



REPORT TO CITY COUNCIL

Approved by:

Wendy Silva
Wendy Silva, Director of Human Resources

Arnoldo Rodriguez
Arnoldo Rodriguez, City Manager

Council Meeting of: February 3, 2021

Agenda Number: D-1

SUBJECT:

Agreements with Alliant Insurances Services, Inc., to serve as the City of Madera's consultant and broker of record for employee health and welfare benefits at a cost of \$45,000 per year

RECOMMENDATION:

Adopt a Resolution approving:

1. A Consulting Services Agreement with Alliant Insurance Services, Inc.; and
2. A Business Associate Agreement between the City of Madera and Alliant Insurance Services, Inc.

SUMMARY:

The City of Madera (City) published a Request for Proposals (RFP) for employee health and welfare benefits consulting services and broker of record. The City received six proposals. A committee consisting of City staff and bargaining unit representatives reviewed the proposals and selected the top three proposals for virtual presentations. After these presentations, the committee unanimously recommended Alliant Insurance Service, Inc., (Alliant) as the consultant of choice to provide these services.

The recommended action would approve an agreement with Alliant to provide these services for a period of three years, with the option to extend by mutual consent for up to two additional years. The annual fee for services will be \$45,000.

DISCUSSION:

The City of Madera utilizes the services of a consultant/broker of record for providing health, dental, vision, life, and long-term disability insurance for its employees. The broker additionally assists the City with its optional benefits such as voluntary life insurance, accident and disability insurance, and the Section 125 flexible spending accounts. The City currently has an agreement with DerManouel Insurance Group to act as broker of record. That agreement is due for renewal.

Staff published an RFP to provide these services. The Finance Department advertised the RFP issuance in compliance with the City’s purchasing policy, including on the City website and published in the newspaper. Staff also sent notifications to firms who have requested to be notified of published RFPs for these services, as well as to local firms who provide employee benefits as part of their insurance firm offerings. Table 1 shows the firms who submitted proposals in alphabetical order, along with their proposed cost to provide the services.

Table 1: Health Consultant/Broker Proposals Received	
<i>Firm</i>	<i>Annual Proposed Rate for Services</i>
Alliant Insurance Services, Inc.	\$45,000
Burnham Benefits Insurance Services	\$78,000
De La Torre & Associates Insurance Services, Inc.	\$85,000
DerManouel Insurance Group	\$50,000
Gallagher Benefit Services, Inc.	\$48,000
McGriff Insurance Services, Inc.	\$99,500

As the services provided by the consultant/broker have a direct impact on all City employees, staff invited all four bargaining units to participate in evaluating the proposals and selecting the preferred provider. Three of the bargaining units participated in the process: Madera Police Officers’ Association, Mid Management Employee Group, and Law Enforcement Mid Management Group. In addition, staff from City Administration and Human Resources participated.

After review of the written proposals submitted, the committee identified their top three preferred providers and invited these firms to meet virtually with the committee to introduce their firm and provide further information on the offered services. Following these meetings, the committee ranked the top three firms, and unanimously agreed the final ranking to be as follows:

Table 2: Final Ranking of Top 3 Health Consultant/Broker Proposals	
<i>Rank</i>	<i>Firm</i>
1	Alliant Insurance Services, Inc.
2	Gallagher Benefit Services, Inc.
3	DerManouel Insurance Group

As shown in Table 2, Alliant was unanimously ranked by the committee as the consultant of choice. The committee found the depth of services offered extremely favorable, complemented by the fact Alliant provided the lowest cost proposal.

Based on the committee’s recommendation, staff has prepared an agreement with Alliant for consideration of approval by the Council. If approved, Alliant will assume the role as the City’s consultant/broker of record effective February 4, 2021, and Alliant will work with the City for the health and welfare insurance renewal to be effective July 1, 2021.

