

REPORT TO CITY COUNCIL

Approved by:

Keith Helmuth, Department Director

Arnoldo Rodriguez, City Manager

Council Meeting of: May 17, 2023

Agenda Number: B-5

SUBJECT:

Outside City Limits Water Connection for 16385 North D Street (APN 038-082-002)

RECOMMENDATION:

Adopt a resolution approving an agreement between the City and Carol D. Moore, Carl Armentrout, and Terry Armentrout for connection to the City's water system

SUMMARY:

The City has a policy wherein properties located outside the City Limits but proximate to the City water and sewer systems may apply for and receive City utility services under certain conditions. If approved by Council, an Agreement for Outside City Limits Water Connection would be recorded against the subject parcel on the title.

DISCUSSION:

The property owners, Carol D. Moore, Carl Armentrout, and Terry Armentrout, have an existing single-family residence on a 0.33-acre parcel located on the southeast intersection of North D and Ellis Streets. The subject site is directly east of the Omni Subdivision which is actively being developed.

The property owners have requested that they be allowed to connect to the existing 14-inch City water main in North D Street and have declared their request urgent as the property has a failing well. Without potable water, they would likely need bottled water or pay for water service delivered to the property.

It is noted that a one-inch water line would be installed and metered, similar to all new residential City connections. In addition, the owners would be required to remit Development Impact Fees (DIF) of \$845 and a payback fee for half the value of the 8-inch component of the 14-inch water main. They would then be charged fixed and volumetric charges (i.e., consumption-based) similar

to existing customers. Similar to existing customers, the property owners would bear all expenses.

It is further noted that the City has recently approved several other similar requests in this area, including:

1. Two requests on North D Street, northeast of the site
2. Two requests on Country Club Drive, southwest of the site
3. One request on Ellis Street, west of D Street

LOCAL AGENCY FORMATION COMMISSION

Given that the subject site is outside of the City Limits, LAFCO review is required. On May 1, 2023, LAFCO approved the request. The City requires an Agreement to be recorded regarding terms and conditions for subject services and the Owners' covenant not to protest annexation.

FINANCIAL IMPACT:

Approving this request for outside City Limits water connection imposes no additional expense to the City, Water Enterprise Fund, or the General Fund, as the property owners pay all costs associated with the physical construction of the water lateral and meter. In addition, the property owners would pay single-family residential Development Impact Fees, also known as DIF, for both structures.

ALTERNATIVES:

Council may deny the request or may seek clarifying information. Should the request be denied, the residents may face hardships and have to seek other alternatives.

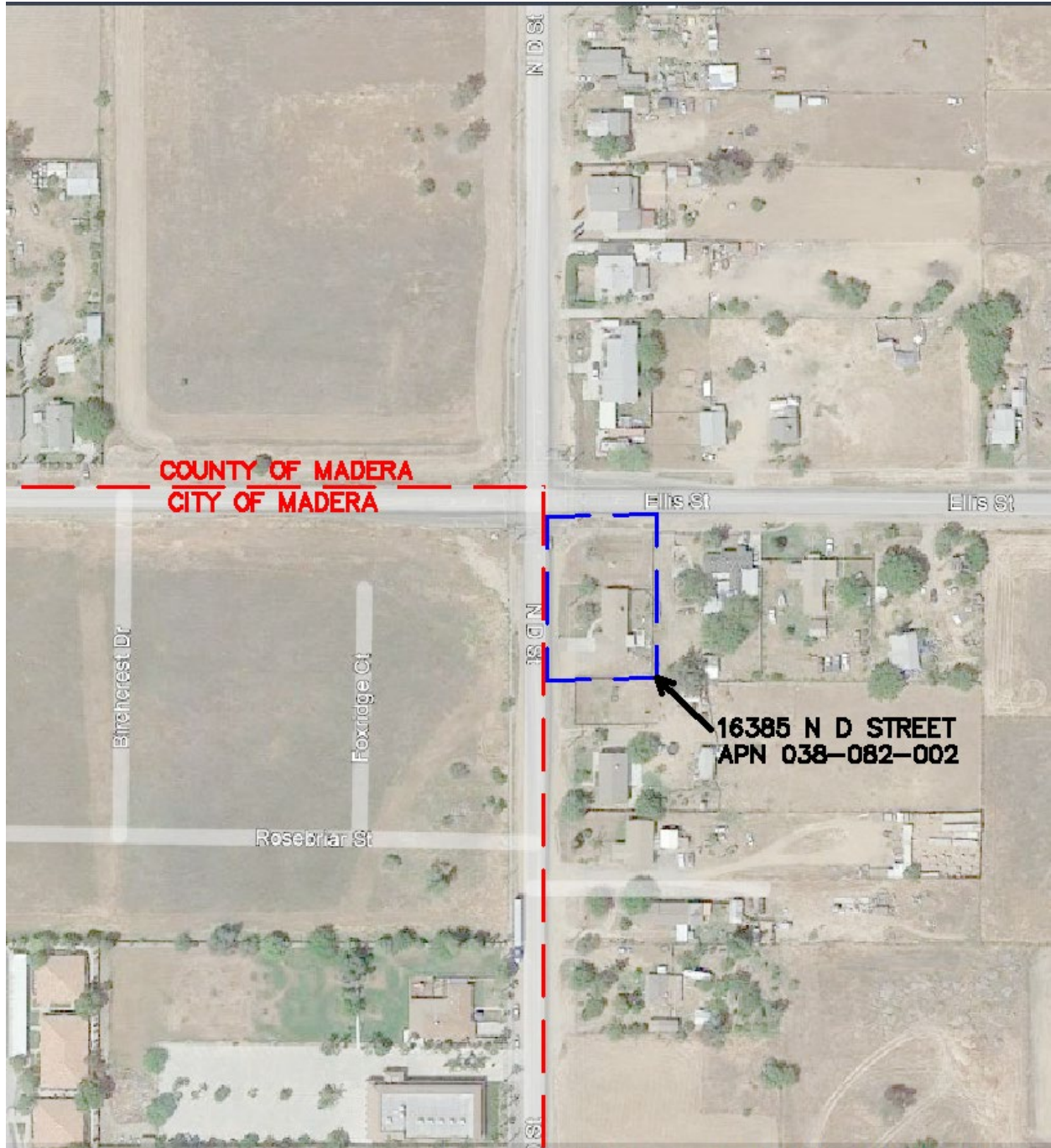
ATTACHMENTS:

1. Location Map
2. Resolution
Exhibit A – Agreement

Attachment 1

Location Map

16385 N D Street



Attachment 2

Resolution

RESOLUTION NO. 23-_____

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MADERA,
CALIFORNIA, APPROVING AGREEMENT FOR OUTSIDE CITY LIMITS WATER
CONNECTION FOR 16385 NORTH D STREET (APN 038-082-002)**

WHEREAS, Carol D. Moore, Carl Armentrout, and Terry Armentrout own the property located at 16385 North D Street (collectively "Property") and desire to connect the Property to the City water system; and

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

WHEREAS, the City Council is willing to authorize the said connection to the City's water system, subject to certain conditions; and

WHEREAS, all costs to connect to the City water system will be borne by the Property owner.

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 Council approves the Agreement for Outside City Limits Water Connection for 16385 North D Street (APN 038-082-002), attached to this resolution as Exhibit A and incorporated by reference.
3. The City Engineer and City Clerk, with concurrence of the City Attorney, are authorized to make any clerical and non-material corrections to this resolution and the Agreement.
4. Staff is hereby directed to record the Agreement.
5. This resolution is effective immediately upon adoption.

* * * * *

Exhibit A

Agreement

RECORDED AT THE REQUEST OF
AND WHEN RECORDED MAIL TO:

CITY CLERK
CITY OF MADERA
205 W. 4TH STREET
MADERA, CA 93637

Presented for Recordation by the City of Madera
Fee Waived Per Sections 27383 & 27388.1(a)(2)(D) of the Government Code.....No Fee Due

Address: 16385 N D Street, Madera, California
APN: 038-082-002

**AGREEMENT FOR OUTSIDE CITY LIMITS WATER CONNECTION
FOR 16385 N D STREET (APN 038-082-002)**

This AGREEMENT FOR OUTSIDE CITY LIMITS WATER CONNECTION FOR 16385 N D Street ("Agreement"), is made and entered into this ____ day of _____, 2023, by and between the CITY OF MADERA, a municipal corporation of the State of California, hereinafter called "CITY", and CAROL D. MOORE, CARL ARMENTROUT AND TERRY ARMENTROUT, hereinafter called "OWNER".

RECITALS

- A. OWNER is the record owner of that certain real property located at 16385 N D Street, in the County of Madera, California and more particularly described below.
- B. The Property consists of 0.33 acres, more or less, located on the southeast corner of D and Ellis Streets, known as 16385 N D Street, in the unincorporated territory of Madera County (the "Subject Property").
- C. OWNER desires a water connection to serve one dwelling on the Subject Property.
- D. CITY is willing to authorize said water connection subject to conditions as set forth in this Agreement.

