliance with Section 148 of the Code relating to required rebate of excess investment earnings to the United States or otherwise as may be necessary to assure exclusion from gross income for federal income tax purposes of interest on the Bonds or to conform with the Regulations.

No such amendment may modify any of the rights or obligations of the Fiscal Agent without its written consent.

Section 8.02. Owners' Meetings. The City may at any time call a meeting of the Owners. In such event the City is authorized to fix the time and place of said meeting and to provide for the giving of notice thereof and to fix and adopt rules and regulations for the conduct of said meeting.

Section 8.03. Procedure for Amendment with Written Consent of Owners. The City and the Fiscal Agent may at any time enter into a Supplemental Agreement amending the provisions of the Bonds or of this Agreement or any Supplemental Agreement, to the extent that such amendment is permitted by Section 8.01, to take effect when and as provided in this Section. A copy of such Supplemental Agreement, together with a request to Owners for their consent thereto, if such consent is required under Section 8.01, shall be mailed by first class mail, by the Fiscal Agent to each Owner of Bonds Outstanding, but failure to mail copies of such Supplemental Agreement and request shall not affect the validity of the Supplemental Agreement when assented to as in this Section provided.

If consent of the Owners is required under Section 8.01, such Supplemental Agreement shall not become effective unless there shall be filed with the Fiscal Agent the written consents of the Owners of at least sixty percent (60%) in aggregate principal amount of the Bonds then Outstanding (exclusive of Bonds disqualified as provided in Section 8.04) and a notice shall have been mailed as hereinafter in this Section provided. Each such consent shall be effective only if accompanied by proof of ownership of the Bonds for which such consent is given, which proof shall be such as is permitted by Section 10.04. Any such consent shall be binding upon the Owner of the Bonds giving such consent and on any subsequent Owner (whether or not such subsequent Owner has notice thereof) unless such consent is revoked in writing by the Owner giving such consent or a subsequent Owner by filing such revocation with the Fiscal Agent prior to the date when the notice hereinafter in this Section provided for has been mailed.

After the Owners of the required percentage of Bonds shall have filed their consents to the Supplemental Agreement, the City shall mail a notice to the Owners in the manner hereinbefore provided in this Section for the mailing of the Supplemental Agreement, stating in substance that the Supplemental Agreement has been consented to by the Owners of the required percentage of Bonds and will be effective as provided in this Section (but failure to mail copies of said notice shall not affect the validity of the Supplemental Agreement or consents thereto). Proof of the mailing of such notice shall be filed with the Fiscal Agent. A record, consisting of the papers required by this Section 8.03 to be filed with the Fiscal Agent, shall be proof of the matters therein stated until the contrary is proved. The Supplemental Agreement shall become effective upon the filing with the Fiscal Agent of the proof of mailing of such notice, and the Supplemental Agreement shall be deemed conclusively binding (except as otherwise herein above specifically provided in this Article) upon the City and the Owners of all Bonds at the expiration of sixty (60) days after such filing, except in the event of a final decree of a court of competent jurisdiction setting aside such consent in a legal action or equitable proceeding for such purpose commenced within such sixty-day period.

Section 8.04. Disqualified Bonds. Bonds owned or held for the account of the City, excepting any pension or retirement fund, shall not be deemed Outstanding for the purpose of any vote, consent or other action or any calculation of Outstanding Bonds provided for in this Article VIII, and shall not be entitled to vote upon, consent to, or take any other action provided for in this Article VIII. Upon request, the City shall provide an Officer's Certificate to the Fiscal Agent listing those Bonds which are disqualified pursuant to this Section 8.04.

Section 8.05. Effect of Supplemental Agreement. From and after the time any Supplemental Agreement becomes effective pursuant to this Article VIII, this Agreement shall be deemed to be modified and amended in accordance therewith, the respective rights, duties and obligations under this Agreement of the City and all Owners of Bonds Outstanding shall thereafter be determined, exercised and enforced hereunder subject in all respects to such

modifications and amendments, and all the terms and conditions of any such Supplemental Agreement shall be deemed to be part of the terms and conditions of this Agreement for any and all purposes.

Section 8.06. Endorsement or Replacement of Bonds Issued After Amendments. The City may determine that Bonds issued and delivered after the effective date of any action taken as provided in this Article VIII shall bear a notation, by endorsement or otherwise, in form approved by the City, as to such action. In that case, upon demand of the Owner of any Bond Outstanding at such effective date and presentation of his Bond for that purpose at the Principal Office of the Fiscal Agent or at such other office as the City may select and designate for that purpose, a suitable notation shall be made on such Bond. The City may determine that new Bonds, so modified as in the opinion of the City is necessary to conform to such Owners' action, shall be prepared, executed and delivered. In that case, upon demand of the Owner of any Bonds then Outstanding, such new Bonds shall be exchanged at the Principal Office of the Fiscal Agent without cost to any Owner, for Bonds then Outstanding, upon surrender of such Bonds.

Section 8.07. Amendatory Endorsement of Bonds. The provisions of this Article VIII shall not prevent any Owner from accepting any amendment as to the particular Bonds held by him, provided that due notation thereof is made on such Bonds.

Section 8.08. Opinion of Counsel Regarding Supplemental Agreement. The Fiscal Agent shall be furnished, upon request, an opinion of counsel that any Supplemental Agreement entered into by the City and the Fiscal Agent complies with the provisions of this Article VIII, and the Fiscal Agent may conclusively rely upon such opinion.

ARTICLE IX

EVENTS OF DEFAULT; REMEDIES OF BOND OWNERS

Section 9.01. Events of Default. The following events shall be Events of Default:

A. Failure to pay any installment of principal of any Bonds when and as the same shall become due and payable, whether at maturity as therein expressed, by proceedings for redemption or otherwise.

B. Failure to pay any installment of interest on any Bonds when and as the same shall become due and payable.

C. Failure by the District to observe and perform any of the other covenants, agreements, or conditions on its part in this Agreement or in the Bonds contained, if such failure shall have continued for a period of 60 days after written notice thereof, specifying such failure and requiring the same to be remedied, shall have been given to the District by the Fiscal Agent or the Owners of not less than 25% in aggregate principal amount of the Bonds at the time Outstanding; provided, however, if in the reasonable opinion of the District the failure stated in the notice can be corrected, but not within such 60-day period, such failure shall not constitute an Event of Default if corrective action is instituted by the District within such 60-day period and the District shall thereafter diligently and in good faith cure such failure in a reasonable period of time.

D. Commencement by the District of a voluntary case under Title 11 of the United States Code or any substitute or successor statute.

Section 9.02. Remedies of Bond Owners. Subject to the provisions of Section 9.07, any Bond Owner shall have the right, for the equal benefit and protection of all Bond Owners similarly situated:

A. by mandamus, suit, action or proceeding, to compel the City and its officers, agents or employees to perform each and every term, provision and covenant contained in this Agreement and in the Bonds, and to require the carrying out of any or all such covenants and agreements of the City and the fulfillment of all duties imposed upon it by the Act;

B. by suit, action or proceeding in equity, to enjoin any acts or things which are unlawful, or the violation of any of the Bond Owners' rights; or

C. upon the happening of any Event of Default, by suit, action or proceeding in any court of competent jurisdiction, to require the City and its officers and employees to account as if it and they were the trustees of an express trust.

