
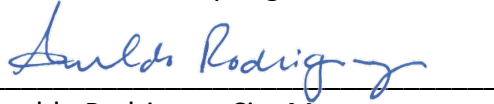




## REPORT TO CITY COUNCIL

Approved By:

  
\_\_\_\_\_  
Keith Helmuth, City Engineer

  
\_\_\_\_\_  
Arnaldo Rodriguez, City Manager

**Council Meeting of:** September 2, 2020

**Agenda Number:** D-2

### **SUBJECT:**

Project Cooperation Agreement (Agreement) between the City of Madera (City) and Madera Irrigation District (MID) – Airport Basin

### **RECOMMENDATION:**

Adopt a Resolution approving Agreement between the City and MID for the Airport Basin

### **SUMMARY:**

This item was continued from the August 5, 2020 Council Meeting. This report includes clarifications verbally addressed at that meeting as well as additional information and items derived since the last Council Meeting that were also discussed at a Council Workshop on August 19, 2020.

Madera Irrigation District (MID) has requested that a new agreement for the Airport Basin utilized by the City of Madera (City) be prepared and executed that replaces the existing Supplemental Agreement to the Conjunctive Use Cooperation Agreement between the City and MID (Supplemental Agreement) dated February 5, 2003.

### **DISCUSSION:**

The purpose of the Supplemental Agreement and the original from which agreements such as the Supplemental Agreement were envisioned included but was not limited to:

- Provide a more efficient and effective way of completing future projects
- Enhance the use of local surface and groundwater supplies
- The “then” water system master plan recommended the City have a dialogue with MID with the goal of developing a comprehensive groundwater management plan.

The Supplemental Agreement has generally met its intent during the time it was active. However, in the spirit of cooperation, MID and the City have discussed clarifying existing language, while also extending the term limits of the agreement.

More specifically, those items include:

- The Agreement should be based on updated contract language that has been used on a number of other recent agreements between the City and MID and MID and the County of Madera
- Under the proposed Agreement, excavated dirt shall be stockpiled for later use by MID. Until several years ago, the City required that developers excavate dirt from the subject basin thus making room for additional stormwater storage; however, this practice was ceased.
- Under the proposed Agreement, the City could continue to excavate dirt for City capital projects.

While the above-referenced reasons have necessitated the need for the new Agreement, the Agreement also contains several other updates that vary in their impact; most being of minor importance.

Table 1 summarizes the differences relative to termination between the Agreement and the Supplemental Agreement.

<b>Table 1: Term Comparisons<sup>1</sup></b>		
	<i>(Existing) Supplemental Agreement</i>	<i>Proposed Agreement</i>
Initial Term	25 years Terminating on Feb. 5, 2028	8 years Terminating on April 25, 2028 (Corresponds to USBR License Expiration)
Term with Anticipated Renewal:	Extend on terms and conditions as may be mutually agreeable. <i>(Assumes USBR License is Renewed)</i>	25 years Terminating on April 28, 2053 <i>(Assumes USBR License is Renewed)</i>
Early Termination	2 years with Written Notice  5 years after construction (5 year since initial construction has passed)	2 Years with Written Notice
Termination if performance results in non-compliance or violation of law or regulation	Immediate (but proviso allows time to relocate improvements subject to good faith efforts)	Automatic on 30th Day following notice; No proviso

<sup>1</sup> USBR: United States Bureau of Reclamation

In addition to the items above, a question was raised at the Council Workshop pertaining to the ownership of the subject basin. The recitals and the Cooperation Agreement state that the United States Bureau of Reclamation (USBR) owns the basin. MID has advised it owns the basin. While MID has purchased the basin from USBR, title still lies with USBR.