In addition to the Consulting Services Agreement, the contemplated resolution also would approve a Business Associate Agreement. The Business Associate Agreement relates to compliance with the Health Insurance Portability and Accountability Act of 1996 (HIPAA) and Health Information Technology Economic and Clinical Health Act (HITECH), which amended HIPAA in 2009. HIPAA-HITECH included many changes to HIPAA that are not applicable to the City, but did include a requirement for Business Associate Agreements that does apply to the City. In short, prior to HIPAA-HITECH, Business Associates (in this case our broker of record) had no obligation to report breaches in confidential information to the City, yet the City was technically liable for any breaches to this information. HIPAA-HITECH has mandated that Business Associates comply with certain reporting requirements for breaches to confidential information. The reporting obligations are defined in the Business Associate Agreement.

FINANCIAL IMPACT:

The annual fee for services will be \$45,000, net of commission. The City moved to a flat fee model for this type of service many years ago to better control costs. If not a flat fee arrangement, the consultant receives a commission added to employee insurance premiums, with the commission percentage being set by the carrier and the City having no control over that amount. The flat fee arrangement is a method of cost containment. The fee is considered a component of the health benefits premiums the City pays. The annual flat fee is divided by the number of employees who participate in the medical plan and included in annual premium calculations.

The annual fee in the existing agreement with DerManouel is \$29,400, last adjusted in 2016. This represents an annual increase of \$15,600 for services. As this agreement would be effected mid-fiscal year, the increase for the fiscal year will be approximately \$6,500.

Staff recommends that for the balance of fiscal year 2020/21, the City pay the increase of \$6,500 from contracted services in the Insurance Reserve Fund as opposed to adjusting monthly insurance premiums mid-plan year. Sufficient funds are available in the Insurance Reserve Fund adopted budget to cover \$6,500 difference in cost.

CONSISTENCY WITH THE VISION MADERA 2025 PLAN:

The requested action is not addressed in the vision or action plans; the requested action is also not in conflict with any of the actions or goals contained in that plan.

ALTERNATIVES:

Council may direct staff to re-publish the RFP.

ATTACHMENTS:

1. Resolution
 - a. Exhibit 1: Health and Welfare Insurance Broker/Consulting Services Agreement
 - b. Exhibit 2: Business Associate Agreement

Resolution No. _____

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MADERA
APPROVING AN AGREEMENT FOR HEALTH AND WELFARE INSURANCE
BROKER/CONSULTING SERVICES AND A BUSINESS ASSOCIATE
AGREEMENT WITH ALLIANT INSURANCE SERVICES, INC.**

WHEREAS, the City of Madera (City) has a need for health and welfare insurance broker/consulting services to assist the City in providing its employees comprehensive health and welfare insurance benefits in an efficient and economical manner; and

WHEREAS, the City published a Request for Proposals (RFP) for the contemplated services and received six (6) proposals; and

WHEREAS, the proposals received in response to the RFP were reviewed by a committee of City staff and bargaining unit representatives, and the final outcome of that review was a unanimous recommendation to retain Alliant Insurance Services, Inc. (Alliant), to provide health and welfare insurance broker/consulting services to the City; and

WHEREAS, Alliant is a firm having the necessary experience and qualifications to provide the requested services to the City.

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

1. The above recitals are true and correct.
2. The Health and Welfare Insurance Broker/Consulting Services Agreement between the City of Madera and Alliant Insurance Services, Inc., a copy of which is attached hereto as Exhibit 1, is approved.
3. The Business Associate Agreement between the City of Madera and Alliance Insurance Services, Inc., a copy of which is attached hereto as Exhibit 2, is approved.
4. This resolution is effective immediately upon adoption.

* * * * *

CITY OF MADERA

HEALTH AND WELFARE INSURANCE BROKER/CONSULTING SERVICES AGREEMENT

THIS AGREEMENT made and entered into the 3rd day of February 2021, by and between the CITY OF MADERA, a municipal corporation of the State of California, hereinafter called "City" AND ALLIANT INSURANCE SERVICES, INC, hereinafter called "Consultant".