Section 9.03. Application of Special Taxes and Other Funds After Default. If an Event of Default shall occur and be continuing, all Special Taxes, including any penalties, costs, fees and other charges accruing under the Act, and any other funds then held or thereafter received by the Fiscal Agent under any of the provisions of this Agreement shall be applied by the Fiscal Agent as follows and in the following order:

A. To the payment of any expenses necessary in the opinion of the Fiscal Agent to protect the interests of the Owners of the Bonds and payment of reasonable fees, charges, and

expenses of the Fiscal Agent (including reasonable fees and disbursements of its counsel) incurred in and about the performance of its powers and duties under this Agreement;

B. To the payment of the principal of and interest then due with respect to the Bonds (upon presentation of the Bonds to be paid, and stamping thereon of the payment if only partially paid, or surrender thereof if fully paid) subject to the provisions of this Agreement, as follows:

First: To the payment to the persons entitled thereto of all installments of interest then due in the order of the maturity of such installments, and, if the amount available shall not be sufficient to pay in full any installment or installments maturing on the same date, then to the payment thereof ratably, according to the amounts due thereon, to the persons entitled thereto, without any discrimination or preference; and

Second: To the payment to the persons entitled thereto of the unpaid principal of any Bonds which shall have become due, whether at maturity or by call for redemption, with interest on the overdue principal at the rate borne by the respective Bonds on the date of maturity or redemption, and, if the amount available shall not be sufficient to pay in full all the Bonds, together with such interest, then to the payment thereof ratably, according to the amounts of principal due on such date to the persons entitled thereto, without any discrimination or preference.

C. Any remaining funds shall be transferred by the Fiscal Agent to the Bond Fund.

D. Upon occurrence of any Event of Default, by suit, action, or proceeding, in law or in equity as may be necessary or desirable to collect amounts due hereunder.

Section 9.04. Absolute Obligation of the District. Nothing in Section 9.08 or in any other provision of this Agreement or in the Bonds contained shall affect or impair the obligation of the District, which is absolute and unconditional, to pay the principal of and interest on the Bonds to the respective Owners of the Bonds at their respective dates of maturity, or upon call for redemption, as herein provided, but only out of the Special Tax Revenues and other moneys herein pledged therefor and received by the District or the Fiscal Agent, or affect or impair the right of such Owners, which is also absolute and unconditional, to enforce such payment by virtue of the contract embodied in the Bonds.

Section 9.05. Termination of Proceedings. In case any proceedings taken by any one or more Bond Owners on account of any Event of Default shall have been discontinued or abandoned for any reason or shall have been determined adversely to the Bond Owners, then in every such case the District, and the Bond Owners, subject to any determination in such proceedings, shall be restored to their former positions and rights hereunder, severally and respectively, and all rights, remedies, powers and duties of the City, and the Bond Owners shall continue as though no such proceedings had been taken.

Section 9.06. Remedies Not Exclusive. No remedy herein conferred upon or reserved to the Fiscal Agent or to the Owners of the Bonds is intended to be exclusive of any other remedy or remedies, and each and every such remedy, to the extent permitted by law, shall be cumulative and in addition to any other remedy given hereunder or now or hereafter existing at law or in equity or otherwise.

Section 9.07. No Waiver of Default. No delay or omission of any Owner of the Bonds to exercise any right or power arising upon the occurrence of any default shall impair any such right or power or shall be construed to be a waiver of any such default or an acquiescence therein; and every power and remedy given by this Agreement to the Owners of the Bonds may be exercised from time to time and as often as may be deemed expedient.

Section 9.08. Attorney's Fees. If the City defaults under any of the provisions hereof and any Original Purchaser employs attorneys (including in-house counsel) or incurs other expenses for the collection of moneys or the enforcement or performance or observance of any obligation or agreement on the part of the City herein contained, the City will on demand therefor pay to such Original Purchaser the reasonable fees of such attorneys (including those of in-house counsel) and such other expenses so incurred by such Original Purchaser.

ARTICLE X

MISCELLANEOUS

Section 10.01. Benefits of Agreement Limited to Parties. Nothing in this Agreement expressed or implied, is intended to give to any person other than the City, the Fiscal Agent and the Owners, any right, remedy, claim under or by reason of this Agreement. Any covenants, stipulations, promises or agreements in this Agreement contained by and on behalf of the City shall be for the sole and exclusive benefit of the Owners and the Fiscal Agent.

Section 10.02. Successor is Deemed Included in All References to Predecessor. Whenever in this Agreement or any Supplemental Agreement either the City or the Fiscal Agent is named or referred to, such reference shall be deemed to include the successors or assigns thereof, and all the covenants and agreements in this Agreement contained by or on behalf of the City or the Fiscal Agent shall bind and inure to the benefit of the respective successors and assigns thereof whether so expressed or not.

Section 10.03. Discharge of Agreement. If the City shall pay and discharge the entire indebtedness on all or any portion of the Bonds Outstanding in any one or more of the following ways:

(A) by well and truly paying or causing to be paid the principal of, and interest and any premium on, such Bonds Outstanding, as and when the same become due and payable;

(B) by depositing with the Fiscal Agent or other fiduciary, at or before maturity, money which, together with (in the event that all of the Bonds are to be defeased) the amounts then on deposit in the funds and accounts provided for in Sections 4.02 and 4.03, is fully sufficient to pay such Bonds Outstanding, including all principal, interest and redemption premiums; or

(C) by irrevocably depositing with the Fiscal Agent or other fiduciary, cash and Federal Securities in such amount as the City shall determine as confirmed by an independent certified public accountant will, together with the interest to accrue thereon and (in the event that all of the Bonds are to be defeased) moneys then on deposit in the fund and accounts provided for in Sections 4.02 and 4.03, be fully sufficient to pay and discharge the indebtedness on such Bonds (including all principal, interest and redemption premiums) at or before their respective maturity dates;

and if such Bonds are to be redeemed prior to the maturity thereof notice of such redemption shall have been given as in this Agreement provided or provision satisfactory to the Fiscal Agent shall have been made for the giving of such notice, then, at the election of the City, and notwithstanding that any Bonds shall not have been surrendered for payment, the pledge of the Special Taxes and other funds provided for in this Agreement and all other obligations of the City under this Agreement with respect to such Bonds Outstanding shall cease and terminate, except only the obligations of the City (i) under Section 5.13 (Maintenance of Tax-Exemption) and (ii) to pay or cause to be paid to the Owners of the Bonds not so surrendered and paid all sums due thereon and all amounts owing to the Fiscal Agent pursuant to Section 7.05; and thereafter Special Taxes shall not be payable to the Fiscal Agent. Notice of such election shall be filed with the Fiscal Agent.

Any funds thereafter held by the Fiscal Agent upon payments of all fees and expenses of the Fiscal Agent, which are not required for said purpose, shall be paid over to the City.

Section 10.04. Execution of Documents and Proof of Ownership by Owners. Any request, declaration or other instrument which this Agreement may require or permit to be executed by Owners may be in one or more instruments of similar tenor, and shall be executed by Owners in person or by their attorneys appointed in writing.

Except as otherwise herein expressly provided, the fact and date of the execution by any Owner or his attorney of such request, consent, declaration or other instrument, or of such writing appointing such attorney, may be proved by the certificate of any notary public or other officer authorized to take acknowledgments of deeds to be recorded in the state in which he purports to act, that the person signing such request, declaration or other instrument or writing acknowledged to him the execution thereof, or by an affidavit of a witness of such execution, duly sworn to before such notary public or other officer.

Except as otherwise herein expressly provided, the ownership of registered Bonds and the amount, maturity, number and date of holding the same shall be proved by the registry books.

Any request, consent, declaration or other instrument or writing of the Owner of any Bond shall bind all future Owners of such Bond in respect of anything done or suffered to be done by the City or the Fiscal Agent in good faith and in accordance therewith.

Section 10.05. Waiver of Personal Liability. No member, officer, agent or employee of the City shall be individually or personally liable for the payment of the principal of, or interest or any premium on, the Bonds; but nothing herein contained shall relieve any such member, officer, agent or employee from the performance of any official duty provided by law.

