



REPORT TO CITY COUNCIL

Approved by:

A handwritten signature in blue ink, appearing to be "John Scarborough".

John Scarborough, Parks & Community
Services Director

A handwritten signature in blue ink, appearing to be "Arnoldo Rodriguez".

Arnoldo Rodriguez, City Manager

Council Meeting of: February 19, 2020

Agenda Number: D-1

SUBJECT:

Consideration of Resolution Approving an Agreement with EMTS Inc. for Landscape Maintenance Services for the Downtown District, Certain City Facilities, and Median Islands in the amount of \$200,880.00 and Authorizing the Mayor to Execute the Agreement on behalf of the City.

RECOMMENDATIONS:

Staff recommends the City Council (Council) adopt the Resolution approving the Agreement for Landscape Maintenance Services for the downtown district, certain City facilities, and median islands in the amount of \$200,880.00 to EMTS Inc. Staff further recommends Council authorize the Mayor to execute the Agreement on behalf of the City.

SUMMARY:

The City has historically retained contractors to perform landscape maintenance work at some City-owned properties. The previous contractor worked in the City for three years until their Agreement expired on November 14, 2019. In an effort to secure a new contractor, staff published a Request for Proposals (RFP) on December 3, 2019. Five proposals were received, but one was rejected after it was determined to be non-responsive. Of the four remaining proposals, one was considered to represent the best value for the City as they ranked at, or near the top, in categories such as references, approach to work, staffing, and fees. Staff recommends Council adopt the Resolution approving the Agreement with EMTS Inc. for landscape maintenance services.

The agreement is for three years and may be extended by mutual written consent for an additional two years.

DISCUSSION:

The City currently maintains approximately 30 acres of landscaped areas that are not in a landscape assessment zone. The City has historically entered into multi-year agreements with professional landscape maintenance contractors for the work needed for these areas, inclusive of the downtown district, certain City facilities and median islands. Maps of these areas are shown in Attachment A to the proposed Agreement.

The landscape maintenance of these areas has historically been performed by a single contractor. The previous contractor has maintained the properties within this program since 2016. Their Agreement expired on November 14, 2019. As a result, on December 3, 2019, RFP 201920-08 for Landscape Maintenance Services was published. In order to allow smaller (local) firms to compete for the work, the RFP was divided into three groups corresponding with downtown, certain City facilities, and median islands. This allowed bidders to submit proposals for a single group or any combination of the three groups. Therefore, it was possible to award agreements to as few as one contractor or as many as three. One Madera County-based firm participated in the current solicitation and all responding firms submitted quotes for all three groups.

Responses to the RFP were due on January 13, 2020. The four firms outlined below submitted timely and complete proposals. A fifth proposal was received, but it was incomplete and deemed non-responsive by the City’s Purchasing Department. The four remaining proposals were reviewed for compliance to bid requirements and completeness. They were then forwarded to a review committee for scoring and ranking. In order to ascertain the best value for the City, a committee of staff from the Parks and Community Services and Public Works Departments reviewed the proposals fees, as well as approach to the work, references, and other criteria. From these categories, staff generated a total score and rank for each proposal. The bid results, ranging from \$200,880.00 to \$541,803.60, were ranked by the review committee as well as detailed below in Table 1:

Table 1: Landscape Maintenance Request for Proposal Ranking Summary

<i>Proposer</i>	<i>Group 1 (Downtown)</i>	<i>Group 2 (City Facilities)</i>	<i>Group 3 (Medians)</i>	<i>Total Bid</i>	<i>Rank</i>
EMTS Professional Landscape	\$5,460.00	\$60,840.00	\$134,580.00	\$200,880.00	1
Villa Gardening Service	\$22,560.00	\$76,500.00	\$297,000.00	\$396,060.00	2
All Commercial Landscape Service	\$48,600.00	\$121,500.00	\$332,550.00	\$502,650.00	3
Joe’s Landscape and Concrete	\$59,670.00	\$170,258.40	\$311,875.20	\$541,803.60	4

EMTS Inc. was ranked the highest by the review committee out of the four proposals, representing the best value for the City. They scored near the top in all categories. Additionally, their proposal was also the lowest bid.

FINANCIAL IMPACT:

The financial impact of the new agreement represents an increase of \$24,240.00 per year from the previous agreement. This increase is broken down into three respective budgets as follows: \$720.00 in City’s Downtown (#41400000-6440), \$8,040.00 in Parks Contracted Services (#10206100-6440), and \$15,480.00 in Median Island (#10206120-6440).

Table 2: Landscape Costs Comparisons

	<i>Group 1 (Downtown)</i>	<i>Group 2 (City Facilities)</i>	<i>Group 3 (Medians)</i>	<i>Total Bid</i>
EMTS Professional Landscape Bid Result	\$5,460.00	\$60,840.00	\$134,580.00	\$200,880.00
Previous Contract Costs	\$4,740.00	\$52,800.00	\$119,100.00	\$176,640.00
Difference +/-	+\$720.00	+\$8,040.00	+\$15,480.00	+\$24,240.00

The previous agreement expired on November 14, 2019. Since that date, City staff have maintained the areas of responsibility utilizing part-time, temporary staff until an RFP could be published and awarded. As a result, each of the budgets represented by the three groups have incurred savings, which will allow the contract increases to be absorbed within the current fiscal year budgets. If the Agreement is approved, staff will include these increases during the annual budget process for FY 2020/21. The revenue sources for these increases will come from Gas Tax revenue, Downtown Association, and the City’s General Fund.

Staff believe the increases between the previous agreement and the proposed agreement is a result of recent regulatory changes by the State Department of Industrial Relations subjecting landscape maintenance activities, like those represented in this Agreement, to Prevailing Wage rates. This additional cost of doing business usually results in higher bids and increased costs to the City.

CONSISTENCY WITH THE VISION MADERA 2025 PLAN:

- *Action 121.10:* Add facilities and amenities for the public.
- *Action 126.4:* Develop financing plans for development and maintenance of landscape programs.
- *Action 134.1:* Consider establishment of design/landscape standards for neighborhoods.

ALTERNATIVES:

1. Council may direct staff to reject all bids and recirculate the RFP to secure a new/different contractor and associated bid.
2. Council may direct staff to explore alternative service delivery models.

ATTACHMENTS:

1. Resolution - Approving Agreement
 - Exhibit 1 - Agreement
 - Exhibit A - Maps of Landscape Maintenance Areas
 - Exhibit B - Insurance Requirements

Resolution No. 20- _____

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MADERA, CALIFORNIA APPROVING AN AGREEMENT WITH EMTS INC. FOR LANDSCAPE MAINTENANCE SERVICES FOR THE DOWNTOWN DISTRICT, CERTAIN CITY FACILITIES, AND MEDIAN ISLANDS IN THE AMOUNT OF \$200,880.00 AND AUTHORIZING THE MAYOR TO EXECUTE THE AGREEMENT ON BEHALF OF THE CITY

WHEREAS, the City of Madera (“City”) is a municipal Corporation which provides services and facilities to the citizens of the community; and

WHEREAS, the City is in need of landscape maintenance services for the Downtown District, certain City facilities, and median islands; and

WHEREAS, the City requires the services of a professional landscape maintenance firm to provide the services; and

WHEREAS, the City circulated a Request for Proposals to solicit bids and select a qualified firm to provide landscape maintenance services; and

WHEREAS, EMTS Inc. (“Contractor”) is a firm qualified to provide said landscape maintenance services and submitted a complete timely bid that was ranked number one (1) by the proposal review committee; and

WHEREAS, the City has prepared an Agreement with the Contractor that details the responsibilities and requirements of each party; and

WHEREAS, the Agreement is in the best interests of the City, the Contractor, and the citizens of Madera.

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

1. The above recitals are true and correct.
2. The Agreement between the City and EMTS Inc., attached hereto as Exhibit 1, is approved.
3. The Mayor is authorized to execute the Agreement on behalf of the City.
4. This Resolution is effective immediately upon adoption.

CITY OF MADERA

LANDSCAPE MAINTENANCE SERVICES

THIS AGREEMENT made and entered into the 19th day of February, 2020, by and between the CITY OF MADERA, a municipal corporation of the State of California, hereinafter called "City" and EMTS Inc. hereinafter called "Service Provider";

RECITALS

- A. The City is in need of Landscape Maintenance services and the City has issued a Request for Proposals (RFP) for Landscape Maintenance Service.
- B. City requires a Landscape Maintenance Services Agreement from a qualified professional service provider.
- C. Service Provider is a firm having the necessary experience and qualifications to provide services under this Landscape Maintenance Agreement.
- D. After conducting an RFP process for Landscape Maintenance services and after review and consideration, City desires to retain Service Provider to provide said services.

AGREEMENT

NOW, THEREFORE, in consideration of the foregoing and the mutual covenants and agreements herein contained, it is agreed by and between the City and the Service Provider as follows:

1. Services. The City hereby contracts with Service Provider to provide Landscape Maintenance services, herein set forth at the compensation and upon the terms and conditions herein expressed, and Service Provider hereby agrees to perform such services for said compensation, and upon said terms and conditions City hereby authorizes Service Provider to commence work on March 01, 2020. The City Director of Parks and Community Services or his designee shall be the City Contact under this Agreement.