The Agreement adheres to the same understanding that the City would have had when the Supplemental Agreement was first executed as to termination. The potential existed then as now that a termination notice could be received by the City. It is the time frame under which an immediate termination is received that has been compressed in which the City would need to redirect flood water to a new basin; being reduced from an indeterminate time frame based on the City's good faith efforts to relocate to a fixed two years. The ability to vacate is predicated on:

- The City's ability to fund the purchase of a new basin and construct new conveyance pipe that would redirect storm runoff to a new basin.
- The ability to purchase nearby land that minimizes the expense of relocating to a new basin

It is important to note, MID staff has previously been clear that it has no interest in terminating the agreement and that they value the relationship they have with the City as expressed in the August 5 Council Report. This is evident through a review of recent collaborative efforts that include efforts such as:

- Groundwater Sustainability Plan (GSP) – Submitted to State on January 31, 2020
- Berry Basin
- Golf Course Basin, approved at the Aug. 5, 2020 Council meeting
- This Airport Basin Agreement

The City has, however, received a letter with notice to terminate the current agreement (Attachment 2). The letter states that as "good faith effort" it is postponing effective date of the notice to September 16, 2020 "allowing the City of Madera time to reconsider its position related to this agreement."

City staff recommends entering into this Agreement given its benefit to the City, including but not limited to:

- Use of the basin by the City comes at a *nominal* cost to the City considering that MID purchased the property
- The City is not in a position to acquire and develop a basin in the immediate future
- The community benefits from coordination by two public agencies
- There is an increase in the amount of groundwater recharge in the area which the City ultimately pumps for potable water

**FISCAL IMPACT:**

There is no adverse fiscal impact to the City's General Fund or other Funds by virtue of entering into agreement.

Should the agreement be terminated for any reason, the potential cost to the Storm Drainage Impact Fee (DIF) fund, and the General Fund would vary. At present, termination of the agreement would result in the need to utilize primarily DIF storm drainage funds. If a termination occurred further into the future after development has occurred on parcels that would rely on this basin, the following might be expected:

- Cost of a replacement basin will have increased.
- Land for use as a basin may be more difficult to acquire as logical choices may be reduced due to ongoing development.
- If DIF fees have not been collected specifically for a replacement basin through inclusion in the DIF program, a portion of the cost may need to be assigned to existing users. If this occurs, the City would need grants, General Fund or some other source of funding in addition to DIF 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:**

1. Not approve agreement – This would result in termination notice found in Attachment 2 going into effect.

**ATTACHMENTS:**

1. Location Map
2. MID Letter
3. Resolution
  - a. Project Cooperation Agreement

**ATTACHMENT 1**

Location Map

# EXHIBIT A

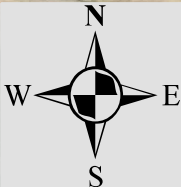


Exhibit Only, Not to Scale

**ATTACHMENT 2**

MID Letter

Phone (559) 673-3514

[www.madera-id.org](http://www.madera-id.org)

**General Manager**

Thomas Greci

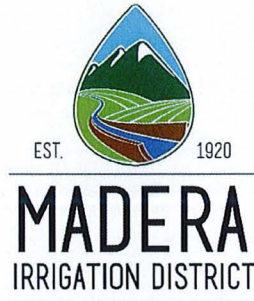
**Assistant**

**General Manager**

Dina Cadenazzi Nolan

**Legal Counsel**

John P. Kinsey



12152 Road 28 1/4  
Madera, CA 93637

**Board of Directors**

**Division 1**

David Loquaci

**Division 2**

Rick Cosyns

**Division 3**

Brian Davis

**Division 4**

James Erickson

**Division 5**

Carl Janzen

August 11, 2020

**Via U.S. Mail and Email**

City of Madera  
Attention: Keith Helmuth, City Engineer  
205 W. Fourth Street  
Madera, CA 93637

Dear Mr. Helmuth,

It is with great displeasure and sadness for our community, that Madera Irrigation District (MID or District) is hereby providing a two (2) year notice to the City of Madera to terminate the Supplemental Agreement No. 1 to the Conjunctive Use Cooperation Agreement between the City of Madera and Madera Irrigation District dated February 5, 2003 ("Notice"). MID has truly valued its relationship with the City of Madera and the on-going partnership for the benefit of the entire community. MID has strived to foster a cooperative relationship between the agencies so Madera, as a whole, can continue to prosper.

Unfortunately, at the City of Madera's City Council Meeting on August 5, 2020, the spirit of cooperation seemed to be quashed, for reasons unknown to MID. MID and the City of Madera, for many years, have been discussing entering into a new agreement related to Parcel 013-050-001, commonly referred to as the "Airport Basin". Much of this desire has stemmed from the City of Madera itself and its want for a longer-term agreement related to the Airport Basin. Through the new agreement presented to City Council on August 5, 2020, this was attained with a new potential expiration date of 2053. This also provided an opportunity to update many sections of the agreement with clarifying language, a direct benefit to both agencies as staff and legal time discussing vague provisions could be reduced if not eliminated, saving time and expense to both the City and MID.

