



REPORT TO CITY COUNCIL

Approved by:

Wendy Silva

Wendy Silva, Director of Human Resources

Arnoldo Rodriguez

Arnoldo Rodriguez, City Manager

Council Meeting of: August 21, 2019

Agenda Number: B-11

SUBJECT:

Consideration of a Resolution Approving an Agreement with Madera County for Municipal Code Prosecution Services by the District Attorney's Office

RECOMMENDATION:

It is recommended that the City Council (Council) adopt the resolution approving the agreement for municipal code prosecution services by the District Attorney's office and authorizing the Mayor to sign the agreement.

SUMMARY:

Following the departure of the City's former in-house attorney, Council directed and authorized the City Manager to secure temporary legal services while long term alternatives were evaluated. The City Manager entered into an agreement with the Madera County District Attorney to prosecute Municipal Code Violations. The agreement was for a period of time not to exceed six (6) months from March 1, 2019.

DISCUSSION:

Beginning in March 2019, the District Attorney's office began to provide prosecution services to the City for violations of the City of Madera Municipal Code. These services are provided at actual cost, currently \$77.91 per hour plus a 12% administration fee, for a total cost of \$87.26 per hour for these services. Should the actual costs of services increase, per the proposed agreement, the County must provide the City Manager thirty (30) days written notice of such increase, and the City Manager will have thirty (30) days to request further information. Either party may withdraw from the agreement at any time with ten (10) days written notice.

The City recently conducted a Request for Proposals for City Attorney Services. The City received six (6) proposals with hourly bill rates ranging from \$150 to \$325 per hour, plus travel costs and support costs. Based on this information and the expertise of the District Attorney's office, staff

is recommending the City continue with prosecutorial services being provided by the District Attorney. They are the most cost effective for this service and have legal expertise in this area.

FINANCIAL IMPACT:

Prosecution of Municipal Code violations was previously performed by the City's in-house City Attorney. The bill rate for the District Attorney is less than the hourly equivalent of the former City Attorney. While the number of Municipal Code citations issued by the Police Department varies and is driven by criminal behavior, staff believes that the cost of these services will not exceed the budgeted expenses for the City Attorney budget. Staff will continue to provide regular reports to Council on contract City Attorney services as the City moves forward with this new service delivery model.

CONSISTENCY WITH THE VISION MADERA 2025 PLAN:

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

ALTERNATIVES:

Council could direct staff to evaluate other alternatives for prosecution of Municipal Code violations.

ATTACHMENTS:

1. Resolution approving the proposed agreement for prosecution services.
2. Exhibit 1 to Resolution: Proposed agreement for prosecution services.

RESOLUTION NO. _____

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MADERA APPROVING AN AGREEMENT FOR PROSECUTION SERVICES BETWEEN THE CITY OF MADERA AND MADERA COUNTY AND AUTHORIZING THE MAYOR TO EXECUTE THE AGREEMENT

WHEREAS, the City of Madera requires prosecution of Municipal Code violations; and

WHEREAS, the City desires the District Attorney to prosecute violations of the City's Municipal Code; and

WHEREAS, the District Attorney is the public prosecutor in all prosecutions for public offenses pursuant to Government Code Section 26500; and

WHEREAS, the District Attorney may provide legal services to local public entities as requested pursuant to Government Code Section 26520.

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 Agreement for Prosecution Services between the City and Madera County, a copy of which is attached hereto as Exhibit 1, is approved.
3. The Mayor is authorized to execute the Agreement on behalf of the City of Madera.
4. This resolution is effective immediately upon adoption.

* * * * *

MADERA COUNTY CONTRACT NO. _____

**MEMORANDUM OF UNDERSTANDING.
WITH RESPECT TO DISTRICT ATTORNEY MUNICIPAL CODE PROSECUTION
SERVICES TO THE CITY OF MADERA**

THIS MEMORANDUM OF UNDERSTANDING ("MOU") is entered into the 21st day of August, 2019 (the "Agreement Date"), by and between the COUNTY OF MADERA ("COUNTY") and the CITY OF MADERA ("CITY") collectively hereinafter referred to as the "Parties."

RECITALS

- A. The City of Madera requires prosecution of municipal code violations; and
- B. The City of Madera desires the District Attorney to prosecute violations of the City's Municipal Code; and
- C. Under Government Code Section 26500, the District Attorney is the public prosecutor in all prosecutions for public offenses; and
- D. Under Government Code 26520, the District Attorney may provide legal services to local public entities as requested.

NOW, THEREFORE, the COUNTY and the CITY hereby agree as follows.

1. The COUNTY through the District Attorney's office will prosecute the CITY's municipal code violations. The District Attorney's Office will use its best legal judgment and prosecute cases in the same manner and custom as the Office's regular cases.
2. **Payment.** CITY agrees to pay the COUNTY for the use of the District Attorney in the hourly rate of a Deputy District Attorney III, step C (currently \$77.91 per hour) plus a twelve percent (12%) administrative fee. This hourly rate reflects the actual cost of providing District Attorney services as required in Government Code 26520. Should the actual cost of providing District Attorney services increase during the term of this agreement, COUNTY shall provide CITY at least thirty (30) days advance written notice of such increase addressed to the City Manager. The City Manager will provide a written response to COUNTY within thirty (30) days of receipt of such notice should CITY require additional information regarding the basis of the increase.

3. **Retroactive Effect.** The terms and consideration as agreed to by the Parties on the Agreement Date shall apply retroactively to September 1, 2019.

4. **Term.** This MOU shall be effective as of September 1, 2019, and shall remain in effect until such time that either Party withdraws from this MOU pursuant to Section 5.

5. **Withdrawal.** A Party may, in its sole discretion, withdraw from this MOU upon 10 days written notice to the other Parties.

6. **Cooperation.** Both Parties agree to cooperate with each other in the prosecutions of municipal code violations including providing all materials required to prosecute and communicating the status of cases as desired by the Parties.

7. **Entire Agreement.** This MOU and items incorporated herein contain all of the agreements of the Parties with respect to the matters contained herein, and no prior agreement or understanding pertaining to any such matter shall be effective for any purpose.

8. **Amendments.** No provisions of this MOU may be amended or modified in any manner whatsoever except by an agreement in writing duly authorized by representatives of both Parties.

9. **Assignment.** The rights and obligations of the Parties under this MOU may not be assigned or delegated.

10. **Governing Law.** This MOU and all documents provided for herein and the rights and obligations of the Parties hereto shall be governed in all respects , including validity, interpretation and effect, by the laws of the State of California (without giving effect to any choice of law principles).

11. **Waiver.** The failure of any Party to insist on strict compliance with any provision of this MOU shall not be considered a waiver of any right to do so, whether for that breach or any subsequent breach. The acceptance by any Party of either performance or payment shall not be considered to be a waiver of any preceding breach of the MOU by any other Party.

12. **Severability.** If any term or provision of this MOU is, to any extent, held invalid or unenforceable, the remainder of this MOU shall not be affected.

13. **Headings.** The subject headings of the sections of this MOU are included for purposes of convenience only and shall not affect the construction or interpretation of any of the provisions herein .

14. **Counterparts.** This MOU may be executed in any number of counterparts, each of which shall be an original, but all of which shall constitute one and the same instrument.

* * * * *

IN WITNESS WHEREOF the foregoing Memorandum of Understanding is executed on the date and year first above-written.



COUNTY OF MADERA

Chairman, Board of Supervisors

ATTEST:

CITY OF MADERA

Clerk, Board of Supervisors

Mayor, City Council

APPROVED AS TO LEGAL FORM:

County Counsel