AGREEMENT

In consideration of the recitals above, which are incorporated herein, and the mutual promises contained herein, the Parties agree as follows:

1. Authority to Connect to City Water. CITY hereby authorizes OWNER to connect to the 14-inch water main on D Street to serve one dwelling on the Subject Property located at 16385 N D Street, which property is more particularly described as follows:

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

THE LAND REFERED TO HEREIN IS DESCRIBED AS FOLLOWS:

THAT CERTAIN REAL PROPERTY SITUATE IN THE COUNTY OF MADERA, STATE OF CALIFORNIA, AND DESCRIBED AS FOLLOWS, TO WIT:

ALL THAT PORTION OF LOT 156 IN SECTION 12, TOWNSHIP 11 SOUTH, RANGE 17 EAST, M.D.B.&M., ACCORDING TO THAT CERTIAN MAP DESIGNATED AS "MAP OF MILLER & LUX'S SUBDIVISION OF LANDS AT MADERA, FILED AND RECORDED IN THE COUNTY RECORDER OF THE COUNTY OF MADERA, STATE OF CALIFORNIA, FEBRUARY 2, 1895, IN VOL. 1 OF MAPS, AT PAGE 11, BOUNDED AND DESCRIBED AS FOLLOWS, TO WIT:

BEGINNING AT THE NORTHWESTERLY CORNER OF SAID LOT 156, THENCE EASTERLY ALONG THE NORTH LINE OF SAID LOT A DISTANCE OF 126.68 FEET; THENCE SOUTHERLY AND PARALLEL WITH THE WESTERLY LINE OF SAID LOT A DISTANCE OF 165.80 FEET: THENCE WESTERLY AND PARALLEL WITH THE NORTH LINE OF SAID LOT A DISTANCE OF 126.68 FEET TO THE WEST LINE OF SAID LOT AND CENTER LINE OF 80 FOOT ROAD: THENCE NORTHERLY 165.80 FEET ALONG SAID CENTER LINE OF SAID ROAD AND WEST LINE OF SAID LOT TO THE NORTHWESTERLY CORNER THEREOF AND POINT OF BEGINNING.

APN: 038-082-002

2. Payment of Fees. Prior to any such water connection, APPLICANT shall pay to CITY water impact fees which total \$845.00. Impact fees are based on one single family residence on the parcel. Any additional development on the Subject Property will be subject to additional CITY impact fees. OWNERS shall also pay to CITY connection, permit, inspection or other fees as required, and 50% of the cost to install the 8-inch component of the 14-inch water main located in D Street, in the amount of \$3,120.00. On and after connection of OWNERS' property to the CITY water system, OWNER shall pay to CITY the monthly water service charges as determined by the Director of Finance.

3. Municipal Service Application and Service Rates. In addition to this Agreement, OWNER agrees to complete a Municipal Service Application to apply for water and agree to pay the water rates applicable to City residents which will be billed in accordance with City billing of City residents. As a new water service connection, OWNER is required to install a water meter and a reduced pressure back flow prevention device at property line in accordance with CITY Standard Specifications and destroy any existing wells in accordance with the Madera County and California Department of Health Standards.

4. Discontinuance of Utilities. The parties acknowledge that one result of the utility billing method of payment is to allow City to use the non-judicial remedy of discontinuing all

utility services in the event of a default by OWNER in the performance of its duties and obligations pursuant to the Agreement.

5. No Assignment; Agreement Runs with the Land. The rights and obligations of the parties shall not be assigned or transferred to others without the prior written consent of the other party. This Agreement shall be binding upon and insure to the benefit of the parties' successors or assigns. The burdens and benefits of this Agreement shall run with the land identified in Exhibit A attached hereto. This Agreement shall be executed in recordable form.

6. Notices. All notices to be given under this Agreement shall be in writing and either:

(a) Sent by certified mail, return receipt requested, in which case notice shall be deemed delivered three (3) business days after deposit, postage prepaid in the United States Mail,

(b) Sent by a nationally recognized overnight courier, in which case notice shall be deemed delivered one (1) business day after deposit with this courier, or

(c) By telecopy or similar means, if a copy of the notice is also sent by United States Certified Mail, in which case notice shall be deemed delivered on transmittal by telecopier or other similar means provided that a transmission report is generated by reflecting the accurate transmission of the notices, as follows:

TO OWNER: CAROL MOORE ET AL
16385 N D St
Madera, CA 93638

TO CITY: CITY OF MADERA
Attn: City Manager
205 W. 4th Street
Madera, CA 93637

These addresses may be changed by written notice to the other party, provided that no notice of a change of address shall be effective until actual receipt by the parties of the notice. Copies of notices are for informational purposes only, and a failure to give or receive copies of any notice shall not be deemed a failure to give notice.

7. Limitation on Use of City Water. OWNER agrees that the water provided by the CITY shall be used only for domestic water service to the Subject Property. Any future water connection for property development purposes is subject to CITY approval.

8. LAFCo Approval. The Subject Property is located outside the corporate limits of the City of Madera but within the City's Sphere of Influence. Due to this, the CITY must obtain authorization from the Madera Local Agency Formation Commission (LAFCo) to extend and/or

connect utility services to the subject property. LAFCo authorization requires the submittal of an application for review. The CITY has prepared and submitted the required application, and LAFCo has authorized the extension and/or connection of utility services to the Subject Property.