2. Obligations, duties and responsibilities of Service Provider. It shall be the duty, obligation and responsibility of the Service Provider, in a skilled and professional manner, to perform, furnish and supply to the City the services and supplies in accordance with the minimum service requirements as listed below:

2.1. Scope of Maintenance Services. Service Provider shall provide and coordinate all services necessary for the proper maintenance of the Maintenance Area as defined in Attachment A. The specific services of Service Provider shall include, but not be limited to the following:

- a. Prepare a preliminary estimate for material and labor costs associated with needed services not directly covered by this Agreement.
- b. Provide itemized monthly statement showing all services performed.

2.2 Labor, Tools, Equipment

Service Provider shall furnish all labor, tools, equipment, fertilizers, herbicides, and materials necessary for performance

Exhibit 1

of the maintenance work and services in the manner specified herein for each of the maintenance areas of service.

2.3. General Requirements. Service Provider shall thoroughly complete each task in a professional, workmanlike manner. To this end, they will use equipment and materials that comply with all current regulations. The safety of workers, passersby, and the public shall be paramount.

Service Provider shall provide the labor, materials, and equipment necessary for the provision of grounds and landscape maintenance services, except as otherwise specified hereinafter. Tasks shall be performed in accordance with standards contained herein, at no less than the frequencies set forth herein.

Service Provider is hereby required to render and provide grounds maintenance services including, but not limited to, turf mowing, edging, trimming, over seeding, reseeding, fertilization, aeration, irrigation, hand watering and bleeding of valves as necessary during emergencies when automatic systems are not functioning, pruning and renovation of turf and shrub areas as well as provide weed control, disease control, tree maintenance, maintenance of irrigation systems, repair of walkways, pumps, walkway lighting systems and the necessary maintenance of any appurtenant structures and equipment pursuant to specifications and frequencies as set forth herein or revised by City.

Service Provider shall not perform any operations, particularly during periods of inclement weather, which may destroy or damage groundcover or turf areas.

The Service Provider recognizes, that during the course of this Agreement, other activities and operations may be conducted by City work forces and other contracted parties. These activities may include but not be limited to, landscape refurbishment, irrigation system modification or repair, construction and/or storm related operations. The Service Provider may be required to modify or curtail certain tasks and operations and shall promptly comply with any request by the City to modify or curtail impacted tasks covered by this Agreement.

Service Provider shall, during the hours and days of maintenance service, as identified in Section II.H, respond to all emergencies within two (2) hours of notification.

Service Provider shall be required to identify equipment and vehicles used at City facilities with decals identifying the Service Provider's name, and phone number.

2.4. Description of Work and Services.

a. All areas of the Maintenance Area shall be maintained in accordance to the preservation of the quality of standard landscaping practices of the intended design concept. Maintenance will occur in such a manner that will not alter the existing ground area from the natural state. All areas will be kept weed free leaving a clean and manicured appearance. Such maintenance to occur at the following minimum intervals and shall comply with procedures for standard landscaping practices leaving these grounds in a clean and desirable condition.

1) If turf exists within the Maintenance Areas, turf shall be cut or mowed with conventional mowing equipment of a type which will not damage the turf, such mowing to occur at the following minimum intervals and shall comply with standard practices and procedures for mowing and maintaining turf in a healthy and presentable condition.

2) The maintenance shall occur at a minimum of one time per week, between March 1 and October 31. Maintenance may be performed a minimum of twice per month for all other months provided

Exhibit 1

minimum standards per specifications contained herein are maintained.

3) The maintenance services will be provided Monday through Friday, between the hours of 7:00 a.m. and 5:00 p.m.

b. All trees and shrubs shall be inspected, trimmed and adjusted to facilitate complete maintenance, provide neat appearance and protect said trees and shrubs from damage by site maintenance operations. Said trimming shall comply with standard practices and procedures to maintain trees and shrubs in a healthy and presentable condition. The standard trimming of all trees and shrubs within the scope of this contract shall be a minimum 7 feet above ground level over pedestrian pathways and 14 feet above vehicle travel ways such as streets, alleys, etc. Said standard trimming is specific to facilitating maintenance and differs from major trimming as described under the Extra Work provision in this RFP. The determination of major trimming shall be at the sole discretion of City. Service Provider shall be responsible for maintaining all tree staking and should adjust, modify or remove as required to promote acceptable growth requirements.

c. Service Provider shall maintain the perimeter of all landscape areas, including but not limited to curb, parking areas or affiliated grounds. Service Provider may use the application of herbicides at the Service Provider's discretion. Service Provider shall comply with all applicable laws, regulations and ordinances and shall be responsible for the securing of any and all permits, which may be required for the performance of the work and services herein provided. All herbicide to be used shall be approved prior to application and only by written notice as detailed in the draft agreement included in this RFP. Weed eating around trees will not be permitted and damage to trees caused by such activity will be justification for damages being assessed to Service Provider, termination of contract or tree replacement at Service Providers expense.

d. All trash and debris which has accumulated, or which may in the future accumulate within the boundaries of the specific areas, including, but not limited to, sidewalks, play areas, driveways, fence lines and property boundaries shall be removed from the site. Grass clippings, weeds, trash, debris and other waste and refuse materials collected within the sites shall be disposed of in an approved manner off-site. Trash and debris shall be removed by Service Provider and at the Service Provider's expense at a frequency concurrent with maintenance.

e. All landscaping irrigation areas shall be checked concurrent with maintenance (when applicable) in accordance to standard irrigation practices and the automatic sprinkling systems located within each landscape area shall be maintained in adjustment and repaired so as to ensure proper operation and coverage to the end that all such landscaping shall be properly irrigated. Sprinklers shall be adjusted so as not to throw water on streets or adjacent properties. Maintenance as provided in this work description includes all parts and labor for repair and adjustment of all irrigation system components downstream of the Vacuum Breaker including, but not limited to valves, heads and clocks. The system shall be maintained and adjusted at a frequency concurrent with maintenance or turf mowing. Irrigation controller schedules shall be set to comply with local watering ordinances.

f. When damage occurs to sprinkler systems outside of the above specified area of responsibility, turf or other plantings through no fault or activity of Service Provider, Service Provider shall notify City of the extent of damage within twenty- four (24) hours of discovery. Upon written request by the City, Service Provider will perform repairs, materials including, but not limited to irrigation parts, trees or shrubs may be provided either by City or Service Provider at the City's discretion. Service Provider will not be compensated for any overhead for materials so provided. Service Provider shall be compensated at the rate specified for extra work performed by the Service Provider for such repairs or replacements if he/she is selected to complete the repairs. Damage to sprinkling systems, plantings, fences, gates, or other property affixed to or located in any area, or damage to adjacent properties caused by or resulting from any activities of maintenance Service Provider, shall be repaired by said Service Provider at their sole cost and expense within twenty-four (24) hours of receipt of written notification by City. If the Service Provider fails to respond within this time City shall have the repairs completed by others and all expenses associated with the repair will be charged to the responsible Service Provider.

g. All landscape maintenance areas shall be inspected monthly to determine whether any damage has occurred to property, including, but not limited to, fences, sidewalks, equipment, structures, plants,

turf, trees or other improvements. Service Provider shall report to City within twenty-four (24) hours of discovery of any damage to site which adversely impacts the functioning of the site, improvements, security, and/or safety thereof.

h. All landscape maintenance areas shall be fertilized and kept weed free. Fertilizers and herbicides will be provided by Service Provider and shall be applied in such manner that non target species are protected. Any grasses or plants damaged or destroyed through application of fertilizers, herbicides or other chemicals shall be replaced at Service Provider's sole cost and expense.

i. Service Provider shall be responsible for the maintenance of all locks and chains on all back-flow preventer enclosures, gates, structures and other improvements requiring such security. Or at the request of City personnel, City will provide Service Provider with replacement locks and chains as may be required.

j. Service Provider shall submit signed detailed work reports no later than the fifth day of each month describing all work and services performed on each landscape maintenance area during the preceding month. Without limitation to scope or detail, Service Provider shall include in said report a general description of the work and services performed; the date or dates on which each landscape area was inspected and work performed; information concerning damages, repairs, or replacements required, including, but not limited to locks or chains and unusual or special conditions which require special attention in order to preserve the functional and/or security and integrity of the landscape areas. The report shall include Service Provider's recommendations for measures to correct any deficient condition reported. However, this report does not exempt Service Provider from notification of conditions that exist as specified in No. 5 and No. 6 above. All work reports must be submitted to City prior to/ or with the monthly payment request forms. If monthly work reports are not submitted, payment shall be held until City receives the monthly work reports.

2.5. Description of Extra Work. Service Provider shall, from time-to-time, be required to perform Extra Work of varying types. The following, though not inclusive, represents specific types of Extra Work that may be required and the conditions governing performance. In all cases of Extra Work, no such work may be performed without prior written authorization from City. City, at its discretion, may choose to provide all necessary materials or have Service Provider provide materials and reimburse Service Provider for all authorized costs.

a. Service Provider may be required to eradicate pests and rodents, such as ground squirrels, gophers, moles, etc. Pursuit of such eradication measures and the use of pesticides and other chemicals or eradication techniques shall be in accordance with all local, state and federal regulations governing the use of such agents or techniques. In no event shall the actions of Service Provider in effecting such eradication result in a danger to humans, domestic animals or plant life. Service Provider shall be responsible for any damages that result from a violation of local, state, or federal regulations governing eradication agents or techniques and/or improper or negligent use of such agents or techniques.

b. Service Provider may be required to perform major tree pruning or removal of trees and/or shrub growth located on or adjoining City sites, so that said trees do not present a danger to persons or improvements of City. Such responsibility may include planting, watering, treatment, fertilizing, the cutting away and removal of dead, diseased, broken or otherwise impaired branches, and the complete removal of those trees and shrubs whose location or state of health demand such removal. Such work is considered Extra Work in scope above the normal tree and shrub trimming requirements identified in Section II.C.2 of this Description of Work and Services. City shall be the sole determinate of what constitutes normal or extra work.

c. Service Provider may be required to eradicate weeds, plants and undesirable growth within adjacent properties. The work and services necessary to accomplish the foregoing shall be coordinated with the control activities of any governmental agencies concerned with the work. Elimination of undesirable weeds or specific ground plantings may be accomplished by means of appropriate herbicides and pesticides after prior written approval of City. The elimination process shall be performed in such manner as not to endanger or damage existing turf and other plantings within City sites or plant or animal life on adjacent properties.

d. Service Provider may be required to plant flowers, plants, and place bark or mulch.

