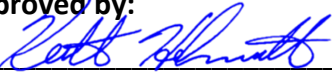


REPORT TO CITY COUNCIL

Approved by:



Keith Helmuth, City Engineer



Arnoldo Rodriguez, City Manager

Council Meeting of: August 5, 2020

Agenda Number:

SUBJECT:

Project Cooperation Agreement between the City of Madera (City) and Madera Irrigation District (MID) – Golf Course Basins (Agreement)

RECOMMENDATION:

Adopt the Resolution approving Agreement for use of the identified basins for recharge purposes.

SUMMARY:

The City and the MID have identified a project that, when complete, will serve to increase opportunities for recharge of the local aquifer within the limits of the City and the region in general. It is also anticipated that it will provide possible opportunities in which the Golf Course benefits through reduced need to utilize existing wells through the use of surface water. The proposed project seeks to provide physical pipe connections between MID facilities located adjacent to Road 23 and Avenue 17 and the Madera Municipal Golf Course (Golf Course) and an existing storm water basin (Basin) located on the southwest fringes of the Golf Course as well as one or more golf course water hazards. These connections will allow for the diversion of storm water or excess irrigation water in the adjacent MID canal that would normally pass through or around the City.

DISCUSSION:

In recent years, the City and the MID have discussed ways in which the City and MID can jointly participate in programs and activities that benefit the groundwater table. One of those ways includes sending additional surface water to existing storm drainage retention basins within the city that can accommodate additional water supplies that were not originally anticipated. This additional water, once percolated, assists in the City and region's efforts in balancing demands

on the water table with concerted efforts to recharge the water table. This proposal has already been successfully tested in the City/County at two different locations:

- Berry Basin: Located west of Westberry Boulevard and north of the Fresno River, excess irrigation or stormwater is diverted through gates into this basin
- A storm drainage basin north of Ellis Avenue and east of Country Club Drive where storm water is pumped from the MID canal west of Country Club Drive.

There are two locations associated with this project; a Basin that receives runoff from the airport while the other is a water hazard. The locations are shown in Attachment 1. It is possible that other water hazards may also be appropriate for the proposed deposition of water and may be considered later as part of this agreement. Both locations are subject to Federal Aviation Administration (FAA) oversight.

The Basin is in proximity to the current east-west runway; Runway 8-26. A request to close this runway in conformance with the 2015 Madera Countywide Airport Land Use Compatibility Plan is in process with the FAA. Without approval by FAA to close the runway, use of the Basin for recharge would almost certainly be restricted to its current storm drainage retention associated with surface runoff from the airport. This restriction is based upon the concern that a constant presence of water might result in regular use by birds which in turn might result in an increased possibility of bird strikes on planes. With the anticipated closure of the runway, staff is cautiously optimistic that the FAA will allow for this expanded use. At present, a dialogue has been initiated with the FAA that includes use of this Basin. While FAA seems to agree that the Basin can potentially be used for this purpose, they have expressed at least two qualifying comments:

- The Basin should be at least 5,000 feet away from the nearest aircraft operations. This does not strictly refer to fixed wing aircraft. It includes piston powered aircraft. Based on this, any future proposal to use this runway surface for other types of aircraft operations, might result in the need to terminate this Agreement or certain areas to which it refers.
- If MID is using any portion of the airport property for non-airport purposes, then MID should compensate the airport for such use. The Agreement provides 50% of the recharge benefit to the City. The FAA will need to confirm if this meets with their interpretation of compensation.

Use of Golf Course water hazards for the proposed use does not represent a departure from the intended and acknowledged use as a water hazard.

Staff's recommendation is to approve the Agreement now to reduce the time between execution of the Agreement and possible use of the Basin for recharge this water delivery season. If the Agreement is already approved at the time the FAA grants authority to use the Basin for the use described herein, MID can immediately install the necessary infrastructure required to convey water to the Basin. Approval of the Agreement will also allow MID to immediately install an additional turnout to provide water to the golf course water hazard(s) that would not be subject to FAA approval.