MID worked cooperatively with the City of Madera on the development of this agreement into its final form. The basics of this agreement are for MID to provide the City of Madera a 12.2 acre property for the City's use **at no cost to the City**. An equivalent project to meet the City's needs would result, from MID's understanding, of the expenditure of likely **millions and millions of dollars** from the City's



General Fund<sup>1</sup>. However, for inexplicable reasons certain City officials took an adversarial position related to this agreement and MID, as an agency, when presented at the August 5, 2020 City Council Meeting.

MID has a great need for recharge facilities, particularly with the advent of the Sustainable Groundwater Management Act (SGMA) in 2014 and the requirement that Groundwater Sustainability Agencies (GSAs) achieve sustainable groundwater balances. For many years, MID has been pursuing the acquisition of additional parcels, at significant expense, for this very purpose. A 12.2 acre recharge facility would be a much needed, substantial addition to MID's groundwater recharge program.

Given the tone and tenor of the City Council Meeting on August 5, 2020 and the fact that the City of Madera did not approve the Project Cooperation Agreement presented, MID is concerned that the City of Madera is no longer interested in a cooperative partnership related to this free, 12.2 acre facility. As such, MID is **more than happy** to have the use of this facility revert back to the District. This will satisfy an existing need of the District immediately. Given these unfortunate circumstances, MID has decided to enact the two (2) year notice of termination.

As a final attempt and good-faith effort for the residents and tax-payers of Madera, MID's Board has decided to postponed the effective date of the Notice until September 16, 2020, allowing the City of Madera time to reconsider its position related to this agreement. It is with great hope that the City of Madera and, in particular, certain City Council Members take the time to truly understand the benefits this agreement provides to their constituents and reconsider their previous position related to both this agreement and the relationship between MID and the City.

Sincerely,



Thomas Greci, PE  
General Manager

cc: City Council, City of Madera  
Arnoldo Rodriguez, City Manager, City of Madera

---

<sup>1</sup> MID understands that over the course of the existing agreement, 17 years, that the City of Madera has not been collecting sufficient funds to meet potential obligations related to storm water. MID highly recommends that regardless of the outcome of this current situation, that the City of Madera begin collecting appropriate funding to meet its obligations immediately.

**ATTACHMENT 3**

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 – AIRPORT BASIN**

**WHEREAS**, the City of Madera (City) and Madera Irrigation District (MID) have determined that a new Project Cooperation Agreement (Agreement) between the City of Madera (City) and Madera Irrigation District (MID) – Airport Basin is required to address areas in which the existing Conjunctive Use Cooperation Agreement (Conjunctive Agreement) Between the City and MID and its Supplemental Agreement do not clearly define the expectations of both parties to the agreement; and

**WHEREAS**, the City and MID acknowledge the existing Conjunctive Agreement does adhere to current contractual requirements set forth in contemporary agreements wherein the Bureau of Reclamation holds title to land associated with an agreement; and

**WHEREAS**, the City and MID agree that the Agreement provides benefits to both parties that may eventually result in expanded cooperation and future projects at the basin associated with this agreement.

**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 – Airport Basin, a copy of which is attached hereto as Exhibit 1 and referred to for particulars, is approved.
3. The Mayor is authorized to execute the Amendment as approved.
4. This resolution is effective immediately upon adoption.