Exhibit 1

e. All extra work shall commence on the specified date established and Service Provider shall proceed diligently to complete said work within the time allotted.

f. City retains the right at all times to accept, re-negotiate or decline bids for extra work and further retains the right to negotiate with third party companies to perform extra work.

2.6. Damage by Service Provider. All damages incurred to existing facilities by the Service Provider's operation shall be repaired or replaced at the Service Provider's expense. All such repairs or replacements shall be completed within the following time limits:

a. Irrigation damage shall be repaired or replaced within one watering cycle.

b. All damages to shrubs, trees, turf or groundcover shall be repaired or replaced within five (5) working days.

c. Minor damage to trees such as bark lost from impact of mowing equipment shall be remedied by a qualified tree surgeon or arborist. If damage results in loss of a tree, the damaged tree shall be removed and replaced to comply with the specific instructions of City.

d. Minor damage to shrubbery may be corrected by appropriate pruning as required in Section II. Major damage shall be corrected by removal of the damaged shrub and replacement.

e. All damage resulting from chemical operation, such as spray-drift or lateral-leaching, shall be corrected in accordance with the aforementioned maintenance practices and the soil conditioned to ensure its ability to support plant life.

f. All damage caused to components of the sites such as pumps, pump houses, doors, drainage structures, walkways, fences, light fixtures etc. from accidents or cumulative effects of incidents caused by the carelessness of Service Provider's staff shall be immediately corrected at the Service Provider's expense.

2.7. Inquiries and Complaints. The Service Provider shall maintain a written log of all complaints, the date and time thereof and the action taken pursuant thereto or the reason for non-action. The log of complaints shall be open to the inspection of the City at all reasonable times.

All complaints shall be abated as soon as possible after notification; but in all cases within 24 hours, to the satisfaction of the City. If any complaint is not abated within 24 hours, the City shall be notified immediately of the reason for not abating the complaint followed by a written report to the City within five (5) days. If the complaints are not abated within the time specified or to the satisfaction of the City, the City may correct the specific complaint and the total cost incurred by the City will be deducted and forfeit from the payments owing to the Service Provider from the City.

2.8. Safety. Service Provider agrees to perform all work outlined in this Agreement in such a manner as to meet all accepted standards for safe practices. Service Provider shall safely maintain stored equipment, machines, and materials or other hazards consequential or related to the work; and agrees additionally to accept the sole responsibility for complying with all local, City, State or other legal requirements including but not limited to, full compliance with the terms of the applicable O.S.H.A. and CAL-O.S.H.A. Safety Orders at all times so as to protect all persons, including Service Provider's employees, agents of the City, vendors, members of the public or others from foreseeable injury, or damage to their property. Service Provider shall inspect for potential hazards at the various sites covered by this RFP and keep a log indicating date inspected and action taken.

It shall be the Service Provider's responsibility to inspect, and identify, any condition(s) that renders any portion of the area unsafe, as well as any unsafe practices occurring thereon. The City shall be notified immediately of any unsafe condition that requires major correction. Service Provider shall be responsible for making minor corrections including, but not limited to; filling holes in turf areas and paving, using barricades or traffic cones to

alert the public of the existence of hazards, replacing valve box covers, and securing the area so as to protect members of the public or others from injury. Service Provider shall obtain emergency medical care for any member of the public who is in need thereof, because of illness or injury occurring within the landscape easement area. Service Provider shall cooperate fully with City in the investigation of any accidental injury or death occurring on the premises, including a complete written report thereof to the City within five (5) days following the occurrence.

2.9. Hours and Days of Maintenance Services. The basic daily hours of maintenance service shall be from 7:00 a.m. to 5:00 p.m. A work week is typically described as Monday through Friday, but City may approve requests from Service Provider to work infrequent Saturdays due to wet weather or other anomalies. Requests must be submitted to City in writing 48 hours prior to the Saturday workday.

Service Provider shall provide adequate staffing to perform the required maintenance services during the prescribed hours five (5) days per week. Any changes in the days and hours of operation heretofore prescribed shall be subject to approval by the City.

Per State of California Labor Code, Service Provider is directed to the following prescribed requirement with respect to the hours of employment. Eight (8) hours of labor under this Agreement shall constitute a legal day's work and said Service Provider shall not require or permit any laborer, worker or mechanic, or any subcontractor employed by him to perform any of the work described herein to labor more than eight (8) hours during any one day or more than forty, (40) hours during any one calendar week, except as authorized by Labor Code Section 1815, under penalty of paying to the City the sum of Twenty-Five Dollars (\$25) for each laborer, worker or mechanic employed in the execution of said Agreement by him, or any subcontractor under him, upon any of the work included in said Agreement for each calendar day during which such laborer, worker, technician, specialist or mechanic is required or permitted to labor more than eight (8) hours in any one calendar day or forty (40) hours in any one calendar week, in violation of the provisions of Section 1811 to 1815, inclusive, of the Labor Code of the State of California.

2.10. Maintenance Schedules. Service Provider shall, within ten (10) days after the effective date of this Agreement, submit a work schedule to the City for review and approval. Said work schedule shall be set on an annual calendar identifying and delineating the time frames for the required functions by the day of the week, morning and afternoon. In addition, Service Provider shall notify the City, in writing, at least two (2) weeks prior to the scheduled date and time for the eradication process of rodents.

The Service Provider shall submit revised schedules when actual performance differs substantially from planned performance. Said revisions shall be submitted to the City for review, and if appropriate approval, within five (5) working days prior to scheduled time for the work.

The above provisions are not construed to eliminate the Service Provider's responsibility in complying with the requirements to notify the City for Specialty Type maintenance as set forth immediately hereafter.

Service Provider shall notify the City, in writing, at least two (2) weeks prior to the date and time of all "Specialty Type" maintenance operations. "Specialty Type" operations are defined as:

- a. Fertilization
- b. Turf renovation/reseeding
- c. Micro-Nutrients/soil amendments
- d. Spraying of trees, shrubs or turf

Exhibit 1

- e. Aesthetic tree pruning
- f. Other items as determined by the City

2.11. Service Provider's Staff. The Service Provider shall provide sufficient personnel to perform all work in accordance with the specifications set forth herein. Service Provider's employees, whether assigned to any one area or as part of a crew serving any number of areas, shall include at least one individual who speaks and comprehends the English language.

The City may at any time give Service Provider written notice to the effect that the conduct or action of a designated employee of Service Provider is, in the reasonable belief of the City, detrimental to the interest of the public within the landscape easement area. Service Provider shall meet with representatives of the City to consider the appropriate course of action with respect to such matters and Service Provider shall take reasonable measures to assure the City that the conduct and activities of Service Provider's employees will not be detrimental to the interest of the public within the landscape easement area.

The City requires the Service Provider to establish an identification system for personnel their which clearly indicates to the public the name of the individual employee responsible for the landscape and grounds maintenance services. The identification system shall be furnished at the Service Provider's expense and may include appropriate attire and/or name badges as specified by the City.

The Service Provider shall require each of his employees to adhere to basic public works standards of appropriate working attire. These are basically: uniforms, proper shoes and other gear required by State Safety Regulations, and proper wearing of the clothing. Shirts shall be worn at all times and buttoned. It is Service Providers sole responsibility to assure its employees are provided the proper personnel protective equipment (PPE) that each specific duty requires.

2.12. Signs/Improvements. Service Provider shall not post signs or advertising matter upon the premises or improvements unless they are proper men working signs, without the City's prior approval.

2.13. Utilities. The City shall pay for all utilities within the Maintenance Area with the exception of telephone. However, water usage shall not exceed amount required to comply with irrigation schedules established by the City. Service Provider shall pay for all excessive utility usage due to Service Provider's failure to monitor irrigation system malfunctions or unauthorized increases in the frequency of irrigation. The excess cost will be determined by comparing current usage with historical usage for the same time period. The excess cost factor to be deducted from payments to Service Provider by the City will be presented to the Service Provider by the City 15 days prior to actual deduction.

2.14. Non-Interference. Service Provider shall not interfere with the public use of the premises and shall conduct its operations as to offer the least possible obstruction and inconvenience to the public or disruption to the peace and quiet of the area within which the services are performed.

2.15. Use of Chemicals. All work involving the use of chemicals shall comply with all Federal, State and local laws and will be accomplished by a Qualified Applicator under the direction of a Licensed Pest Control Advisor. Service Provider, in complying with the California Food and Agricultural Code, shall provide a copy of a valid Pest Control Business License, a valid Pest Control Advisor's License and a Qualified Applicator's License prior to using any and all applicable chemicals within the area(s) to be maintained.