There is no cost to the City for implementation of this project. MID will construct all physical improvements at their cost. Additionally, the City and MID will each share 50% of the groundwater recharge benefits.

FISCAL IMPACT:

There is no adverse fiscal impact to the City's General Fund or other Funds.

CONSISTENCY WITH THE VISION MADERA 2025 PLAN:

Approval of this Agreement supports:

- *Strategy 101.6* - Ensure infrastructure can sustain population growth in the development of the General Plan.

ALTERNATIVES:

Not approve Agreement – This would result in no benefit being realized by the City of Madera, Madera Irrigation District or Golf Course.

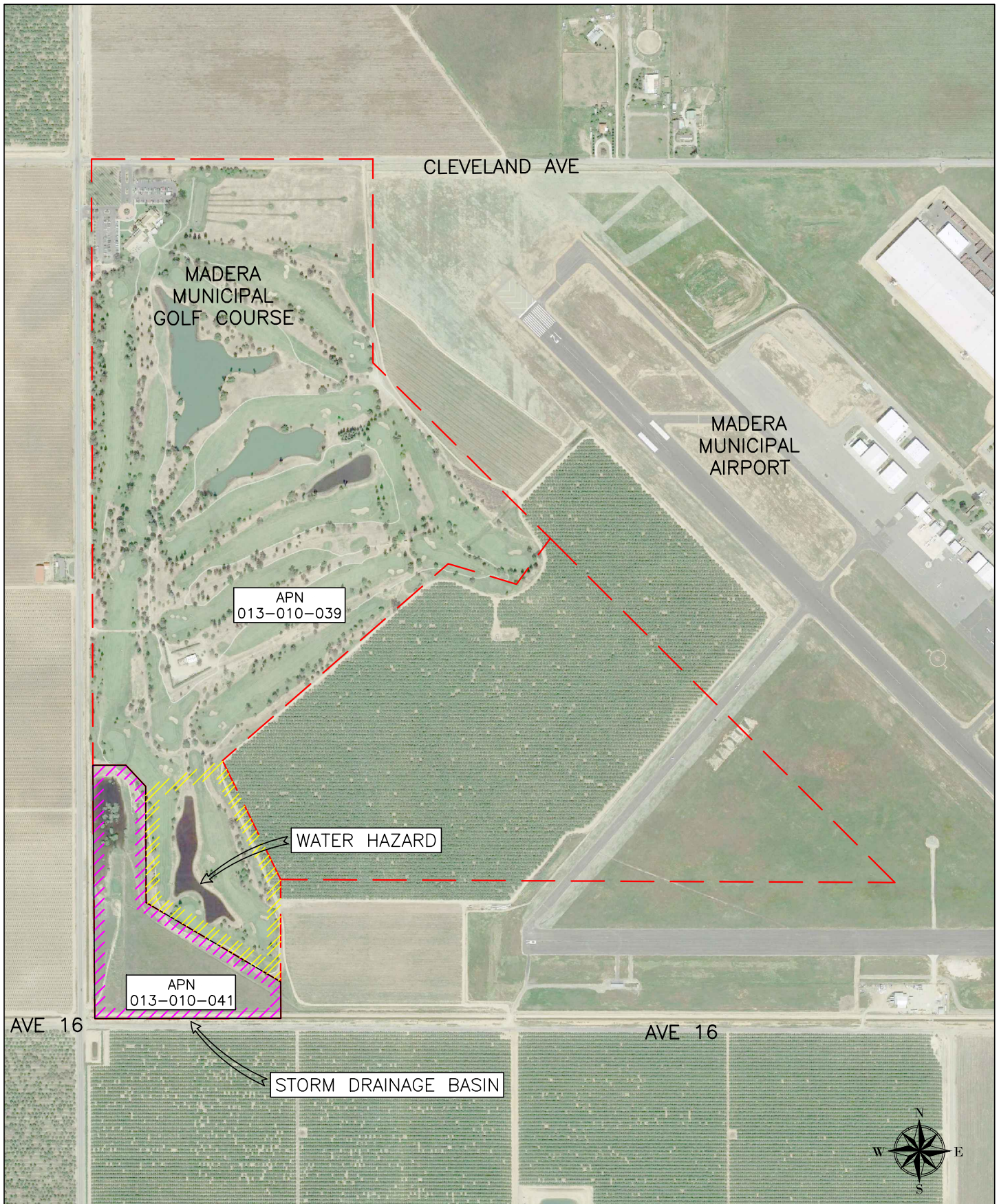
ATTACHMENTS:

1. Location Map
2. Resolution
 - a. Project Cooperation Agreement

ATTACHMENT 1

Location Map

LOCATION MAP



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

MADERA MUNICIPAL
GOLF COURSE

DR BY: EP
CH BY: _____
DATE: 3/31/20
SCALE: NTS
SHT 1 OF 1

ATTACHMENT 2

Resolution

RESOLUTION NO. 20-_____

**A RESOLUTION OF THE COUNCIL OF THE CITY OF MADERA,
CALIFORNIA, APPROVING PROJECT COOPERATION AGREEMENT
BETWEEN THE CITY OF MADERA AND MADERA IRRIGATION
DISTRICT – GOLF COURSE BASINS**

WHEREAS, the City of Madera (CITY) and Madera Irrigation District (MID) recognize the importance and value in increasing opportunities to promote and enhance groundwater recharge in the Madera Subbasin; and

WHEREAS, the City and MID agree that use of an existing storm drainage basin (Basin) and water hazard(s) on Road 23 and Avenue 16 referred to as the Golf Course Basins and portions of the Madera Municipal Golf Course pond infrastructure have the potential to assist in recharge of groundwater in the Madera Subbasin; and

WHEREAS, the MID agrees to design and construct necessary improvements with no funding requirement from the City; and

WHEREAS, the City and MID shall equally benefit in any groundwater recharge associated with surface water directed to the Golf Course Basins or other areas located within the Madera Municipal Golf Course.

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

1. The above recitals are true and correct.
2. The Project Cooperation Agreement Between the City of Madera and Madera Irrigation District – Golf Course Basins (Agreement), a copy of which is attached hereto as Exhibit 1 and referred to for particulars, is approved.
3. City staff will not grant permission to MID for use of the Golf Course Basin until FAA approval is granted.
4. The Mayor is authorized to execute the Agreement in substantially the form approved by Council.
5. This resolution is effective immediately upon adoption.

* * * * *

**PROJECT COOPERATION AGREEMENT
BETWEEN THE CITY OF MADERA AND
MADERA IRRIGATION DISTRICT
GOLF COURSE BASINS**

This Project Cooperation Agreement (the “*Agreement*”) is dated as of July ____, 2020, (the “*Effective Date*”), by and between Madera Irrigation District (the “*District*”) and the City of Madera (the “*City*”). The District and the City are collectively referred to herein as the “*Parties*.”

RECITALS

WHEREAS, the City owns and operates a basin located on Parcel 013-010-041 and owns a separate basin located on Parcel 013-010-039 that is currently operated by the Madera Municipal Golf Course. Both basins are capable of recharging water (collectively, the “*City Facilities*”); and

WHEREAS, under appropriate circumstances, the Parties believe that, through greater cooperation between the Parties, City Facilities may be used more efficiently, and may provide increased benefits for both the District and City, including the promotion and enhancement of groundwater recharge in the Madera Subbasin; and

WHEREAS, the City presently lacks a means of conveying surface water from the District’s existing facilities (the “*District Facilities*”) to the City Facilities to provide such potential benefits; and

WHEREAS, to convey surface water from the District Facilities to the City Facilities, the Parties contemplate jointly undertaking the installation of the needed infrastructure to convey surface water from the open canal to the basins; and

WHEREAS, the City agrees to be solely responsible for the coordination of operations and recharge activities with the operator of the Madera Municipal Golf Course or any other operator or lessee on Parcels 013-010-041 and 013-010-039; and

WHEREAS, the Parties seek to allocate the groundwater recharge benefits to the Parties associated with the use of the District Facilities and the City Facilities, as provided herein.