Section 10.06. Notices to and Demands on City and Fiscal Agent. Any notice or demand which by any provision of this Agreement is required or permitted to be given or served by the Fiscal Agent to or on the City may be given or served by being deposited postage prepaid in a post office letter box, by overnight courier or by electronic means (with receipt confirmed by telephone) addressed (until another address is filed by the City with the Fiscal Agent) as follows:

City of Madera
205 W 4th Street
Madera, California 93637
Attention: Director of Financial Services
Fax: _____

Any notice or demand which by any provision of this Agreement is required or permitted to be given or served by the City to or on the Fiscal Agent may be given or served by being deposited postage prepaid in a post office letter box, by overnight courier or by electronic means (with receipt confirmed by telephone) addressed (until another address is filed by the Fiscal Agent with the City) as follows:

The Bank of New York Mellon Trust Company, N.A.
100 Pine Street, Suite 3200
San Francisco, CA 94111

Attention: Corporate Trust Administration
Fax: (415) 399-1647

If to the Original Purchaser of the 2018 Bonds:

[]
c/o Western Alliance Bank
Attention: Municipal Finance
One East Washington Street, Suite 1400
Phoenix, AZ 85004
Email: MunicipalFinanceGroup@WesternAllianceBank.com

The City, the Fiscal Agent and the Original Purchaser may designate any further or different addresses to which subsequent notices, certificates or other communications shall be sent.

Section 10.07. Partial Invalidity. If any Section, paragraph, sentence, clause or phrase of this Agreement shall for any reason be held illegal or unenforceable, such holding shall not affect the validity of the remaining portions of this Agreement. The City hereby declares that it would have adopted this Agreement and each and every other Section, paragraph, sentence, clause or phrase hereof and authorized the issue of the Bonds pursuant thereto irrespective of the fact that any one or more Sections, paragraphs, sentences, clauses, or phrases of this Agreement may be held illegal, invalid or unenforceable.

Section 10.08. Unclaimed Moneys. Anything contained herein to the contrary notwithstanding, any moneys held by the Fiscal Agent in trust for the payment and discharge of the principal of, and the interest and any premium on, the Bonds which remains unclaimed for two (2) years after the date when the payments of such principal, interest and premium have become payable, if such moneys was held by the Fiscal Agent at such date, shall be repaid by the Fiscal Agent to the City as its absolute property free from any trust, and the Fiscal Agent shall thereupon be released and discharged with respect thereto and the Bond Owners shall look only to the City for the payment of the principal of, and interest and any premium on, such Bonds.

Section 10.09. Applicable Law. This Agreement shall be governed by and enforced in accordance with the laws of the State of California applicable to contracts made and performed in the State of California.

Section 10.10. Conflict with Act. In the event of a conflict between any provision of this Agreement with any provision of the Act as in effect on the Closing Date, the provision of the Act shall prevail over the conflicting provision of this Agreement.

Section 10.11. Conclusive Evidence of Regularity. Bonds issued pursuant to this Agreement shall constitute conclusive evidence of the regularity of all proceedings under the Act relative to their issuance and the levy of the Special Taxes.

Section 10.12. Payment on Business Day. In any case where the date of the maturity of interest or of principal (and premium, if any) of the Bonds or the date fixed for redemption of any Bonds or the date any action is to be taken pursuant to this Agreement is other than a Business Day, the payment of interest or principal (and premium, if any) or the action need not be made on such date but may be made on the next succeeding day which is a Business Day with the

same force and effect as if made on the date required and no interest shall accrue for the period from and after such date.

Section 10.13. Counterparts. This Agreement may be executed in counterparts, each of which shall be deemed an original.

Section 10.14. Liability of City The City shall not incur any responsibility in respect of the Bonds or this Agreement except as explicitly set forth herein. The City shall not be liable in connection with the performance of its duties hereunder, except for its own negligence or willful default. The City shall not be bound to ascertain or inquire as to the performance or observance of any of the terms, conditions covenants or agreements of the Fiscal Agent herein or of any of the documents executed by the Fiscal Agent in connection with the Bonds, or as to the existence of a default or event of default thereunder.

In the absence of bad faith, the City may conclusively rely, as to the truth of the statements and the correctness of the opinions expressed therein, upon certificates or opinions furnished to the City and conforming to the requirements of this Agreement. The City shall not be liable for any error of judgment made in good faith unless it is proved that it was negligent in ascertaining the pertinent facts.

No provision of this Agreement shall require the City to expend or risk its own general funds or otherwise incur any financial liability in the performance of any of its obligations hereunder, or in the exercise of any of its rights or powers, if it has reasonable grounds for believing that repayment of such funds or adequate indemnity against such risk or liability is not reasonably assured to it.

The City may rely and shall be protected in acting or refraining from acting upon any notice, resolution, request, consent, order, certificate, report, warrant, bond or other paper or document believed by it to be genuine and to have been signed or presented by the proper party or proper parties. The City may consult with counsel with regard to legal questions, and the opinion of such counsel shall be full and complete authorization and protection in respect of any action taken or suffered by it hereunder in good faith and in accordance therewith.

The City shall not be bound to recognize any person as the Owner of a Bond unless and until such Bond is submitted for inspection, if required, and his title thereto satisfactorily established, if disputed.

Whenever in the administration of its duties under this Agreement the City deems it necessary or desirable that a matter be proved or established prior to taking or suffering any action hereunder, such matter (unless other evidence in respect thereof be herein specifically prescribed) may, in the absence of willful misconduct on the part of the City, be deemed to be conclusively proved and established by a certificate of the Fiscal Agent, an Independent Financial Consultant or a Tax Consultant, and such certificate shall be full warrant to the City for any action taken or suffered under the provisions of this Agreement or any Supplemental Agreement upon the faith thereof, but in its discretion the City may, in lieu thereof, accept other evidence of such matter or may require such additional evidence as to it may seem reasonable.

Section 10.15. Employment of Agents by City. In order to perform its duties and obligations under this Agreement, the City may employ such persons or entities as it deems necessary or advisable. The City shall not be liable for any of the acts or omissions of such persons or entities employed by it in good faith under this Agreement, and shall be entitled to

rely, and shall be fully protected in doing so, upon the opinions, calculations, determinations and directions of such persons or entities.

Section 10.16. No Fiduciary Relationship. Inasmuch as the Bonds represents a negotiated transaction, the City understands, and hereby confirms, that the Original Purchaser is not acting as a fiduciary of the City, but rather is acting solely in its capacity as lender, for its own account.

The City acknowledges and agrees that (i) the transaction contemplated herein is an arm's length commercial transaction between the City and the Original Purchaser and its affiliates, (ii) in connection with such transaction, the Original Purchaser and its affiliates are acting solely as a principal and not as an advisor including, without limitation, a "Municipal Advisor" as such term is defined in Section 15B of the Securities and Exchange Act of 1934, as amended, and the related final rules (the "Municipal Advisor Rules"), (iii) the Original Purchaser and its affiliates are relying on the purchaser exemption in the Municipal Advisor Rules, (iv) the Original Purchaser and its affiliates have not provided any advice or assumed any advisory or fiduciary responsibility in favor of the City with respect to the transaction contemplated hereby and the discussions, undertakings and procedures leading thereto (whether or not the Original Purchaser, or any affiliate of the Original Purchaser, has provided other services or advised, or is currently providing other services or advising the City on other matters), (v) the Original Purchaser and its affiliates have financial and other interests that differ from those of the City, and (vi) the City has consulted with its own financial, legal, accounting, tax and other advisors, as applicable, to the extent it deemed appropriate.

Section 10.17. Waiver of Jury Trial; Agreement for Judicial Reference; No Sovereign Immunity. To the fullest extent permitted by law, the City hereby waives its right to trial by jury in any action, proceeding and/or hearing on any matter whatsoever arising out of, or in any way connected with, the Bonds, this Agreement or any documents relating to the Bonds or this Agreement, or the enforcement of any remedy under any law, statute, or regulation.

To the extent such waiver is not enforceable, the City hereby consents to the adjudication of any and all such matters pursuant to Judicial Reference as provided in Section 638 of the California Code of Civil Procedure, and the judicial referee shall be empowered to hear and determine any and all issues in such Reference whether fact or law.

The City hereby represents that it does not possess and will not invoke a claim of sovereign immunity for disputes arising out of contractual claims relating to the Bonds or this Agreement.

Section 10.18. Additional Provisions and Rights so long as 2018 Bonds held by the Original Purchaser. The following provisions shall apply so long as the Original Purchaser of the 2018 Bonds is the Owner of 100% of the 2018 Bonds:

(a) The 2018 Bonds shall not be rated and shall not be issued pursuant to an offering document, and shall be registered in the name of the Original Purchaser.