\* \* \* \* \*

**PROJECT COOPERATION AGREEMENT  
BETWEEN THE CITY OF MADERA AND THE MADERA IRRIGATION  
DISTRICT  
AIRPORT BASIN**

This Project Cooperation Agreement (the “*Agreement*”) is dated as of \_\_\_\_, 2020, (the “*Effective Date*”) by and between the 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 United States Bureau of Reclamation (USBR) owns Parcel 013-050-001 on which the Parties operate and maintain separate basins (each basin referred to as either “*City Use Area*” or “*District Use Area*”) all of which are capable of recharging water (collectively, the “*District Facilities*”); and

**WHEREAS**, the Parties entered in a Conjunctive Use Cooperation Agreement on June 21, 2000 (the “*Conjunctive Use Agreement*”), to develop a groundwater recharge program to address the water supply needs of both parties now and in the future as well as current and future storm drainage needs of the City; and

**WHEREAS**, the Parties entered into Supplemental Agreement No. 1 on February 5, 2003 (the “*Supplemental Agreement*”) to allow City use of 12.2 acres of land located in the City of Madera at the northwest corner of Condor Drive and Avenue 16 as a stormwater retention/recharge basin; and

**WHEREAS**, the USBR issued a License for the Erection, Maintenance and Operation of Structures agreement dated April 25, 2003 to the City of Madera with a term of twenty-five (25) years.

**WHEREAS**, the Parties desire to terminate the Conjunctive Use Agreement and the Supplemental Agreement and enter into a new agreement that incorporates contemporary obligations and objectives; and

**WHEREAS**, under appropriate circumstances, the Parties believe that, through greater cooperation between the Parties, District 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**, as part of the City’s update to the Storm Drainage System Master Plan approved on November 19, 2014, the City currently directs storm water runoff to a 12.2 acre portion of land within the District Facilities; and

## AGREEMENT

1. **Term.** The term of this Agreement will commence upon the Effective Date, and will terminate on April 25, 2028 (the “*Termination Date*”) unless terminated earlier under Paragraph 8 of this Agreement. This Agreement can be extended by written documentation, prior to the Termination Date, at each Party’s sole and absolute discretion, for up to an additional twenty-five (25) years beyond the Termination Date if a new license is obtained by the City from the USBR with an expiration date beyond April 25, 2028. Upon termination of the Agreement, all facilities installed under the Agreement shall revert to the District.

2. **Operation of City Use Area.** The City shall be solely and exclusively be responsible for the operation and maintenance of the City Use Area delineated on attached Exhibit A including pipe, outfall structure or other appurtenant improvements associated with the operation of the basin located on the City Use Area, including but not limited to the costs of labor, equipment rental, and permitting subject to the terms and conditions provided herein. The City Use Area is delineated on the Airport Basin Site Map which is attached as Exhibit “A” and incorporated by reference. This Agreement supersedes the Conjunctive Use Agreement and the Supplemental Agreement which are deemed terminated upon the effective date of this Agreement.

### A. Operations:

- a. The City shall operate the City Use Area, connecting pipe and other infrastructure in a manner consistent with all applicable local, state and federal laws and regulations.
- b. Each party shall comply with all applicable laws, rules and regulations now existing or that may be enacted or become applicable concerning the performance of this Agreement and the movement, storage, discharge or recharge of waters as contemplated herein. If any party has information or knowledge tending to indicate that the waters to be managed are dangerous or exceed applicable maximum contaminant levels, or that any acts contemplated herein are or would result in, a violation of applicable law, rule or regulation, that party shall promptly notify the other party of such information.
- c. The City will exercise due diligence in operating its storm drain collection system, including prohibiting the discharge of hazardous or other unacceptable material into the storm drain system. Accidental or unlawful hazardous or unacceptable discharges into the City’s system may not be preventable at all times. In any event, such discharges will be confined to the City Use Areas. No discharges into the District’s system will be made by the City without the District approval.

- d. The City shall only discharge stormwater into City Use Area. The City Use Area is identified in Exhibit A attached hereto. In the event of an emergency, with District approval, City may discharge excess quantities of stormwater to adjacent District Facilities, but not to exceed amounts or criteria determined by District.
- e. With City approval, District may discharge water into City Use Area for emergency purposes or to conduct groundwater recharge. Discharges into the City's Use Area shall not exceed amounts or criteria determined by City, subject to Paragraph 3 below. The District will exercise due diligence in its conveyance of water into the City Use Area including prohibiting the discharge of hazardous or other unacceptable material into the City Use Area.