Service Provider, in addition to complying with the California Food and Agricultural Code, must be registered with the County of Madera Agricultural Commission. Service Provider shall also be certified in categories D and E of the

Exhibit 1

Pest Control Advisor's License and in category B of the Qualified Applicator's License. If Service Provider does not possess a valid Pest Control Advisor's License with appropriate categories, Service Provider, upon written consent of the City per Section 13 of the Agreement, may subcontract this service. If the chemical application is performed without the necessary approvals, including registration, licenses and permits, City may deduct pro rata from Service Provider's invoice applicable costs for chemical spraying.

The action above shall not be construed as a penalty but as an adjustment of payment to Service Provider due to the failure of the Service Provider to complete or comply with the provisions of this Agreement.

A listing of proposed chemicals to be used including commercial name, application rates and type of usage shall be submitted to the City for approval at the commencement of the Agreement. No chemical applications shall begin until written approval of use is obtained from the City. Chemicals shall only be applied by those persons possessing a valid California Certified Applicator's license. Application shall be in strict accordance with all governing regulations.

Records of all operations stating dates, times, methods of application, chemical formulations, applicators names and weather conditions shall be made and retained in an active file for a minimum of three (3) years. Service Provider shall provide a chemical use report that is site specific with the monthly billing. A copy of the Pest Control Advisor's recommendation for each application that is site specific shall be provided to the monitor and applicator prior to each application. This shall be in addition to the copy of the usage summary that is provided to the Madera County Agricultural Commissioner. All chemicals requiring a special permit for use must be registered with the County Agricultural Commissioner and a permit obtained with a copy to the City of Madera Department of Parks and Community Services prior to application. All regulations and safety precautions listed in the Pesticide Information and Safety Manual published by the University of California shall be adhered to.

2.16. Maintenance, Repairs and Replacements Due to Extraordinary Incidents. Service Provider shall be responsible for performing maintenance, repairs and replacement, when the need for such work arises out of Acts of God and third-party negligence in accordance with the provisions of this Section. The Service Provider shall repair or replace:

- a. Damaged, diseased (untreatable) or dead shrubs, ground cover and trees in accordance with Sections 2.18 (h) and 2.19 (e) and,
- b. Inoperable irrigation equipment described in Section 2.22 (a, b, c)

The Service Provider shall submit a written estimate of the cost for performing such work. The City may, upon review and approval of such estimate, authorize the Service Provider to perform said work by return of a signed copy of Service Providers estimate. After submittal of the bill, the Service Provider shall be reimbursed only for the agreed upon cost estimate. In the event that the Service Provider's written estimate is not approved, then the City reserves the right to contract with a third party to perform such work.

2.17. Turf Care. The Service Provider shall perform at his/her sole expense the following services:

Mowing: Turf shall be mowed with an adequately sharpened rotary or reel-type mower, equipped with rollers, to ensure a smooth surface appearance without scalping. All cool season grasses (Blue Grass and Fescues) to be cut at 2-1/2 inches during March through November and at 2 inches during December to February of each year. The mowing heights will be adjusted by the City during periods of renovation. All grass clippings will be collected and removed from the site on the same day the area is mowed. A mowing schedule will be established and maintained. This schedule will provide that all areas will be mowed not less than once a week during the warm season of March to November and once every two weeks during the cool season of December to February. This schedule will be submitted to the City for approval.

Exhibit 1

a. Power Edge: With each mowing, the edge of the grass along sidewalks, curbs, shrub and flower beds, and walls shall be trimmed to a neat and uniform line. Where trees and shrubs occur in turf areas, all grass shall be removed 6 inches from the trunks of trees and away from the drip line of shrubs by use of power scythe, approved chemicals, or small mowers as required. Trim around all sprinkler heads as necessary in order to provide maximum water coverage. Edging will be done concurrent with each mowing. The edge of the turf shall be trimmed around valve boxes, meter boxes, backflow devices or any structures located within the turf areas. All turf edges are to be maintained to prevent grass invasion into adjacent shrub, flower, and ground cover bed areas. All clippings shall be removed from the site the same day area is edged. After mowing and edging is completed all adjacent walkways shall be cleaned to remove accumulated debris and limit hazardous conditions.

b. Weed Control: Control turf weeds as needed in accordance with industry standard to maintain turf stands that are 90 % weed free. Hand removal of noxious weeds or grasses will be required as necessary as they occur.

c. Insect, Ants and Disease Control: Eliminate all insect, ants and disease affecting turf areas

d. Aerification: City may request aerification at several or all sites depending upon existing conditions. Expenses related to aerification processes may be billed as Additional Work as specified.

e. Thatch Removal: Verticut all cool season grasses once annually prior to the over-seeding operation. Equipment will consist of standard renovating or vertical mowing types. City is to be notified at least two (2) weeks prior to the exact date of renovation.

f. Irrigation: Irrigation, including hand watering and bleeding of valves during an emergency situation, as required to maintain adequate growth rate and appearance and in accordance with a schedule most conducive to plant growth. Service Provider shall be proficient with Toro Sentinel Field Controllers. Service Provider shall contact the manufacturer for service and training on an as-needed basis. Service Provider to provide City with a quarterly written irrigation report. City shall have the ability to change the irrigation schedule at any time. Adequate soil moisture will be determined by programming the automatic sprinkler controllers as follows:

1) Consideration must be given to the soil conditions, season temperatures, wind conditions, humidity, minimizing runoff and the relationship of conditions which affect day and night watering. This may include daytime watering during winter weather to prevent icy conditions and manual operation of the irrigation system during periods of windy or inclement weather. During freezing and/or windy conditions, automatic irrigation will be discontinued.

2) In areas where wind creates problems of spraying water onto private property or a road right-of-way the controllers shall be set to operate during the period of lowest wind velocity which would normally occur at night (between the hours of 7:00 p.m. and 6:00 a.m.).

3) The Service Provider shall be responsible for monitoring all systems within the jurisdiction of this specification and correct for: coverage, adjustment, clogging of lines, and removal of obstacles, including plant materials which obstruct the spray.

4) Check systems and adjust and/or repair any sprinkler heads causing excessive runoff, including slope areas, or which throw directly onto roadway paving or walks (where sprinkler heads can be adjusted) within the Zone.

5) All controllers shall be adjusted to consider the water requirements of each season, plant community, and adverse weather changes and local watering ordinances.

6) Irrigation system will be controlled by Service Provider in such a way as not to cause an excessively wet area which could interfere with the Service Provider's ability to mow all turf.

7) The Service Provider shall observe and note any deficiencies occurring from the original design and review these findings with the City, so necessary improvements can be considered.

8) Service Provider shall repair all leaking or defective valves immediately upon occurrence, or within twenty-four (24) hours following notification from the City of such a deficiency.

9) Service Provider shall file a monthly statement with the Department of Parks and

Community Services, certifying that all irrigation systems are functioning properly and provide an irrigation schedule on a quarterly basis.

10) The bleeding of valves and hand watering are to be used only in emergency situations.

g. Fertilization: Turf shall be fertilized twice (2 times) a year with Best – Triple Twelve 12-12-12 during the months of May and September. All fertilizer used shall be inorganic and granular. Rate for each application shall be one (1) pound of actual available nitrogen per one thousand (1,000) square feet of turf area. In addition to the balanced type commercial fertilization, the Service Provider shall fertilize all turf areas with Best – Turf Supreme 16-6-8 four times a year during March (after aeration), April, October and November of each calendar year at a rate of one (1) pound of actual available nitrogen per one thousand (1,000) square feet. All turf areas fertilized shall be thoroughly soaked immediately after fertilization. Soil tests shall be taken by Service Provider one (1) time per year during the month of March. Fertilizer materials and rates may be adjusted by City based on test results.

i. Turf Reseeding: Service Provider as needed, shall over-seed all turf area bare spots to reestablish turf to an acceptable quality. When Service Provider reseeds turf, he will aerify, renovate, or verticut, seed and mulch (spread evenly over the entire area to a uniform depth of ¼ inch) in this sequence. The City may require the use of sod when deemed necessary. Service Provider shall be entitled to additional compensation for the cost of the sod only provided loss of turf was not due to the negligence of the Service Provider. Over-seeding shall be sown at a rate of five (5) pounds per one thousand (1,000) square feet and reseeded of bare areas shall be sown at a rate of eight (8) pounds per one thousand (1,000) square feet. The following seed specifications shall be used for all over-seeding and reseeded and may be adjusted at the City’s discretion.

Three Way Tall Fescue LOL	Proportion by Weight Purity Germination
Durana Tall Fescue Grass	44.30% 85%
Helix Tall Fescue	32.50% 85%
Prospect Tall Fescue	21.00% 85%

2.18. Shrub, Ground Cover and Vine Care: The Service Provider shall perform at his sole expense the following services:

a. Pruning (with hand pruners/loppers/saws) as indicated by the City, prune shrubbery between the months of January and March to encourage healthy growth habits pertaining to each individual species of plant, and for an overall balanced shape and appearance. All shrubs shall be free of dead wood, weak, diseased, insect-infested, and damaged limbs shall at all times. In general, selective thinning cuts should be made; not “heading” or tipping” cuts. Some growth will need to be thinned or lifted slightly, one foot (1’) to two feet (2’), to allow all sprinklers to spray freely. Remove all clippings the same day shrubbery is pruned.

b. Trimming (with hedge shears or hand-pruners) restrict growth by trimming shrubbery and ground covers to area behind curbs and walkways, within planter beds and away from walls, fences and utilities as necessary, or upon written notice by the City. Keep ground cover trimmed two feet (2’) diameter from the base of shrubs. For all high-branches, open shrubbery and all trees, keep ground cover trimmed one foot (1’) away from outer perimeter of trunks. For all trees in turf areas, spray a two-foot (2’) radius clearing out from perimeter of trunk and mulch. Do not use string trimmers around trees and shrubs. Trim designated formal hedges and/or shrubs to heights indicated by the City. Trim clinging vines (e.g., Ivy, Ficus, Virginia Creeper) to stay on block wall surfaces - not on buildings (except as designated) nor entangled in groundcover, shrubs or trees.

c. Renovate ground covers (e.g. Rosemary, Acacia) according to prescribed practices in the industry as needed to maintain a healthy vigorous appearance and growth rate. All Rosemary ground cover to be renovated and lowered once per year during the months of February through March. Ground cover height shall be at the discretion of the City.