(b) The Original Purchaser of the 2018 Bonds is hereby expressly made a third party beneficiary of this Agreement.

(c) The City shall notify the Original Purchaser of the 2018 Bonds of any failure of the District to provide relevant notices, certificates or other similar documents.

(d) The City shall inform the Original Purchaser promptly upon the occurrence of an Event of Taxability.

IN WITNESS WHEREOF, the City and the Fiscal Agent have caused this Agreement to be executed by their duly authorized officer, effective as of the first date set forth above.

CITY OF MADERA, for and on behalf of the
City of Madera Community Facilities District No.
2006-1

**THE BANK OF NEW YORK MELLON
TRUST COMPANY, N.A.**, as *Fiscal Agent*

By: _____
Tim Przybyla
Director of Financial Services

By: _____
Authorized Officer

ATTEST:

By: _____
Sonia Alvarez
City Clerk

EXHIBIT A

FORM OF BOND

UNITED STATES OF AMERICA
STATE OF CALIFORNIA

No. _____

\$ _____

CITY OF MADERA
COMMUNITY FACILITIES DISTRICT NO. 2006-1
SPECIAL TAX REFUNDING BONDS SERIES 2018

INTEREST RATE:

MATURITY DATE:

BOND DATE:

January 25, 2018

REGISTERED OWNER: [[WESTERN ALLIANCE BANK]]

PRINCIPAL AMOUNT: _____ DOLLARS

The City of Madera (the "City") for and on behalf of the City of Madera Community Facilities District No. 2006-1 (the "District"), for value received, hereby promises to pay solely from the Special Tax Revenues (as hereinafter defined) to be collected in the District or amounts in certain funds and accounts held under the Agreement (as hereinafter defined), to the Registered Owner named above, or registered assigns (the "Owner"), on the Maturity Date set forth above, unless redeemed prior thereto as hereinafter provided, the Principal Amount set forth above, and to pay interest on such principal amount from the Bond Date shown above, or from the most recent Interest Payment Date (as hereinafter defined) to which interest has been paid or duly provided for, semiannually on March 1 and September 1, commencing September 1, 2018 (the "Interest Payment Dates"), at the Interest Rate set forth above, until the principal amount hereof is paid or made available for payment. The principal of this Bond is payable to the Owner hereof in lawful money of the United States of America upon presentation and surrender of this Bond at the principal corporate trust office of The Bank of New York Mellon Trust Company, N.A. in San Francisco, California, as fiscal agent (the "Fiscal Agent"). Interest on this Bond shall be paid by check of the Fiscal Agent mailed by first class mail on each Interest Payment Date to the Owner hereof as of the close of business on the 15th day of the month preceding the month in which the Interest Payment Date occurs whether or not such day is a Business Day (the "Record Date") at such Owner's address as it appears on the registration books maintained by the Fiscal Agent, or by wire transfer made on such Interest Payment Date upon written instructions delivered to the Fiscal Agent by the applicable Record Date of any Owner of \$1,000,000 or more in aggregate principal amount of Bonds.

From and after an Event of Taxability, following a Determination of Taxability, the Bonds shall bear interest at the Taxable Rate.

This Bond is one of a duly authorized issue of bonds approved by resolution of the City Council of the City on January 17, 2018 pursuant to the Mello-Roos Community Facilities Act of 1982, as amended, Sections 53311, *et seq.*, of the California Government Code (the "Mello-Roos Act") for the purpose of refunding special tax bonds previously issued by the City for and on behalf of the District, and is one of the bonds designated "City of Madera Community Facilities District No. 2006-1 Special Tax Refunding Bonds Series 2018" (the "Bonds"). The issuance of the Bonds and the terms and conditions thereof are provided for by a Fiscal Agent Agreement, dated as of January 1, 2018, by and between the City and the Fiscal Agent (the "Agreement") and this reference incorporates the Agreement herein, and by acceptance hereof the Owner of this Bond assents to said terms and conditions. The Agreement is authorized under, this Bond is issued under and both are to be construed in accordance with, the laws of the State of California.

Pursuant to the Mello-Roos Act, the Agreement and the Resolution, the principal of and interest on this Bond are payable solely from Special Tax Revenues and the amounts in certain funds held under the Agreement. "Special Tax Revenues" means the proceeds of the special taxes ("Special Taxes") levied under the Mello-Roos Act in the District that are received by the City, including all scheduled payments and delinquent payments thereof, interest and penalties thereon and proceeds of the redemption or sale of property sold as a result of foreclosure of the lien of the special taxes, net of the administration charge of the County of Madera.

Interest on this Bond shall be payable from the Interest Payment Date next preceding the date of authentication hereof, unless (i) it is authenticated on an Interest Payment Date, in which event it shall bear interest from such Interest Payment Date, or (ii) such date of authentication is after a Record Date but on or prior to an Interest Payment Date, in which event interest will be payable from such Interest Payment Date, or (iii) such date of authentication is prior to the first Record Date, in which event interest will be payable from the Bond Date shown above; provided however, that if at the time of authentication of this Bond, interest is in default hereon, this Bond shall bear interest from the Interest Payment Date to which interest has previously been paid or made available for payment hereon.

Any tax for the payment hereof shall be limited to the Special Tax, except to the extent that provision for payment has been made by the City as may be permitted by law. The Bonds do not constitute obligations of the City for which the City is obligated to levy or pledge, or has levied or pledged, general or special taxation other than described herein above.

The Bonds are subject to optional redemption by the City, in whole or in part, on any Interest Payment Date on or after September 1, 2025, at the following respective redemption prices (expressed as percentages of the principal amount of the Bonds to be redeemed), plus accrued interest thereon to the date of redemption:

<u>Redemption Dates</u>	<u>Redemption Price</u>
September 1, 2025 and March 1, 2026	103%
September 1, 2026 and March 1, 2027	102
September 1, 2027 and March 1, 2028	101
September 1, 2028 and Interest Payment Dates thereafter	100

The Bonds are subject to mandatory redemption from Prepayments of the Special Tax by property owners, in whole or in part, on any Interest Payment Date at the following respective redemption prices (expressed as percentages of the principal amount of the Bonds to be redeemed), plus accrued interest thereon to the date of redemption:

<u>Redemption Dates</u>	<u>Redemption Price</u>
Interest Payment Dates through March 1, 2026	103%
September 1, 2026 and March 1, 2027	102
September 1, 2027 and March 1, 2028	101
September 1, 2028 and Interest Payment Dates thereafter	100

The Bonds are subject to mandatory sinking payment redemption in part on September 1, 2018, and on each September 1 thereafter to maturity, at a redemption price equal to the principal amount thereof to be redeemed, together with accrued interest to the date fixed for redemption, without premium, from sinking payments as follows:

<u>Redemption Date (September 1)</u>	<u>Sinking Payments</u>
2018	\$
2019	
2020	
2021	
2022	
2023	
2024	
2025	
2026	
2027	
2028	
2029	
2030	
2031	
2032	
2033	
2034	
2035	
2036	

The amounts in the foregoing table shall be reduced pro rata as a result of any prior partial optional redemption of the Bonds or partial mandatory redemption of the Bonds, as specified in an Officer's Certificate to the Fiscal Agent.

Notice of redemption with respect to the Bonds to be redeemed shall be given to the Owners thereof, in the manner, to the extent and subject to the provisions of the Agreement.

This Bond shall be registered in the name of the Owner hereof, as to both principal and interest. Each registration and transfer of registration of this Bond shall be entered by the Fiscal Agent in books kept by it for this purpose and authenticated by its manual signature upon the certificate of authentication endorsed hereon.