9. Annexation. In accordance with Government Code Section 56133 (b) and LAFCo's approval of the application to extend and/or connect utility services to the Subject Property, OWNER agrees not to protest the future annexation of the subject property into the City of Madera, if such annexation is not subject to conditions, excluding the facts pertaining to the annexation itself or the extension of water or sanitary sewer service, which might materially prejudice those holding interest in the Subject Property.

10. Attorney's Fees. If either party commences an action against the other to enforce this Agreement, or because of the breach by either party of this Agreement, the prevailing party in this action shall be entitled to recover attorney fees and costs incurred in connection with the prosecution or defense of this action, including any appeal of the action, in addition to all other relief. Prevailing party within the meaning of this Section shall include, without limitation, a party who successfully brings an action against the other party for sums allegedly due or performance of covenants allegedly breached, or that party who obtains substantially the relief sought in the action.

11. Entire Agreement. This Agreement contains the entire agreement between the parties as to the subject matter hereof. This Agreement shall not be construed to relieve OWNER from properly maintaining improvements on OWNERS' property as required by any existing site plan or conditional use permit, to excuse compliance with any law or regulation of general application, or to address any developmental requirements that may be applied to any future development of OWNERS' property. Without limitation of the foregoing, OWNER acknowledges that the Development Impact Fees paid as provided herein are for the existing residence only, and any additional residences or other uses or additional improvements will require the payment of additional Development Impact Fees as may be applicable to such additional residences, uses or improvements.

No promise, representation, warranty, or covenant not included in this Agreement has been or is relied on by either party. Each party has relied upon his own examination of this Agreement, the counsel of his own advisors, and the warranties, representations, and covenants in the Agreement itself. The failure or refusal of either party to read the Agreement or other documents, or to obtain legal or other advice relevant to this transaction constitutes a waiver of any objection, contention, or claim that might have been based on such reading, inspection, or advice.

12. Time of the Essence. Time is of the essence for each condition, term, and provision in this Agreement.

13. Counterpart Signatures. This Agreement may be executed in one or more counterparts. Each shall be deemed an original and all taken together shall constitute one and the same instrument. The execution of this Agreement is deemed to have occurred, and this Agreement

shall be enforceable and effective only on the complete execution of this Agreement by the parties.

14. Severance. If any term or provision of this Agreement shall, to any extent, be held invalid or unenforceable, the remainder of this Agreement shall not be affected.

15. No Waiver. A waiver or breach of a covenant or provision in this Agreement shall not be deemed a waiver of any other covenant or provision in this Agreement, and no waiver shall be valid unless in writing and executed by the waiving party. An extension of time for performance of any obligation or act shall not be deemed an extension of the time for performance of any other obligation or act.

16. Headings. Headings at the beginning of each section and subsection are solely for the convenience of the parties and are not a part of and shall not be used to interpret this Agreement. The singular form shall include the plural and vice versa. This Agreement shall not be construed as if it had been prepared by one of the parties, but rather as if both parties have prepared it. Unless otherwise indicated, all references to sections are to this Agreement. All exhibits referred to in this Agreement are attached to it and incorporated to it by this reference.

17. Applicable Law. This Agreement shall be governed and construed in accordance with California law. This Agreement concerns real property located in Madera, California and each party agrees that a court of competent jurisdiction for the judicial district including Madera, California would be the most appropriate court for any litigation that might arise in connection with this Agreement.

18. Authority to Sign. Each party signing below certifies that he or she is authorized to execute this Agreement and thereby obligate the party on whose behalf such signature is made. The authority of each signer was, if necessary, granted by appropriate corporate action.

19. Amendments to Agreement. This Agreement may be modified or amended only by a writing duly authorized and executed by both parties. It may not be amended or modified by oral agreements or understanding between the parties. This Agreement and any modification or amendment thereto shall only be effective if authorized by the City Council of the City of Madera.

20. Limitation on Use of City Water. OWNER agrees that the water provided by the CITY shall be used only for domestic use and residential landscape irrigation use. No use of CITY water for agricultural irrigation or other use atypical of residential use shall be allowed.

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

CITY OF MADERA

By: _____
Keith B. Helmuth, City Engineer

By: _____
Santos Garcia, Mayor

ATTEST:

By: _____
Alicia Gonzales, City Clerk

APPROVED AS TO LEGAL FORM:

By: _____
Hilda Cantú Montoy, City Attorney

OWNERS

By: _____
Carol D. Moore

By: _____
Carl Armentrout

By: _____
Terry Armentrout

ATTACH NOTARY ACKNOWLEDGEMENT