Exhibit 1

- d. Maintain shrub areas to be free of disease, insects and ants.
- e. Weed Control: All ground cover and shrub beds are to be kept weed free at all times.

Methods for control can incorporate one or all three of the following:

- 1) Hand removal
- 2) Cultivation
- 3) Chemical eradication (mainly within point irrigated areas). Use chemical eradication twice a year.

f. Fertilization: Mechanically broadcast or individually apply (point irrigation) fertilizer three (3) times per year during the months of March (Best – Triple Twelve 12-12-12), May (Best – Supreme 16-6-8), and September (Best – Supreme 16-6-8). Individually apply Best Triple Twelve 12-12-12 at the rate of 1 cup per plant, to all plants serviced by a point irrigation system. Service Provider will cultivate into soil. Soil tests shall be taken by Service Provider one (1) time per year during the month of March. One soils test with complete analysis and recommendation(s) shall be taken for every five acres of designated landscape areas. Test site(s) to be determined by the City. Fertilizer materials and rates may be adjusted by City based on test results. The Service Provider shall provide the City with a fertilization schedule, with two (2) weeks' notification prior to the proposed fertilization.

g. Irrigation: Irrigation will be programmed in conjunction with automatic controllers or manual control valves servicing turf or ground cover and shrub areas in accordance with the requirements of this specification.

h. Shrub and Ground Cover Replacement: All damaged, diseased (untreatable) or dead shrubs and ground covers will be replaced as needed with the same material of similar size that existed and as required by the City unless otherwise notified by the City in writing. Shrubs and ground covers damaged or lost due to Service Provider negligence shall be replaced at Service Provider's expense. Shrubs and ground covers permanently damaged or lost due to vandalism may be covered at City expense. Service Provider shall be responsible to get City approval in writing prior to removal and/or replacement. Substitutions for any plant materials must have prior approval in writing by the City. Original plans and specifications should be consulted to determine correct identification of species. All shrubs shall be guaranteed to live and remain in healthy condition for no less than six (6) months from the date of acceptance of the job by the City.

2.19. Tree Care. The Service Provider shall perform at his sole expense the following services:

a. Tree Maintenance

- 1) Maintain seven (7) foot clearance for branches overhanging walks and fourteen (14) foot clearance for branches overhanging beyond curb line into the paved section of streets where applicable.
- 2) Control insects and diseases as needed.
- 3) Stake and support all replacement trees and replace stakes which have been broken or damaged on existing trees as required. Tree stakes shall be pentachlorophenol treated lodge pole pine not less than eight (8) feet in length for five (5) gallon size trees and not less than ten (10) feet for fifteen (15) gallon trees sizes, (two (2) per tree). Guy wires where required and plant ties will be of pliable, zinc-coated ten (10) gauge wire (two (2) ties per tree). Hose for covering wire to be either new or used garden hose at least one-half (1/2) inch in diameter (hose ties should allow for minimum of three (3) additional inches of clearance beyond the diameter of the branch or trunk being secured).
- 4) Stakes will not be placed closer than eight (8) inches from trunk of the tree.
- 5) Stakes and ties will be placed so no chafing of bark occurs and shall be checked frequently and retied to prevent girdling.

b. New Tree Pruning. During the first three (3) years of a tree's life, head back lower branches and prune all trees, including those on the slopes, for correct branching structure. Thereafter trees shall

Exhibit 1

be maintained in accordance with section 2.19 (a) above.

c. Fertilization. Apply/install tree fertilizer tablets (Best – Best Tabs 20-10-5) within drip line of tree two times per year (during the months of May and October).

d. Irrigation. Irrigation will be programmed in conjunction with automatic controllers or manual control valves servicing turf or ground cover and shrub areas in accordance with the requirements of these Specifications.

e. Tree Replacement. All trees permanently damaged will be replaced as needed with the identical species of tree unless otherwise notified in writing by the City. The need for and the size of replacement will be determined by the City. Size of the replacement shall be a minimum size of a 15-gallon container. Substitutions will require prior written approval by the City. Original plans and specifications should be consulted to insure correct identification of species. Trees permanently damaged or lost due to vandalism may be replaced at City expense. Service Provider shall be responsible to get City approval in writing prior to removal and/or replacement of these trees.

2.20. Use of Chemicals (Pesticides) for Disease and Pest Control. The Service Provider shall perform at his/her sole expense the following services:

a. Chemical Application. All work involving the use of chemicals will be accomplished by a State of California licensed pest control operator.

b. Permits. All chemicals requiring a special permit for use must be registered by the Service Provider with the County Agricultural Commissioner's office and a permit obtained with a copy to the City of Madera Department of Parks and Community Services prior to use. A copy of all forms submitted to the County Agricultural Commissioner shall be given to the City on a timely basis.

c. Compliance with Regulations. All regulations and safety precautions listed in the "Pesticide Information and Safety Manual" published by the University of California will be adhered to.

d. Pest Control. Control of ground squirrels, gophers, and other burrowing rodents by trapping and/or eradication will be provided by City. The Service Provider is not responsible for this service; however, when Service Provider sees evidence of such activity, they are to notify the City immediately by providing written notice to the City's designated contact. Whenever holes are visible upon the surface, these holes shall be filled and securely tamped to avoid moisture runoff entering the holes. This procedure shall be followed in all areas especially within all slope areas.

2.21. General Cleanup. The Service Provider shall perform at his sole expense the following services:

a. Trash Removal

b. Policing of Areas: All areas under maintenance and other designated areas will have above identified trash removed in conjunction with the approved maintenance schedule for each maintenance area on a weekly basis, with the exception of the Downtown District, where all trash receptacles are to be emptied 3 TIMES A WEEK.

c. Concrete/Asphalt Median Strip Maintenance. Service Provider is responsible for weed and grass removal within concrete asphalt median strip areas.

d. Curb and Gutter Maintenance. Service Provider is responsible for removal of weeds and grass from curbs, gutters, sidewalks asphalt cracks and expansion joints located adjacent to designated maintenance areas at all times.

e. Removal of Leaves. Accumulations of leaves shall be removed from all areas not less than once per week.

2.22. Irrigation System Management. All irrigation systems within the landscaped areas designated in

this Specification will be repaired and maintained as required for operation, by the Service Provider at his sole expense in the following manner:

a. Scope of Responsibility. The Service Provider shall maintain or repair and keep operable all irrigation equipment downstream of the backflow device including but not limited to sprinkler heads, drip systems, remote control valves, quick couplers, and risers. Repairs to automatic controllers, booster pumps, and backflow prevention devices may be performed at City Expense. Service Provider shall be responsible to get City approval in writing prior to removal and/or replacement of these irrigation system components.

b. Replacement Requirements. Replacements will be of original materials or substitutes approved by the City in writing prior to any installation.

c. Extent of Responsibility. The Service Provider will be responsible for immediate maintenance (repair or replacement) of all irrigation system components including those damaged due to vandalism. Service Provider will be responsible at all times for hand watering and the bleeding of valves in emergency situations as required to sustain and prevent loss of turf, trees, plants, and ground covers when automatic systems are not functioning.

2.23. Maintenance and Repair of Drainage Systems and Miscellaneous Improvements.

a. Drainage Systems: The following services shall be provided by the Service Provider at his expense except as otherwise provided for:

1) All surface drains ("V" ditches); if any, shall be kept clear of debris and overgrown planting so that water will have an unimpeded passage to its outlet. Service Provider will repair or replace concrete portions as necessary. Service Provider may request additional compensation for this added work. This compensation will be negotiated per standards set forth in Section 2.5 Additional Work.

2) All sub-surface drains (except storm drains), if any, shall be periodically flushed with water to avoid build-up of silt and debris. All inlets to sub-surface drains shall be kept clear of leaves, paper and other debris to ensure unimpeded passage of water. Service Provider shall replace all broken or stolen sections of pipe, catch basin boxes and grates. Service Provider may request additional compensation for this added work. This compensation will be negotiated per standards set forth in Section 2.5 Additional Work.

b. Miscellaneous Improvements: It will be the responsibility of the Service Provider to repair or replace mowing strips within the Zone unless otherwise specified. Service Provider shall be entitled to additional compensation for this added work.

2.24. Maintenance Inspections. The Service Provider shall:

a. Weekly perform a maintenance inspection during daylight hours of all facilities within the Maintenance Area. Such inspection shall be both visual and operational. The visual inspection shall include observation of all turf, trees, shrubs, and appurtenances to the Maintenance Area to ensure compliance with the above maintenance standards and to ensure the Maintenance Area remains visually appealing. The operational inspection shall include operation of all irrigation and other mechanical systems to check for proper operational condition and reliability.

b. Monthly meet on site with an authorized representative of the City for a walk-through inspection. Said meeting shall be at the convenience of the City and may include residents of the community. The City shall notify the appropriate local representatives of the time and place of each walk-through inspection at least one (1) week prior to such inspection. In addition, interim inspections may be made by the City. The Service Provider will be provided with a written notice including specified time frames to correct any deficiencies identified in the performance of this Agreement. It should be noted that a leaking valve must be repaired within twenty-four (24) hours following verbal and/or written notification.