No transfer or exchange hereof shall be valid for any purpose unless made by the registered owner, by execution of the form of assignment endorsed hereon, and authenticated as herein provided, and the principal hereof, interest hereon and any redemption premium shall be payable only to the registered owner or to such Owner's order. The Fiscal Agent shall require the Owner requesting transfer or exchange to pay any tax or other governmental charge

required to be paid with respect to such transfer or exchange. No transfers of Bonds will be required to be made (i) 15 days prior to the date established by the Fiscal Agent for selection of Bonds for redemption, (ii) with respect to a Bond after such Bond has been selected for redemption, or (iii) between a Record Date and the succeeding Interest Payment Date.

The Agreement and the rights and obligations of the City thereunder may be modified or amended as set forth therein. The principal of the Bonds is not subject to acceleration upon a default under the Agreement or any other document.

The Bonds are not general obligations of the City, but are limited obligations payable solely from the revenues and funds pledged therefor under the Agreement. Neither the faith and credit of the City or the State of California or any political subdivision thereof is pledged to the payment of the Bonds.

This Bond shall not become valid or obligatory for any purpose until the certificate of authentication hereon endorsed shall have been dated and manually signed by the Fiscal Agent.

It is hereby certified, recited and declared that all acts, conditions and things required by law to exist, happen and be performed precedent to and in the issuance of this Bond have existed, happened and been performed in due time, form and manner as required by law, and that the amount of this Bond, does not exceed any debt limit prescribed by the laws or Constitution of the State of California.

IN WITNESS WHEREOF, the City of Madera has caused this Bond to be executed by the facsimile signatures of the _____ and the _____ of the City, all as of the Bond Date stated above.

CITY OF MADERA, for and on behalf of the
CITY OF MADERA COMMUNITY FACILITIES
DISTRICT NO. 2006-1

By: _____

By: _____

FISCAL AGENT'S CERTIFICATE OF AUTHENTICATION

This is one of the Bonds described in the Resolution and the Agreement.

Dated: _____, 2018

**THE BANK OF NEW YORK MELLON TRUST
COMPANY, N.A., as Fiscal Agent**

By: _____
Authorized Signatory

FORM OF ASSIGNMENT

FOR VALUE RECEIVED, the undersigned do(es) hereby sell, assign and transfer unto

(Name, address and Tax Identification Number of Assignee)

the within-mentioned registered Bond and hereby irrevocably constitute(s) and appoint(s) _____, attorney, _____ to transfer the same on the registration books of the Fiscal Agent with full power of substitution in the premises.

Dated: _____

Signature Guaranteed: _____

NOTE: Signature(s) must be guaranteed by a member firm of the New York Stock Exchange or a commercial bank or trust company.

NOTE: The signature(s) on this Assignment must correspond with the name(s) as written on the face of the within Bond in every particular without alteration or enlargement or any change whatsoever.

EXHIBIT B

FORM OF LETTER OF REPRESENTATIONS

City of Madera
205 W 4th Street
Madera, California 93637
Attention: Director of Financial Services

Re: City of Madera Community Facilities District No. 2006-1
Special Tax Refunding Bonds Series 2016

The undersigned, a duly authorized officer of _____, a _____ corporation (the "Purchaser"), hereby acknowledges receipt of the above-referenced bonds (the "Bond"), dated the date hereof, in fully registered form in the aggregate principal amount of \$_____, constituting all of the Bond currently outstanding. The Bond has been checked, inspected and approved by the Purchaser.

The undersigned acknowledges that the Purchaser has made a loan to the City of Madera (the "City"), for and on behalf of City of Madera Community Facilities District No. 2006-1 (the "District"), as evidenced by the Bond which is being sold and delivered for the purpose of refunding the outstanding City of Madera Community Facilities District No. 2006-1 Special Tax Bonds, Series 2006. The undersigned further acknowledges that the Bond is secured by a certain Fiscal Agent Agreement, dated as of January 1, 2018 (the "Agreement"), by and between the City of Madera (the "City") and The Bank of New York Mellon Trust Company, N.A., as fiscal agent.

In connection with the sale and delivery of the Bond to the Purchaser, the Purchaser hereby makes the following representations upon which the City may rely:

(i) The Bond is being acquired by the Purchaser for its own loan account and not with a present intent for any resale or distribution thereof, in whole or in part, to others; provided, however, that the Purchaser shall not be precluded from transferring or assigning its interest in the Bond in accordance with the terms and conditions set forth in the Agreement. The Purchaser is not participating, directly or indirectly, in a distribution of the Bond and will not take, or cause to be taken, any action that would cause the Purchaser to be deemed an "underwriter" of such Bond as defined in Section 2(11) of the Securities Act of 1933, as amended (the "Securities Act"). The Purchaser understands that the City has no obligation to register the Bond for resale under the Securities Act. The Purchaser further understands that the Bond is exempt from the registration requirements of the Securities Act. The Purchaser acknowledges that the City will not be entering into a continuing disclosure agreement pursuant to Section 15c2-12 of the Securities Exchange Act of 1934, as amended, provided, however, that the City has agreed to provide certain ongoing information to the Purchaser.

(ii) The Purchaser has received all information and other items of disclosure relating to the City, the District and the Bond that the Purchaser has deemed necessary (the "Information Items") and, in connection therewith, has had access to all other materials, books, records, documents, and information relating to the City, the District and the Bond, and has been able to verify the accuracy of, and supplement, the information contained therein.

(iii) The Purchaser has had an opportunity to ask questions of, and receive satisfactory answers from, duly designated representatives of the City concerning the terms and conditions pursuant to which the offer to the loan has been made to the City, and any request for such information has been fully complied with to the extent the City possesses such information or can acquire it without unreasonable effort or expense.

(iv) The Purchaser has such knowledge and experience in financial and business matters as to be capable of evaluating the merits and risks relating to the loan as evidenced by the Bond and has evaluated: (i) the information (including the information set forth in the Information) furnished to it by the City; (ii) its or such representative's personal knowledge of the business and affairs of the City and/or the District; (iii) the records, files, and plans of the City, including such records, files and plans that pertain to the District, to all of which it or such representative has had full access; (iv) such additional information as it or such representative may have requested and have received from the City; and (v) the independent inquiries and investigations undertaken by it or such representative.

(v) The Purchaser certifies that it is an "accredited investor" within the meaning of Regulation D under the Securities Act.

(vi) The Purchaser has made an independent investigation and evaluation of the financial condition and prospects of, and the risks associated with, the loan as evidenced by the Bond, the City and the District, or has caused such investigation and evaluation to be made by persons it deems competent to do so, and it has not relied upon the City in making its lending decision to purchase the Bond other than the Information Items.

(vii) No person has given any information or made any representation not contained in any Information Items referred to above or otherwise provided to the Purchaser in writing by a person employed or authorized in writing by the City. The Purchaser understands and agrees that any information or representation not contained therein must not, and will not, be relied upon and that nothing contained therein should be City as legal or tax advice to the Purchaser.

(viii) No person has made any direct or indirect representation or warranty of any kind to the Purchaser with respect to the economic return which may accrue to the Purchaser. The Purchaser has consulted with its own counsel and other advisors with respect to the purchase of the Bond.

(ix) The signatory of this letter is a duly authorized officer of the Purchaser with the authority to sign this letter on behalf of the Purchaser, and this letter has been duly authorized, executed, and delivered by the Purchaser.

(x) Inasmuch as the Bonds represents a negotiated transaction, the Purchaser is not acting as a fiduciary of the City, but rather is acting solely in its capacity as Original Purchaser, for its own loan account. The City acknowledges and agrees that (i) the transaction contemplated herein is an arm's length commercial transaction between the City and the Purchaser and its affiliates, (ii) in connection with such transaction, the Purchaser and its affiliates are acting solely as a principal and not as an advisor including, without limitation, a "Municipal Advisor" as such term is defined in Section 15B of the Securities and Exchange Act of 1934, as amended, and the related final rules (the "Municipal Advisor Rules"), (iii) the Purchaser and its affiliates are relying on the purchaser exemption in the Municipal Advisor Rules, (iv) the Purchaser and its affiliates have not provided any advice or assumed any advisory or fiduciary responsibility in favor of the City with respect to the transaction

contemplated hereby and the discussions, undertakings and procedures leading thereto (whether or not the Purchaser, or any affiliate of the Purchaser, has provided other services or advised, or is currently providing other services or advising the City on other matters) and (v) the Purchaser and its affiliates have financial and other interests that differ from those of the City.