NOW, THEREFORE, in consideration of the above recitals and the mutual covenants and agreements contained herein, and for other good and valuable consideration the receipt and sufficiency of which is hereby acknowledged, the Parties hereby covenant and agree as follows:

AGREEMENT

1. **Term.** The term of this Agreement will commence upon the Effective Date, and will continue for a period of ten (10) years, unless terminated earlier under Paragraph 11 of this Agreement.

2. ***Design and Installation of Infrastructure.*** The District, by and through its employees or contractors, shall design, and construct the necessary infrastructure to convey water from the open canal(s) to the basins, infrastructure downstream of the meter box shall be referred to in this agreement as the “*Pipe*”. The Pipe shall be constructed in a workmanlike manner, and with reasonable diligence and skill, and the District shall install the Pipe between the District facilities and the City basins. Following its installation, the Pipe shall be City property downstream of the meter box.

3. ***Operation of Pipe and City Facilities.*** Following the initial installation of the Pipe by the District as provided in Paragraph 2 hereunder, the City shall be solely and exclusively responsible for the operation and maintenance of the Pipe and the City Facilities, including but not limited to the costs of labor, equipment rental, and permitting not associated with initial construction, subject to the terms and conditions provided herein.

A. The City shall operate the Pipe and the City Facilities in a manner consistent with all applicable local, state and federal laws and regulations.

B. The City shall notify the District in writing prior to making any alterations, additions, or improvements to the Pipe or basins.

4. ***Acceptance of Surface Water by the City.*** In the event the District has excess surface water supplies that are capable of being diverted to recharge in the City Facilities, the District will make these supplies available at its sole discretion and at no cost to the City. The City shall accept the delivery of such water contingent upon City’s determination that such water can be accepted without creating basin capacity concerns, and convey such water through the Pipe into the City Facilities, in an amount equal to or less than the capacity of the Pipe and/or the City Facilities.

5. ***Allocation of Groundwater Benefit.*** The Parties shall share equally (50% and 50%) in the groundwater recharge benefit for any water delivered to the City Facilities by either Party. The groundwater recharge benefit will be determined based on volumetric meter readings. The volume will be measured in acre feet, to the nearest tenth of an acre foot, using a meter owned by the District. The District will submit annual readings and volumetric calculations to the City or when requested by the City.

6. ***Inclusion of Additional Facilities By Mutual Agreement.*** The Parties may, by mutual written agreement, include any additional storage facilities operated by the City as “City Facilities” under this Agreement.

7. ***Responsibility of Both Parties With Respect to their Own Facilities.*** Nothing herein shall be construed as affecting the Parties’ existing obligations to maintain all of their existing facilities at their own sole cost and expense. The Parties will each be responsible for all costs, including labor, equipment rental, and permitting, required to maintain and operate any facilities each Party owns, and one Party shall not look to the other Party for any such costs.

8. Insurance. The Parties shall each include the other Party as an additional insured on their respective liability insurance coverage, which coverage shall be in a liability amount of at least One Million Dollars (\$1,000,000.00) combined single limit, or the amount generally carried by the Parties, whichever shall be higher. The Parties shall be named by the other Party as an additional insured by endorsement of the liability policies required by this Paragraph and such endorsement shall name the entity, its officers, officials, employees, and agents. The endorsement shall require the insurer to provide the additional insured with not less than thirty (30) days prior written notice before any cancellation of the coverage required by this Paragraph. The payment of any such deductible or self-insured retention of liability amounts shall be the sole responsibility of the insured Party. The Parties shall provide the other Party with a certificate of insurance reflecting the insurance coverage required by this Paragraph as soon as practicable after the Effective Date. Such certificates shall also be provided upon renewal of said policies and changes in carriers. If the District utilizes the services of outside design professionals, contractors or any other service providers in the course of designing or constructing the Pipe, the District will obtain appropriate general liability and automobile liability coverage naming both the District and City as additional insured as well as proof of professional liability and workers' compensation coverage with waiver of subrogation in favor of the District and City.