Exhibit 1

2.24. Natural Areas Maintenance. Natural areas are open space areas that have minimal usage due to the sloping character of the land and the rugged landscape materials that are native to the land. Service Provider will provide periodic maintenance consisting of debris and litter removal only as directed by the City.

2.25. Playgrounds. Playgrounds shall be inspected weekly. At the time of inspection, Service Provider shall inspect each component to verify safe, proper operation. Playground components shall at all times meet or exceed standards set forth in ASTM 1487 and ASTM 1292. Inspection reports shall be submitted to City representative monthly.

Any equipment which is considered unsafe at the time of the inspection must be repaired or marked and taken out of service immediately. City representative must be notified in writing when components or playgrounds are removed from service.

More serious faults shall be immediately reported to the City representative. Any repair work, or replacement found to be necessary which in the opinion of the Service Provider does not result from normal usage/wear and tear must be immediately reported.

Additional repairs, renewals or replacements of playground equipment or components which in the opinion of the Service Provider are not due to normal wear and tear will be subject to the terms expressed in Section 2.5 Additional Work.

Service Provider will perform the following tasks weekly:

- Inspect soft fall material for proper depth as required by ASTM 1292 standards; rake soft fall material into low spots to achieve smooth, level surface.
- Inspect and clean/repair signage.
- Inspect playground components for structural integrity and safety compliance per ASTM 1487 standards.
- Tighten, adjust and lubricate all fixtures and fasteners and take immediate remedial action to correct any minor faults.
- Inspect and repair amenities adjacent to playground such as benches, trash receptacles and drinking fountains.
- Empty trash receptacles.
- Remove all trash from site.
- Inspect lighting and repair if necessary.
- Remove graffiti on playground equipment and adjacent structures.

3. Service Provider's fees and compensation: amount, how and when payable.

3.1 Fees. For all the work and services, including supplies and equipment, pertaining to the Landscape Maintenance Agreement and supplies required to be furnished by the Service Provider to the City, City agrees to pay to Service Provider and Service Provider agrees to accept and receive as payment in full the following fees and compensation which shall be known as the "Fee" to be paid as hereinafter set forth.

Exhibit 1

a. Cost Schedule

Group #1 Downtown Maintenance

Map #	Designation	Location	Monthly	Annual
1	Downtown	Downtown District	455	5460
Group Total				5460

Group #2 Non-Median Maintenance

4	City Hall	205 West 4 th Street	560	6720
5	Corporation Yard	1030 S. Gateway Drive	390	4680
6	Frank Bergon Center	238 South D Street	430	5160
7	WAC & Youth Hut	113 South Q Street	340	4080
8	Kennedy Pond	Kennedy Pond	290	3480
9	Mex-Am Center	716 Columbia	290	3480
10	Cleveland Linear	South side of Cleveland from Granada west to Glade	1785	21420
11	Granada Linear	West side of Granada from Cleveland to Foxglove (excluding Veterans Hall property)	720	8640
11A	Police Department	330 South C Street	265	3180
Group Total				60,840

Group #3 Median Maintenance

12	Yosemite Ave Islands	Median island on Yosemite from Gateway west to Howard	415	4980
13	Gateway Dr	Islands & Park Strips – Cleveland to Fresno River	510	6120
14	Howard Road	Islands & Park Strips – Schnoor to west of Autumn	1035	12420
15	West Cleveland Islands	West from Schnoor to Granada	435	5220
16				
17	Hopy Island	Cypress and Yosemite	260	3120
18	Sunrise Island	Sunrise & Lake Street	240	2880
19	Barsotti Islands	Park Lane, Park Drive, Park South, North Park	865	10380
20	Mainberry Islands	Mainberry, Third, and Westgate	1500	18000
21	West Park	West Park	175	2100
22	Terrace Place	Terrace Place Island, North of Central	220	2640
23	4 th & Sunset	4 th & Sunset	195	2340
24	Renway Island	Renway Cul-de-sac	195	2340
25	Riverview Strips	Riverview East and West of Granada	415	4980
26	Gateway Tree Planters	East and West Side of Gateway Drive, Fresno River to Olive Avenue	290	3480
27	Roosevelt Planter Boxes	Roosevelt and 13 th	195	2340
28	Kennedy Wall	Kennedy, East of Kennedy Pond	325	3900
29	Olive Avenue Islands	Olive Ave, Yosemite to Hwy 145	300	3600
30	East Cleveland Islands	Cleveland Ave, Gateway Dr. to Tozer	600	7200
32	Ave 17/Airport Median	Ave 17 West of Airport Dr.	230	2760
33	Yosemite Tozer (Crossroads)	Tozier Ave. South of Yosemite	230	2760
34	Cleveland Center Median	Cleveland median islands from Glade Ave west to Westberry	590	7080

Exhibit 1

35	Industrial Schnoor	Industrial Avenue between Granada and Schnoor Avenue and Schnoor Avenue between Howard Road and Industrial	405	4860
36	Lake Street	Lake Street from Cleveland to Ellis	325	3900
37	Ave 13 Median Island-Parkwood	Ave 13 Median Island in front of Parkwood School	290	3480
38	Ave 13 Median Island-Valero	Ave 13 West of Hwy 145 in front of Valero Station	210	2520
39	Sunset Wall	Sunset East of Schnoor Avenue	220	2640
40	Madera South H.S. Medians	Avenue 13 (Pecan) between Stadium and Pine	265	3180
41	4 th Street Medians	4 th Street from Lake Street West to Sunset	280	3360
Group Total				134,580

b. Square Foot Rate for extra work \$.12

 Hourly Rate for extra work \$ \$40.00

4. Term of Agreement. This Agreement shall be effective on February 19, 2020, after approval by the City Council at a duly scheduled meeting thereof and shall continue in full force and effect through February 19, 2023, unless otherwise terminated earlier by one of the parties pursuant to Section 8 of this Agreement. This Agreement may be extended by mutual written consent annually thereafter, not to exceed two (2) additional years, by providing such notice to the parties as identified in Section 8 of this Agreement.

5. Hold Harmless and Insurance Requirements.

5.1 Independent Service Provider. In the furnishing of the services provided herein, the Service Provider is acting as an independent Service Provider and not as an employee of the City. Service Provider acknowledges and agrees that at all times, Service Provider or any agent or employee of Service Provider shall be deemed at all times to be an independent contractor and is wholly responsible for the manner in which it performs the services and work requested by City under this Agreement. Service Provider, its agents, and employees will not represent or hold themselves out to be employees of the City at any time. Service Provider or any agent or employee of Service Provider shall not have employee status with City, not be entitled to participate in any plans, arrangements, or distributions by City pertaining to or in connection with any retirement, health or other benefits that City may offer its employees. Service Provider or any agent or employee of Service Provider is liable for the acts and omissions of itself, its employees, and its agents. Service Provider shall be responsible for all obligations and payments, whether imposed by federal, state, or local laws, including, but not limited to, FICA, income tax withholdings, unemployment compensation, insurance, and other similar responsibilities related to Service Provider’s performing services and work, or any agent or employee of Service Provider providing same. Nothing in this Agreement shall be construed as creating an employment or agency relationship between City and Service Provider or any agent or employee of Service Provider. Any terms in this Agreement referring to direction from City shall be construed as providing for direction as to policy and the result of Service Provider’s work only, and not as to the means by which such a result is obtained. City does not retain the right to control the means or the method by which Service Provider performs work under this Agreement

5.2 Indemnification and Waivers. Service Provider 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 Service Provider’s performance of its obligations under this agreement or out of the operations conducted by Service Provider, except for such loss or damage arising from the sole active negligence or willful misconduct of the City. In the event the City indemnitees are made a party to any action,

Exhibit 1

lawsuit, or other adversarial proceeding arising from Service Provider's performance of this agreement, the Service Provider 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. Service Provider shall and does hereby waive any claim against the City of Madera, its officers, volunteers and employees, for any damage to equipment or other property connected with Service Provider's operations under this Agreement arising from any cause.

5.3 Insurance. During the term of this Agreement, Service Provider shall maintain, keep in force and pay all premiums required to maintain and keep in force insurance, the limits of which shall be as required by the City of Madera. A copy of the City's requirements for such insurance coverage is attached hereto as Attachment "B".

6. Attorney's 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 attorney's 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.

7. Governing Law. The laws of the State of California shall govern the rights and obligations of the parties under this 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.

8. Termination.

8.1 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, Service Provider 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.

8.2 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:

- a. A failure by Service Provider to comply with any material term of this Agreement;
- b. A substantially incorrect or incomplete report submitted by Service Provider to City.

In no event shall any payment by City or acceptance by Service Provider 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 Service Provider the repayment to City of any funds disbursed to Service Provider under this Agreement which, as determined by the appropriate court or arbitrator, were not expended in accordance with the terms of this Agreement.

All notices shall be mailed to the City:

City of Madera
Director of Parks & Community Services
701 E. 5th Street
Madera, CA 93638

Exhibit 1

To Service Provider: EMTS Inc.
2972 Larkin Ave.
Clovis, CA. 93612
(559) 292-7760

9. Compliance with Laws. In performance of this Agreement, Service Provider shall comply with all applicable local, state, and federal laws and regulations. In particular, Service Provider shall comply with laws listed below.