Capitalized terms used herein and not otherwise defined have the meanings given such terms in the Fiscal Agent Agreement.

Dated: January 25, 2018

By: _____
Name: _____
Title: _____

ESCROW AGREEMENT

Relating to:

**\$2,885,000
City of Madera
Community Facilities District No. 2006-1
Special Tax Bonds, Series 2006**

This ESCROW AGREEMENT (this "Agreement") is made and entered into on January 1, 2018 by and between the City of Madera (the "City"), and The Bank of New York Mellon Trust Company, N.A., a national banking association organized and existing under the laws of the United States of America, acting as trustee for the Prior Bonds described herein, and as Escrow Agent hereunder (the "Escrow Agent");

BACKGROUND:

1. The City has previously issued the special tax bonds captioned above (the "Prior Bonds") with respect to the community facilities district formed by the City known as the "City of Madera Community Facilities District No. 2006-1" (the "District") under an Indenture dated as of December 1, 2006 (the "Prior Bonds Indenture"), by and between the City and The Bank of New York Mellon Trust Company, N.A., as trustee (the "Prior Bonds Trustee").

2. The City has determined that it is in the economic interests of the City and the property owners within the District at this time to provide for the refunding in full of the outstanding Prior Bonds, and to that end the City has authorized the issuance of its bonds captioned "City of Madera Community Facilities District No. 2006-1 Special Tax Refunding Bonds Series 2018" in the aggregate principal amount of \$_____ (the "Refunding Bonds") under a resolution adopted by the City Council of the City on January 17, 2018, and a Fiscal Agent Agreement dated as of January 1, 2018, between the City and The Bank of New York Mellon Trust Company, N.A., as fiscal agent (the "Fiscal Agent Agreement").

3. The Escrow Agent currently acts as Prior Bonds Trustee, and as such, has been designated as Escrow Agent hereunder in connection with defeasance and refunding of the Prior Bonds.

4. The City wishes to appoint the Escrow Agent for the purpose of establishing an irrevocable escrow fund to be funded, invested, held and administered for the purpose of providing for the defeasance, payment and redemption of the Prior Bonds.

A G R E E M E N T :

In consideration of the premises and the material covenants contained herein, the City and the Escrow Agent hereby agree as follows:

SECTION 1. *Appointment of Escrow Agent.* The City hereby appoints the Escrow Agent to act as escrow agent for purposes of administering the funds required to pay the principal of and interest and redemption premium on the Prior Bonds.

SECTION 2. *Establishment of Escrow Fund.* The Escrow Agent is hereby directed to establish an escrow fund (the "Escrow Fund") to be held by the Escrow Agent as an irrevocable escrow securing the payment and redemption of the Prior Bonds in accordance with the Prior Bonds Indenture.

If at any time the Escrow Agent receives actual knowledge that the cash and securities in the Escrow Fund will not be sufficient to make any payment required by Section 5, the Escrow Agent shall notify the City of such fact and the City shall immediately cure such deficiency from any source of legally available funds. The Escrow Agent has no liability for any such insufficiency.

SECTION 3. *Deposit of Amounts in Escrow Fund.* On January 25, 2018 (the "Closing Date"), the City shall cause \$_____ in immediately available funds, to be derived from the funds as more particularly identified in Exhibit A hereto, to be transferred to the Escrow Agent for deposit into the Escrow Fund.

The City hereby instructs the Prior Bonds Trustee to make the applicable transfers from the Prior Bonds Indenture set forth on Exhibit A.

SECTION 4. *Investment of Amounts in Escrow Fund.* On the Closing Date, the Escrow Agent shall [[invest \$_____ deposited into the Escrow Fund in the federal securities identified in Exhibit B hereto, and shall hold the remaining \$_____ in cash, uninvested]] [[hold the entire \$_____ in cash, uninvested]].

All amounts deposited with and held by the Escrow Agent in the Escrow Fund solely for the uses and purposes set forth herein. The Escrow Agent shall have no lien upon or right of set off against the amounts at any time on deposit in the Escrow Fund.

SECTION 5. *Application of Funds.* All amounts on deposit in the Escrow Fund shall be and are hereby irrevocably pledged as a special fund for the payment of the principal of and interest (there is no redemption premium) on the Prior Bonds in accordance with the Prior Bonds Indenture, at the times and in the amounts set forth in the schedules shown in Exhibit C.

Following payment in full of the principal of and interest on the payment of the principal of and interest and redemption premium on the Prior Bonds, and payment in full of any amounts then owed to the Escrow Agent, all amounts on deposit in the Escrow Fund shall be transferred by the Escrow Agent for deposit in the Special Tax Fund established under the Fiscal Agent Agreement and applied to pay interest next coming due and payable on the Refunding Bonds.

SECTION 6. *Irrevocable Election to Redeem Prior Bonds.* The City hereby irrevocably elects to redeem the Prior Bonds on March 1, 2018, in accordance with the Prior Bonds Indenture. Notice of redemption of the Prior Bonds, in substantially the form attached as Exhibit D, shall be given by the Escrow Agent, in its capacity as Prior Bonds Trustee, in accordance with the Prior Bonds Indenture, at the expense of the City.

In addition, Notice of Defeasance of the Prior Bonds, in substantially the form attached as Exhibit E, shall be given by the Escrow Agent, in its capacity as Escrow Agent, on the Closing Date, to the Municipal Securities Rulemaking Board Electronic Municipal Market Access (EMMA) system accessible at the emma.msrb.org website, no later than ten business days following the Closing Date. The sole remedy available for the failure to give such notice to EMMA shall be an action by the holders of the Prior Bonds in mandamus for specific performance.

SECTION 7. *Compensation to Escrow Agent; Indemnification.* The City shall pay the Escrow Agent full compensation for its services under this Agreement, including out-of-pocket costs such as publication costs, redemption expenses, legal fees and other costs and expenses relating hereto and, in addition, all fees, costs and expenses relating to the purchase, substitution or withdrawal of any securities after the date hereof. Under no circumstances shall amounts deposited in or credited to the Escrow Fund be deemed to be available for said purposes. The Escrow Agent has no lien upon or right of set off against amounts at any time on deposit in the Escrow Fund.

The City shall indemnify, defend and hold harmless the Escrow Agent and its officers, directors, employees, representatives and agents, from and against and reimburse the Escrow Agent for any and all claims, obligations, liabilities, losses, damages, actions, suits, judgments, reasonable costs and expenses (including reasonable attorneys' and agents' fees and expenses) of whatever kind or nature regardless of their merit, demanded, asserted or claimed against the Escrow Agent directly or indirectly relating to, or arising from, claims against the Escrow Agent by reason of its participation in the transactions contemplated hereby, except to the extent caused by the Escrow Agent's negligence or willful misconduct. The provisions of this Section 7 shall survive the termination of this Agreement or the earlier resignation or removal of the Escrow Agent.

SECTION 8. *Immunities and Liability of Escrow Agent.* The Escrow Agent undertakes to perform only such duties as are expressly set forth in this Agreement and no implied duties, covenants or obligations shall be read into this Agreement against the Escrow Agent. The Escrow Agent shall not have any liability hereunder except to the extent of its negligence or willful misconduct. In no event shall the Escrow Agent be liable for any special, indirect or consequential damages. The Escrow Agent shall not be liable for any loss from any investment made by it in accordance with the terms of this Agreement. The Escrow Agent shall not be liable for the recitals or representations contained in this Agreement and shall not be responsible for the validity of this Agreement, the sufficiency of the Escrow Fund or the moneys and securities to pay the principal and interest with respect to the Prior Bonds. The Escrow Agent may consult with counsel and the advice or any opinion of counsel shall be full and complete authorization and protection in respect of any action taken or omitted by it hereunder in good faith and in accordance with such advice or opinion of counsel.