9. Indemnification.

A. The City shall at all times indemnify and save harmless the District against and pay in full all losses, damages, or expenses the District may sustain, incur or become liable for, resulting in any manner from the City's maintenance and operation of the City Facilities, including, but not limited to, any such losses, damages or expenses arising out of (a) loss of or damage to property, (b) injury to or death of persons, (c) mechanics' or other liens of any character, (d) taxes or assessments of any kind, and (e) failure to comply with any legal requirements. It is the intention of the Parties that the District's right to indemnity hereunder shall be valid and enforceable against the City regardless of negligence (whether active or passive) on the part of the District, and its officers, agents and employees, unless such injury is a result of the sole negligence of the District.

B. The District shall at all times indemnify and save harmless the City against and pay in full all losses, damages, or expenses the City may sustain, incur or become liable for, resulting in any manner from the District's work under paragraph 2 herein and also due to the District's maintenance and operation of the District Facilities, including, but not limited to, any such losses, damages or expenses arising out of (a) loss of or damage to property, (b) injury to or death of persons, (c) mechanics' or other liens of any character, (d) taxes or assessments of any kind, and (e) failure to comply with any legal requirements. It is the intention of the Parties that the City's right to indemnity hereunder shall be valid and enforceable against the District regardless of negligence (whether active or passive) on the part of the City, and its officers, agents and employees, unless such injury is a result of the sole negligence of the City.

10. Defense.

A. Upon written Notice from the District, the City agrees to assume the defense of any lawsuit, administrative action or other proceeding brought against the District by any public body, individual, partnership, corporation, or other legal entity, relating to any matter related to the City's operation of the City Facilities. The City shall pay all the costs incident to such defense, including, but not limited to, attorneys' fees, investigators' fees, litigation expenses, settlement payments, and amounts paid in satisfaction of judgments. Any and all lawsuits or administrative actions brought or threatened on any theory of relief available at law, in equity or under the rules of any administrative agency shall be covered by this section, including, but not limited to, the theories of intentional misconduct, negligence, breach of statute or ordinance, or upon any theory created by statute or ordinance, state or federal.

B. Upon written Notice from the City, the District agrees to assume the defense of any lawsuit, administrative action or other proceeding brought against the City by any public body, individual, partnership, corporation, or other legal entity, relating to any matter related to the District's operation of the District Facilities or resulting from the District's work under Paragraph 2 herein. The District shall pay all the costs incident to such defense, including, but not limited to, attorneys' fees, investigators' fees, litigation expenses, settlement payments, and amounts paid in satisfaction of judgments. Any and all lawsuits or administrative actions brought or threatened on any theory of relief available at law, in equity or under the rules of any administrative agency shall be covered by this section, including, but not limited to, the theories of intentional misconduct, negligence, breach of statute or ordinance, or upon any theory created by statute or ordinance, state or federal.

11. Termination. This Agreement may be terminated at any time prior to its expiration by providing written Notice to the other Party pursuant to Paragraph 15 below. The Agreement will automatically terminate, without further action of either Party, on the ninetieth (90th) day following the date upon which such Notice is deemed effective under Paragraph 15 below (the "*Date of Termination*"). All groundwater recharged under Paragraph 5 up to and including the Date of Termination will be recorded and allocated pursuant to Paragraph 5 above. The groundwater recharge benefit for any water recorded and allocated under this Agreement shall continue past the Date of Termination.

12. Entire Agreement. This Agreement contains the entire agreement between the Parties relating to the rights herein granted and the obligations hereunder assumed. Any oral representations or modifications concerning this Agreement shall be of no force and effect. This Agreement may be modified or amended only in writing, signed by both parties. The terms of this Agreement are contractual and are the result of negotiation among the Parties. Each Party hereto has cooperated in the drafting and preparation of this Agreement.

13. Amendments. This Agreement cannot be amended, modified, or supplemented in any respect except by written agreement entered into by the Parties hereto.