9.1 Laws Incorporated by Reference. The full text of the laws listed in this Section, including enforcement and penalty provisions, are incorporated by reference into this Agreement.

9.2 Conflict of Interest. By executing this Agreement, Service Provider certifies that it does not know of any fact which constitutes a violation of Title 9, Chapter 7 of the California Government Code (Section 87100 et seq.), or Title 1, Division 4, Chapter 1, Article 4 of the California Government Code (Section 1090 et seq.), and further agrees promptly to notify the City if it becomes aware of any such fact during the term of this Agreement.

9.3. Proprietary Information. In the performance of Services, Service Provider may have access to City's proprietary or confidential information, the disclosure of which to third parties may damage City. If City discloses proprietary or confidential information to Service Provider, such information must be held by Service Provider in confidence and used only in performing the Agreement. Service Provider shall exercise the same standard of care to protect such information as a reasonably prudent Service Provider would use to protect its own proprietary or confidential information.

9.4. Nondiscrimination Requirements. Service Provider shall comply with all state and federal laws in the administration of this Agreement.

9.5. Alcohol and Drug-Free Workplace. City reserves the right to deny access to, or require Service Provider to remove from, City facilities personnel of any Service Provider or subcontractor who City has reasonable grounds to believe has engaged in alcohol or drug abuse or illegal drug activity which in any way impairs City's ability to maintain safe work facilities or to protect the health and well-being of City employees and the general public. City shall have the right of final approval for the entry or re-entry of any such person previously denied access to, or removed from, City facilities. Illegal drug activity means possessing, furnishing, selling, offering, purchasing, using or being under the influence of illegal drugs or other controlled substances for which the individual lacks a valid prescription. Alcohol abuse means possessing, furnishing, selling, offering, or using alcoholic beverages, or being under the influence of alcohol. Drug abuse means being under the influence of prescription or over-the-counter drugs which the individual may have obtained legally but which impair the individual's ability to safely perform the job at hand or endangers others. Drug abuse also means the illegal or unauthorized use of, or intentional misuse of, prescription or over-the-counter drugs.

9.6. Public Records Act. Service Provider acknowledges that this Agreement and all records related to its formation, Service Provider's performance of services, and City's payment are subject to the California Public Records Act, (California Government Code §6250 et seq.). Such records are subject to public inspection and copying unless exempt from disclosure under federal, state, or local law.

10. Notices. All notices and communications from the Service Provider shall be to Director of Parks and Community Services. Verbal communications shall be confirmed in writing. All written notices shall be

Exhibit 1

provided and addressed as indicated above.

11. Assignment. Neither the City nor the Service Provider will assign its interest in this Agreement without the written consent of the other.

12. Entire Agreement. This contract sets forth the entire Agreement between the parties and supersedes all other oral or written provisions. Any changes to this Agreement requested by either City or Service Provider 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 a writing.

13. Venue. The formation, interpretation, and performance of this Agreement shall be governed by the laws of the State of California. Venue for all litigation relative to the formation, interpretation, and performance of this Agreement shall be in the County of Madera.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement at Madera, California, the day and year first above written.

CITY OF MADERA

BY: _____
Andrew Medellin, Mayor

EMTS Inc.

BY: _____
Derik Jakusz, Account Manager

ATTEST:

Alicia Gonzales, City Clerk

APPROVED AS TO FORM

Hilda Cantú Montoy, City Attorney`

Group #1 – Downtown Maintenance



Map #1 – Downtown

Group #2 – Non-Median Maintenance



Map #4 – City Hall
205 W. 4th Street



Map #5 – Corporation Yard
1030 S. Gateway Drive



Map # 6 – Frank Bergon Senior Center
238 S. D Street



Map #7 – Westside Activity Center & Rotary Youth Hut
1124 E. Yosemite Ave. & 113 S. Q Street



Map # 8 – Kennedy Pond



Map #9 – Mexican-American Activity Center
716 Columbia



Map #10 – Cleveland Linear
South side of Cleveland from Granada west to Glade



Map #11 – Granada Linear

West side of Granada from Cleveland to Foxglove (Excluding Veterans Hall)



Map #11A – Police Station
330 South C Street

Group #3 – Median Maintenance



Map #12 – Yosemite Avenue Islands
Median island on Yosemite from Gateway west to Howard



Map #13 – Gateway Drive
Islands & Park Strips – Cleveland to Fresno River



Map #14 – Howard Road
Islands & Park Strips – Schnoor to west of Autumn



Map #15 – West Cleveland Islands
West from Schnoor to Granada



Map # 17 – Hopy Island
Cypress and Yosemite



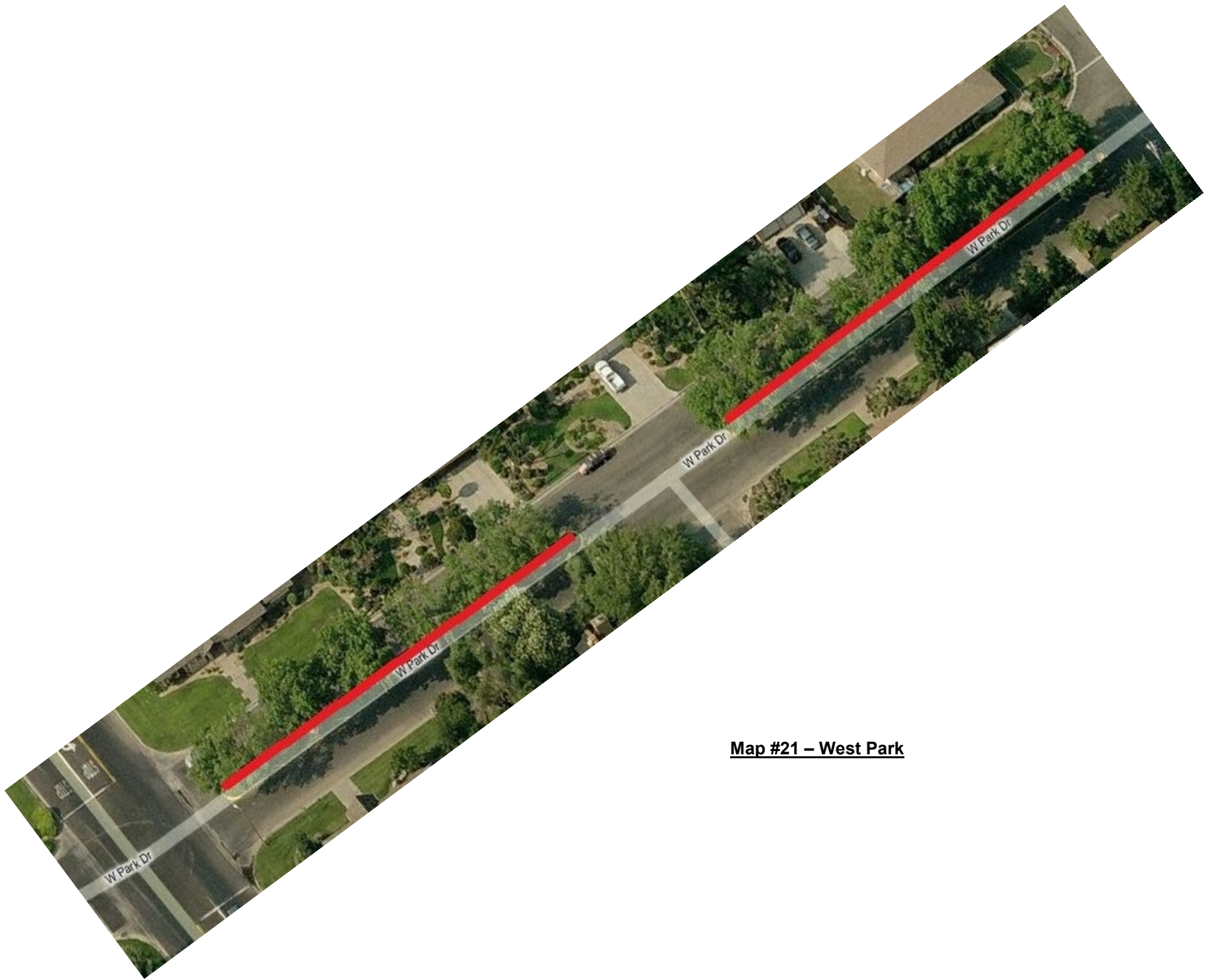
Map #18 – Sunrise Island
Sunrise & Lake Street