Whenever in the administration of this Agreement the Escrow Agent deems it necessary or desirable that a matter be proved or established prior to taking or not taking any action, such matter may be deemed to be conclusively proved and established by a certificate of an authorized representative of the City and shall be full protection for any action taken or not taken by the Escrow Agent in good faith reliance thereon.

The Escrow Agent may conclusively rely as to the truth and accuracy of the statements and correctness of any opinions or calculations provided to it in connection with this Agreement and shall be protected in acting, or refraining from acting, upon any notice, instruction, request, certificate, document, opinion or other writing furnished to the Escrow Agent in connection with this Agreement and believed by the Escrow Agent to be signed by the proper party, and it need not investigate any fact or matter stated therein.

None of the provisions of this Agreement shall require the Escrow Agent to expend or risk its own funds or otherwise to incur any liability, financial or otherwise, in the performance of any of its duties hereunder. The Escrow Agent may execute any of the powers hereunder or perform any duties hereunder either directly or by or through agents, attorneys, custodians or nominees appointed with due care, and shall not be responsible for any willful misconduct or negligence on the part of any agent, attorney, custodian or nominee so appointed. The Escrow Agent shall not be liable to the parties hereto or deemed in breach or default hereunder if and to the extent its performance hereunder is prevented by reason of force majeure. The term "force majeure" means an occurrence that is beyond the control of the Escrow Agent and could not have been avoided by exercising due care. Force majeure shall include acts of God, terrorism, war, riots, strikes, fire, floods, earthquakes, epidemics or other similar occurrences.

The Escrow Agent may at any time resign by giving 30 days written notice of resignation to the City. Upon receiving such notice of resignation, the City shall promptly appoint a successor and, upon the acceptance by the successor of such appointment, release the resigning Escrow Agent from its obligations hereunder by written instrument, a copy of which instrument shall be delivered to each of the City, the resigning Escrow Agent and the successor. If no successor shall have been so appointed and have accepted appointment within 30 days after the giving of such notice of resignation, the resigning Escrow Agent may petition any court of competent jurisdiction for the appointment of a successor. If the Prior Bonds Trustee is removed and replaced pursuant to the terms of the Prior Resolution, the Escrow Agent shall similarly be removed and replaced as Escrow Agent hereunder, and shall facilitate the City in accomplishing such removal and replacement, including the transfer of securities hereunder as needed.

Any bank, corporation or association into which the Escrow Agent may be merged or converted or with which it may be consolidated, or any bank, corporation or association resulting from any merger, conversion or consolidation to which the Escrow Agent shall be a party, or any bank, corporation or association succeeding to all or substantially all of the corporate trust business of the Escrow Agent shall be the successor of the Escrow Agent hereunder without the execution or filing of any paper with any party hereto or any further act on the part of any of the parties hereto except on the part of any of the parties hereto where an instrument of transfer or assignment is

required by law to effect such succession, anything herein to the contrary notwithstanding.

The Escrow Agent shall have the right to accept and act upon instructions, including funds transfer instructions ("Instructions") given pursuant to this Agreement and delivered using Electronic Means ("Electronic Means" shall mean the following communications methods: e-mail, facsimile transmission, secure electronic transmission containing applicable authorization codes, passwords and/or authentication keys issued by the Escrow Agent, or another method or system specified by the Escrow Agent as available for use in connection with its services hereunder); provided, however, that the City shall provide to the Escrow Agent an incumbency certificate listing officers with the authority to provide such Instructions ("Authorized Officers") and containing specimen signatures of such Authorized Officers, which incumbency certificate shall be amended by the City whenever a person is to be added or deleted from the listing. If the City elects to give the Escrow Agent Instructions using Electronic Means and the Escrow Agent in its discretion elects to act upon such Instructions, the Escrow Agent's understanding of such Instructions shall be deemed controlling. The City understands and agrees that the Escrow Agent cannot determine the identity of the actual sender of such Instructions and that the Escrow Agent shall conclusively presume that directions that purport to have been sent by an Authorized Officer listed on the incumbency certificate provided to the Escrow Agent have been sent by such Authorized Officer. The City shall be responsible for ensuring that only Authorized Officers transmit such Instructions to the Escrow Agent and that the City and all Authorized Officers are solely responsible to safeguard the use and confidentiality of applicable user and authorization codes, passwords and/or authentication keys upon receipt by the City. The Escrow Agent shall not be liable for any losses, costs or expenses arising directly or indirectly from the Escrow Agent's reliance upon and compliance with such Instructions notwithstanding such directions conflict or are inconsistent with a subsequent written instruction. The City agrees: (i) to assume all risks arising out of the use of Electronic Means to submit Instructions to the Escrow Agent, including without limitation the risk of the Escrow Agent acting on unauthorized Instructions, and the risk of interception and misuse by third parties; (ii) that it is fully informed of the protections and risks associated with the various methods of transmitting Instructions to the Escrow Agent and that there may be more secure methods of transmitting Instructions than the method(s) selected by the City; (iii) that the security procedures (if any) to be followed in connection with its transmission of Instructions provide to it a commercially reasonable degree of protection in light of its particular needs and circumstances; and (iv) to notify the Escrow Agent immediately upon learning of any compromise or unauthorized use of the security procedures.

The City acknowledges that to the extent regulations of the Comptroller of the Currency or other applicable regulatory entity grant the City the right to receive brokerage confirmations of security transactions as they occur, the City specifically waives receipt of such confirmations to the extent permitted by law. The City further understands that trade confirmations for securities transactions effected by the Escrow Agent will be available upon request and at no additional cost and other trade confirmations may be obtained from the applicable broker. The Escrow Agent will furnish the City periodic transaction statements which include detail for all investment transactions made by the Escrow Agent hereunder; provided that the Escrow Agent is not obligated to provide an accounting for any fund or account that (a) has a balance of \$0.00 and (b) has not had any activity since the last reporting date. Upon the City's

election, such statements will be delivered via the Escrow Agent's online service and upon electing such service, paper statements will be provided only upon request.

SECTION 9. *Termination of Agreement.* Upon payment and redemption in full of the Prior Bonds and the payment and redemption in full of the Prior Bonds, and upon payment of all fees, expenses and charges of the Escrow Agent as described above, this Agreement shall terminate and the Escrow Agent shall be discharged from any further obligation or responsibility hereunder.

SECTION 10. *Execution in Counterparts.* This Agreement may be executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument.

SECTION 11. *Applicable Law.* This Agreement shall be governed by and construed in accordance with the laws of the State of California.

CITY OF MADERA

By: _____
Tim Przybyla
Director of Financial Services

**THE BANK OF NEW YORK MELLON
TRUST COMPANY, N.A.,**
as Escrow Agent and Prior Bonds Trustee

By: _____
Authorized Officer

EXHIBIT A

FUNDS TO BE DEPOSITED IN ESCROW FUND

Net Proceeds of Refunding Bonds	\$
Prior Bonds Reserve Fund	
Prior Bonds Bond Fund	
Total deposit:	<hr/> \$

EXHIBIT B

IDENTIFICATION OF FEDERAL SECURITIES

Type	Principal Amount	Maturity Date	Coupon	Price

EXHIBIT C

PRIOR BONDS PAYMENT SCHEDULE

Payment Date	<u>Interest</u>	<u>Principal Prepaid</u>	<u>Premium</u>	<u>Total Payment</u>
March 1, 2018				

EXHIBIT D

FORM OF REDEMPTION NOTICE

\$2,885,000

City of Madera

**Community Facilities District No. 2006-1
Special Tax Bonds, Series 2006**

Final Maturity Date: September 1, 2036

NOTICE IS HEREBY GIVEN, by the City of Madera (the "City"), with respect to the captioned bonds (the "Bonds"), that it has irrevocably elected to optionally redeem all of the outstanding Bonds on March 1, 2018 (the "Redemption Date"), at a redemption price equal to the principal amount to be redeemed, plus accrued interest to the Redemption Date, without premium.