14. **Severability.** In the event any term or provision of this Agreement shall be held to be unenforceable for any reason whatsoever by any court of competent jurisdiction, such holding shall not invalidate or render unenforceable any other term or provision hereof.

15. **Notice.** Whether expressly so stated or not, all notices, demands, requests and other communications required or permitted by or provided for in this Agreement (“*Notice*”) shall be given in writing to the Parties at their respective addresses set forth below, or at such other address as a Party shall designate for itself in writing in accordance with this Section:

TO THE DISTRICT:

Madera Irrigation District
12152 Road 28^{1/4}
Madera, CA 93637
Attn: General Manager

TO THE CITY:

City of Madera
205 W. 4th Street
Madera, CA 93637
Attn: City Engineer

Notice under this Paragraph may be transmitted (i) by personal delivery, (ii) by delivery by messenger, express or air courier or similar courier, and (iii) by delivery by United States first class certified or registered mail, postage prepaid. Except as otherwise provided in this Agreement, delivery or service of any Notice shall be deemed effective only upon receipt, and receipt shall be deemed to have occurred when the Notice was delivered to the specified address without regard to whether or not a representative of the addressee was present to receive the Notice; provided, any Notice delivered after 5:00 P.M. local time of place of receipt, or on a day other than a Business Day, shall be deemed received on the next succeeding Business Day.

16. **Liens.** A Party shall not permit to be placed against any property or facility of the other Party, or any part thereof, any design professionals’, mechanics’, materialmen’s, contractors’ or subcontractors’ liens. The Parties each agree to hold the other Party harmless for any loss or expense, including reasonable attorneys’ fees and costs, arising from any such liens which might be filed against the property or facility that is not owned or operated by that Party.

17. **Execution of Additional Documents.** In addition to, and without replacing any other terms or provisions of this Agreement, each party further assures and represents to each other party that it will execute such other documents and take such other actions as may be reasonably necessary to further the purpose of this Agreement.

18. **No Third-Party Beneficiary Intended.** This Agreement is made solely for the benefit of the Parties to this Agreement and their respective permitted successors and assigns, and no other person or entity shall have or acquire any right by virtue of this Agreement.

19. **No Assignment.** Neither Party may assign this Agreement, or any of their respective rights or obligations hereunder, to any other person.

20. **Interpretation.** Headings in this Agreement are used for convenience only and shall have no force or effect regarding its interpretation or construction. The Parties have each participated in the drafting of this Agreement, and none of the Parties hereto shall be deemed to be the author of this Agreement, and any rule of construction of contracts (including, without limitation, California Civil Code Section 1654) that ambiguities are to be construed against the drafting party, shall not be employed in the interpretation of this Agreement.

21. **Warranty of Authority.** Each Party represents and warrants to the other that it has the right, power, and legal capacity and authority to enter into and execute this Agreement, and that the person or persons executing this Agreement on its behalf are authorized to do so and that no approval or consent of any person or entity other than those persons executing this Agreement on its behalf are necessary in connection with each Parties' obligations hereunder.

22. **Exhibits.** Each of the exhibits attached hereto is expressly made a part hereof by reference as though fully set forth in this Agreement.

23. **Counterparts.** This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, and will become effective and binding upon the Parties at such time as all of the Parties have signed a counterpart of this Agreement. All counterparts so executed shall constitute an Agreement binding on all of the Parties notwithstanding that all of the Parties are not signatories to the same counterpart. Each of the Parties agree that a fully executed copy of this Agreement may be enforced as though it were an original.

24. **Recitals.** The "Recitals" stated above are hereby incorporated into this Agreement.

* * * * *

IN WITNESS WHEREOF, the foregoing Agreement is executed on the date and year first above-written.

CITY OF MADERA

Andrew J. Medellin, Mayor

ATTEST:

MADERA IRRIGATION DISTRICT

City Clerk

By: _____



THOMAS GRECH

Title: GENERAL MANAGER

Approved as to Legal Form:

By: _____

City Attorney

ACCOUNT NUMBER(S)