Map #19 – Barsotti Islands
Park Lane, Park Drive, Park South, North Park



Map #20 – Mainberry Islands
Mainberry, Third, and Westgate



Map #21 – West Park



Map #22 – Terrace Place
Terrace Place Island north of Central



Map#23 – 4th & Sunset



Map #24 – Renway Island
Renway Cul-de-sac



Map #25 – Riverview Strip
Riverview East and West of Granada



Map#26 – Gateway Tree Planter

East and West Side of Gateway Drive, Fresno River to Olive Avenue



Map #27 – Roosevelt Planter Boxes

Roosevelt and 13th



Map #28 – Kennedy Wall
Kennedy, East of Kennedy Pond

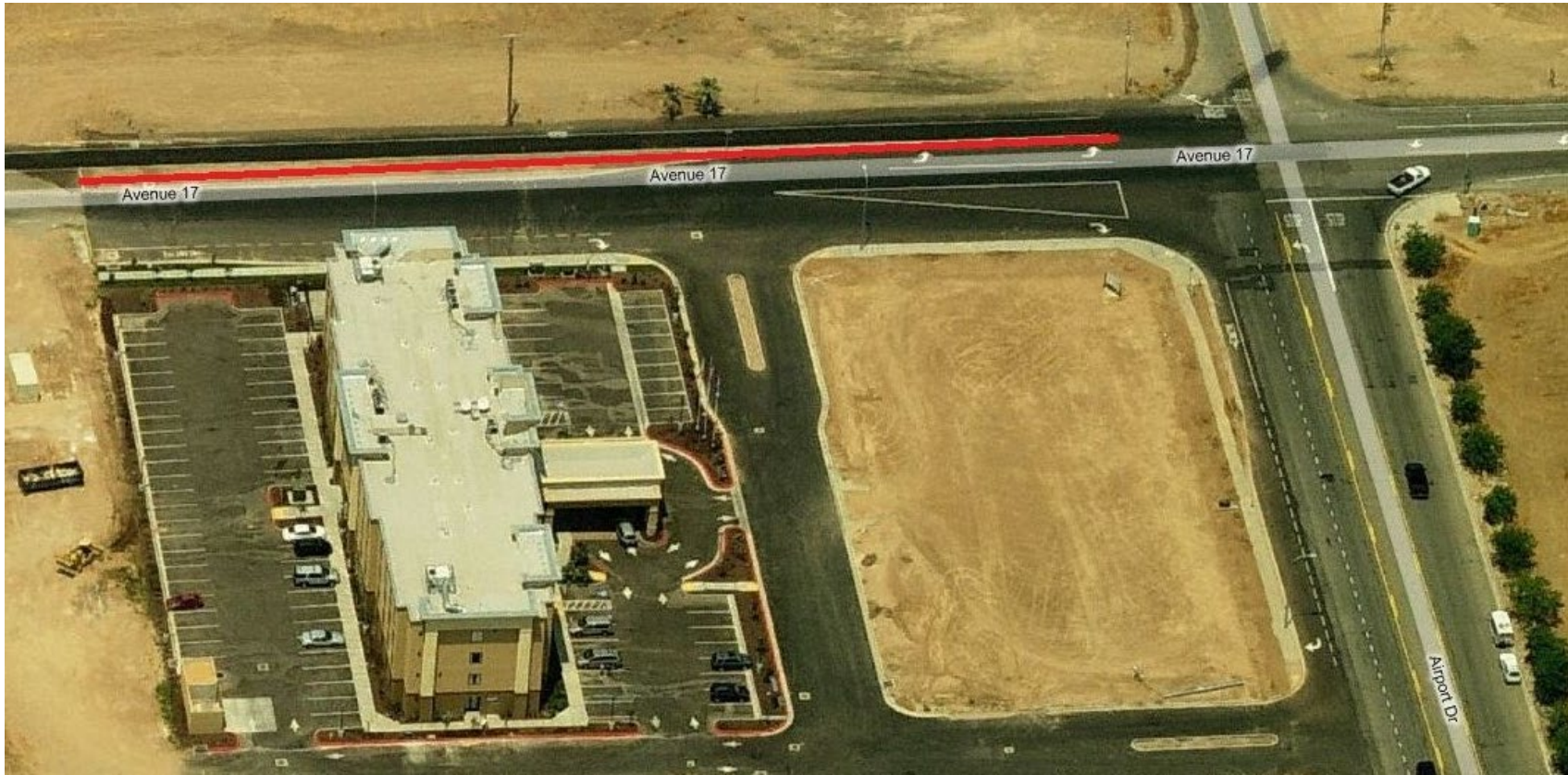


Map #29 – Olive Avenue Islands

Olive Ave, Yosemite to Hwy 145



Map #30 – East Cleveland Islands
Cleveland Ave, Gateway Drive to Tozer



Map #32 – Avenue 17 / Airport Median
Avenue 17 West of Airport Drive



Map #33 – Yosemite/Tozer (Crossroads)
Tozer Avenue South of Yosemite



Map #34 –Cleveland Center Median
Cleveland median islands from Granada Ave. west to Glade



Map #35 – Industrial / Schnoor

Industrial Avenue between Granada and Schnoor Avenue and
Schnoor Avenue between Howard Road and Industrial



Map #36 – Lake Street

Lake Street from Cleveland Avenue to Ellis Street



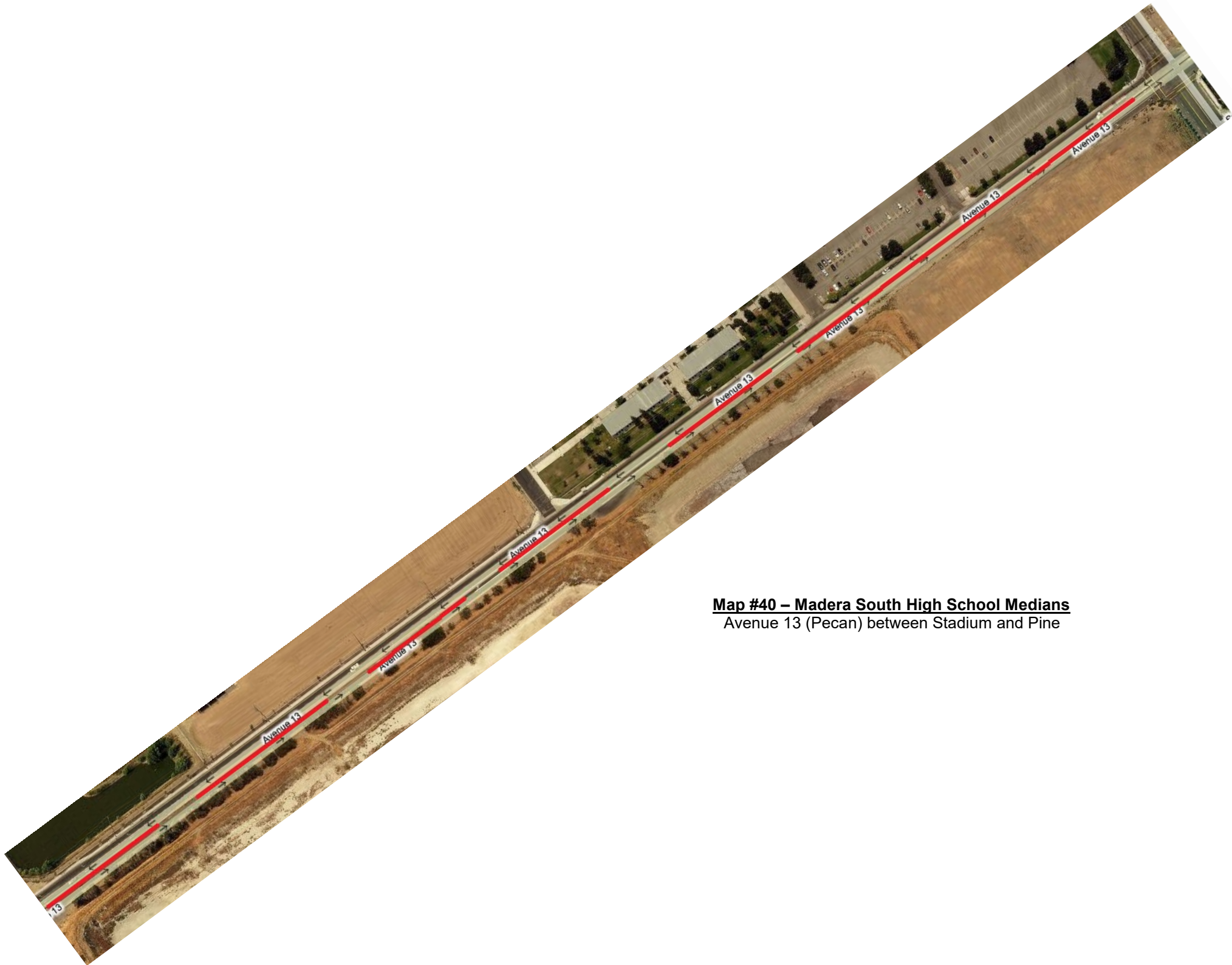
Map #37 – Avenue 13 Median Island – Parkwood
Avenue Median Island in front of Parkwood School



Map # 38 – Avenue 13 Median Island – Valero
Avenue 13 West of Hwy 145 in front of Valero Station



Map #39 – Sunset Wall
Sunset East of Schnoor Avenue



Map #40 – Madera South High School Medians
Avenue 13 (Pecan) between Stadium and Pine



Map #41 – 4th Street Medians
4th Street between Lake and Sunset

Attachment B

Insurance Requirements for Landscape Maintenance Service Provider

Without limiting Service Provider's indemnification of City, and prior to commencement of Work, Service Provider 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

Service Provider 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 to provide that the City and its officers, officials, employees and agents shall be additional insureds under such policies.
- **\$2,000,000 Automobile Liability** combined single limit per accident for bodily injury or property damage at least as broad as ISO Form CA 00 01 for all activities of Service Provider 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. Service Provider 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

Service Provider 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 Service Provider, his agents, representatives, employees, subcontractors or subconsultants as specified in this Agreement.

Proof of Insurance

Service Provider 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

Attachment B

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 Service Provider, or others providing insurance evidence in compliance with these specifications, to waive their right of recovery prior to a loss. Service Provider 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)

Service Provider acknowledges and agrees that any actual or alleged failure on the part of the Agency to inform Service Provider 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 Service Provider maintains higher limits than the minimums required above, the entity shall be entitled to coverage at the higher limits maintained by Service Provider.

Notice of Cancellation

Service Provider 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.

Attachment B

Timely Notice of Claims

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

Additional Insurance

Service Provider 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.