The Bonds to be redeemed consist of the following:

CUSIP Number*	Amount	Maturity Date	Interest Rate
556448 AL2	\$ 55,000	9/1/2018	4.500%
556448 AM0	60,000	9/1/2019	4.500
556448 AN8	70,000	9/1/2020	4.600
556448 AP3	75,000	9/1/2021	4.700
556448 AQ1	495,000	9/1/2026	4.800
556448 AR9	1,845,000	9/1/2036	5.000

* CUSIP data are provided by S&P Global Services, managed by Standard & Poor's Capital IQ. The City and the Escrow Agent shall not be responsible for the selection or use of the CUSIP numbers listed above, nor is any representation made as to the accuracy of the CUSIP numbers listed above or as printed on any Bond; the CUSIP numbers are included solely for the convenience of the owners of the Bonds.

Funds for the payment of all of the outstanding Bonds have been deposited with The Bank of New York Mellon Trust Company, N.A., as escrow agent for the Bonds (the "Escrow Agent").

The Bonds to be redeemed must be surrendered by the owners thereof at the corporate trust office of the Escrow Agent for payment of the redemption price.

Dated: _____, 2018

THE BANK OF NEW YORK MELLON TRUST COMPANY, N.A.,
as Trustee for the Bonds and as Escrow Agent

EXHIBIT E

FORM OF DEFEASANCE NOTICE

\$2,885,000

City of Madera

Community Facilities District No. 2006-1

Special Tax Bonds, Series 2006

Final Maturity Date: September 1, 2036

NOTICE IS HEREBY GIVEN, by the City of Madera (the "City"), with respect to the captioned bonds (the "Bonds"), that it has defeased the Bonds set forth below as of January 25, 2018. ***This notice is not a notice of redemption of any of the Bonds.***

The Bonds that have been defeased consist of the following:

CUSIP Number*	Amount	Maturity Date	Interest Rate
556448 AL2	\$ 55,000	9/1/2018	4.500%
556448 AM0	60,000	9/1/2019	4.500
556448 AN8	70,000	9/1/2020	4.600
556448 AP3	75,000	9/1/2021	4.700
556448 AQ1	495,000	9/1/2026	4.800
556448 AR9	1,845,000	9/1/2036	5.000

* CUSIP data are provided by S&P Global Services, managed by Standard & Poor's Capital IQ. The City and the Escrow Agent shall not be responsible for the selection or use of the CUSIP numbers listed above, nor is any representation made as to the accuracy of the CUSIP numbers listed above or as printed on any Bond; the CUSIP numbers are included solely for the convenience of the owners of the Bonds.

Funds for the payment of all of the Bonds that have been defeased have been deposited with The Bank of New York Mellon Trust Company, N.A., as escrow agent for the Bonds (the "Escrow Agent"). As a result of this defeasance, the City's obligations under the Continuing Disclosure Agreement dated as of December 1, 2006 related to the Bonds has terminated, and this notice shall constitute notice of such termination.

Dated: January 25, 2018

THE BANK OF NEW YORK MELLON TRUST COMPANY, N.A.,
as Trustee for the Bonds and as Escrow Agent



2001 Howard Road, Suite 211 • Madera, CA 93637 • (559) 673-7002 • Fax (559) 673-6931



October 31, 2017

Mayor Andrew Medellin
Councilmembers
Madera City Council
205 W. 4th Street
Madera CA 93637

RE: Madera Water Rates

Dear Mayor Medellin and Council Members:

As you may recall, I have spoken with several of you lately regarding the recent uproar over Madera's new water rates. I have also spoken with many of my neighbors, as well as Community Members who are as upset as I am about the new rates. I would respectfully request, at this time, that you agenzize a public hearing to openly discuss those rates and allow the public to comment on them. If you agree to grant my request please provide me with 30 day notice of the hearing date so that I may have time to get the word out to as many residents of Madera as possible in order that we may have a spirited public hearing on the matter.

Your consideration of my request would be greatly appreciated.

Sincerely,

Michael Pistoiresi

RECEIVED
OFFICE OF THE CITY CLERK

NOV 03 2017

BY
City Administrator
City Attorney
Comm. Dev. Dir.
Finance Director
PW Director
City Engineer



REPORT TO CITY COUNCIL

Approved by:

Sonia Alvarez
Department Director

Steve Frazier
City Administrator

Council Meeting of: January 17, 2018

Agenda Number: E-1

SUBJECT: Consideration of a Resolution Supporting the Dream Act and the Deferred Action for Childhood Arrivals

RECOMMENDATION: Staff recommends Council consider adoption of the attached resolution in support of the Dream Act of 2017 and the Deferred Action for Childhood Arrivals

SUMMARY: At the request of Mayor Medellin, the attached resolution stating Council support of legislation S. 1615 and H.R. 3440, Dream Act of 2017, and the Deferred Action for Childhood Arrivals (DACA) Program is presented for Council consideration.

DISCUSSION: The DACA program, implemented in 2012, offered work authorization and a renewable two year reprieve from deportation to unauthorized immigrants who were brought to the United States as children and met specific eligibility requirements. Currently over 800,000 immigrant youth who have applied for DACA are in jeopardy of losing their ability to legally work in the United States.

In September of 2012, the current Administration announced that without action by Congress to approve legislation to formally create or replace the DACA program, the current program would cease to exist within six months or by March of 2018.

The Dream Act of 2017 introduced in July of 2017, if passed, will allow thousands of youth students that have lived in the United States for years, and call it home, to realize their education dream and provides a path to legalizing their immigration status.

FINANCIAL IMPACT: There is financial impact at this time.

CONSISTENCY WITH THE VISION MADERA 2025 PLAN: The requested action is not specifically addressed in the Vision Plan nor is it in conflict with it.

RESOLUTION NO. _____

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MADERA, CALIFORNIA,
SUPPORTING THE DREAM ACT AND THE DEFERRED ACTION FOR CHILDHOOD
ARRIVALS**

WHEREAS, it is recognized that over 800,000 immigrant youth are in jeopardy of losing their ability to legally work in these United States. It is also recognized that there are over 11 million immigrants waiting for a path to citizenship in the United States.

WHEREAS, with the elimination of Deferred Action for Childhood Arrivals (DACA), the result will force immigrant youth into seclusion and in the shadows of society.

WHEREAS, it is well documented that 97% of immigrant youth who benefited from DACA are either employed and/or enrolled in school and contribute to society.

WHEREAS, the beneficiaries of DACA would have contributed \$460.3 billion to the U.S. gross domestic product over the next 10 years.

WHEREAS, let's be reminded that the Development Relief and Education for Alien Minors (DREAM) Act is a bipartisan legislation introduced both in the United States Senate and the House of Representatives, provides a permanent solution and peace of mind to immigrant youth who were brought to the United States as infants, children and adolescents and who have since grown up in our State and called our country home.

WHEREAS, deporting immigrant youth, who are protected under DACA, is unfair and a violation of our values and beliefs as a nation.

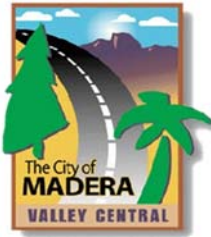
WHEREAS, we call on Congress to pass comprehensive immigration reform which would benefit the residents of Madera and the Central San Joaquin Valley.

WHEREAS, let it be resolved that the Madera City Council stands in support of the passage of S. 1615 and H.R. 3440, Dream Act of 2017, a bill that will allow thousands of young students that have lived in the United States for years and call it home, to realize their education "DREAM" by providing a path to legalizing their immigration status.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF MADERA DOES HEREBY FIND, ORDER AND RESOLVE AS FOLLOWS:

1. The above recitals are true and correct.
2. The Madera City Council states its support and urges the passage of (S. 1615) and (H.R. 3440) the Development, Relief, and Education for Alien Minors (DREAM) Act of 2017.
3. This resolution is effective immediately upon adoption.

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**Madera City Council Agenda 01/17/18
Agenda Item E-2**

**Discussion and Consideration of Solicitation for Consultant(s) to
Perform an Employee Compensation Study and/or Other Services
Related to Review Internal City Operations to Address Council
Concerns**

There is no written report for this item.