**B. Access:**

- a. Access to the City Use Area shall be restricted to City employees, equipment and contractors (including engineering consultants) authorized by City. USBR and District personnel shall have access at all times to the City Use Area.
- b. Access to District Use Area by the City or its authorized contractor(s) shall be by District written permission only.
- c. All access gates and the basin interconnecting valve shall be interlocked with City and District locks to allow either agency to operate them, except that the interconnecting, valved pipeline shall only be operated by specifically authorized personnel of the City and the District. The interconnecting, valved pipeline shall only be operated with the full knowledge and consent of the Parties. Each Party shall install, maintain and operate appropriate and effective safety and security features to prevent unauthorized parties from entering their respective use areas or interfering with the activities contemplated by Agreement.

**C. Costs:** City shall be responsible for all costs of maintaining City Use Area including, but not limited to:

- a. Keep its use area reasonably free of trash and debris, including weed control and abatement.
- b. Maintain side slopes of cut faces and berms by repairing any significant erosion which may threaten the structural integrity of the slope within City Use Area.
- c. Maintain fences and gates for that portion of the site as agreed to between the agencies. Maintain all City-owned facilities located within either City or District use areas. Maintenance of the

valved pipeline connection between the District's and City's use areas shall be on a 50%-50% shared basis.

- d. Provide rodent control within the City Use Area to prevent burrowing animals from causing leakage through berms or erosion problems.
- e. Provide maintenance measures to the City Use Area as may be required by any applicable National Pollution Discharge Elimination System (NPDES) permit(s).
- f. When permission is granted by District for use of its area by City, repair any damage to the District Area caused by the City or its contractors or the agents or employees of either of them. District shall likewise repair any damage to City Use Area when granted use by City.

**D.** The City shall notify the District in writing prior to making any alterations, additions, or improvements to the City Use Area, including the excavation of soil.

**E.** Excavation of soil for any use other than those explicitly necessary for City owned infrastructure projects shall be stockpiled for District use.

**3. *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 Use Area, 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 District or City pipe into the City Use Area, in an amount equal to or less than the capacity of the City Use Area.

**4. *Allocation of Groundwater Benefit.*** The District shall retain 100% of the groundwater recharge benefit for any water delivered to the City Use Area unless City purchases water from District in which case City shall retain 100% of the benefit for such delivery. Any groundwater recharge benefit will be determined based on volumetric meter readings subject to installation of such meter. 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, but only when the City purchases water for delivery.

**5. *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.

## **6. *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 Use Area, 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.

## **7. *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 Use Area. 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.

8. **Termination.** This Agreement may be terminated at any time prior to its expiration by providing written Notice to the other Party pursuant to Paragraph 12 below ("*Termination Notice*"). The Agreement will automatically terminate, without further action of either Party, two (2) years from the day following the date upon which such Termination Notice is deemed effective under Paragraph 12 below. If there is a determination that further performance would result in non-compliance with, or a violation of, applicable law or regulation, the Agreement will automatically terminate, without further action of either Party, on the thirtieth (30th) day following the date upon which such Notice is deemed effective under Paragraph 12 below. All groundwater recharged under Paragraph 4 up to and including the date of termination will be recorded and allocated pursuant to Paragraph 4 above. The groundwater recharge benefit for any water recorded and allocated under this Agreement shall continue past the date of termination.
9. **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.
10. **Amendments.** This Agreement cannot be amended, modified, or supplemented in any respect except by written agreement entered into by the Parties hereto.

- 11. 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.
- 12. 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 Paragraph:

**TO THE DISTRICT:**

Madera Irrigation District  
12152 Road 28<sup>1/4</sup>  
Madera, CA 93637  
Attn: General Manager

**TO THE CITY:**

City of Madera  
205 W. 4<sup>th</sup> 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.

- 13. 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.
- 14. 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.
- 15. 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.

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

**17. 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.

**18. 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.

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

**20. 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.

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

///

///

///

\* \* \* \* \*

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

**ATTEST:**

\_\_\_\_\_  
Alicia Gonzales, City Clerk

**Approved as to Form:**

By: \_\_\_\_\_  
Hilda Cantu Montoy  
City Attorney

**ACCOUNT NUMBERS(S)**

\_\_\_\_\_

\_\_\_\_\_

**CITY OF MADERA:**

By: \_\_\_\_\_  
Andrew J. Medellin, Mayor

**MADERA IRRIGATION DISTRICT:**

By: \_\_\_\_\_

Title: \_\_\_\_\_