RECITALS

- A. The City desires to make available to its employees comprehensive health and welfare insurance benefits in an efficient and economical manner.
- B. Consultant is a firm having the necessary experience and qualifications to provide health and welfare insurance consultation services the City.
- C. City desires to retain Consultant to provide said service.

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 Consultant as follows:

1. Services. The City hereby employs Consultant to provide health and welfare insurance broker and consulting services herein set forth at the compensation and upon the terms and conditions herein expressed, and Consultant hereby agrees to perform such services for said compensation, and upon said terms and conditions. City hereby authorizes Consultant to commence work on February 4, 2021.

2. Obligations, Duties, and Responsibilities of Consultant. It shall be the duty, obligation, and responsibility of the Consultant, in a skilled and professional manner, to perform the consulting services in accordance with Exhibit 1: Scope of Work. Exhibit 1 is attached and incorporated by reference.

3. Consultant's Fees and Compensation: Amount, How and When Payable.

3.1 Fees for services provided pursuant to the Scope of Work in Exhibit 1 shall be \$45,000 per year.

3.2 Billings are to be made directly to the following address:

City of Madera Human Resources Department
Attn: Diana Rosas
205 W. 4th Street
Madera, CA 93637

3.3 Consultant will fully disclose to the City all commission revenue, including any contingent compensation it may receive related to the services that are the subject of this Agreement. At the end of each plan year (June 30), consultant will provide the City with a report showing its total compensation including fees paid by City and any commission(s) received. Total compensation for services that are the subject of this Agreement may not exceed the Fee Schedule noted above. Consultant shall reimburse the City an amount equivalent to any compensation in excess of the Fee Schedule that Consultant received as a result of commission(s) within 30 days of reporting the commission to the City pursuant to the terms of this section.

3.4 Billing shall be made monthly by Consultant. The billing statements shall be prepared and organized in a manner that facilitates an efficient review of the services performed, inclusive of information required by section 3.3, above. The City shall make its best effort to process payments promptly and not later than 30 days after receiving Consultant's billing statement.

3.5 Service Guarantee: Alliant agrees to place 20% of its annual consulting fee at risk with the following categories of the Service Guarantee:

(i) Execution of Scope of Work (10%) – Satisfaction with deliverables in the Scope of Work.

(ii) Service and Support (10%) - Service and support with decision making tools, attendance at meetings, and assistance for any implementation of new benefits/products and transition of carriers.

At any time, the City can invoke the terms of the guarantee. All categories are based solely on client satisfaction level. The categories proposed may be modified by mutual agreement between Alliant and The City.

3.6 Alliant has a separate division within the firm, Alliant Underwriting Services (AUS) that provides Consulting, Underwriting and Program Management Services to a number of Joint Powers Authorities (JPA) and Joint Purchasing Pools throughout the country; this division is separate from Alliant's Brokerage and Consulting division. AUS receives compensation from carriers for services provided to support the operations and administration of a JPA and/or purchasing pool and is a cost included in the premium. Alliant

will disclose any AUS fees associated with a joint purchasing program presented to the City. 4. Term of agreement.

4.1 This Agreement shall be effective on February 4, 2021 for a period of three (3) years, with the option to extend annually thereafter by written mutual consent, not to exceed two (2) additional years.

4.2 City reserves the right to discharge Consultant and terminate this Agreement at any time. In the event of such discharge or termination, the City shall compensate Consultant for services rendered up to and including the date of termination. City shall terminate services and/or the Agreement by delivering to Consultant a written notice specifying the extent to which services and/or the Agreement are terminated and the effective date of the termination. Notice of termination shall be emailed as follows:

Erin Thomas, Vice President
Erin.Thomas@alliant.com

5. Hold Harmless and Insurance Requirements.

5.1 Indemnification and Waivers. Indemnification and Waivers. Consultant shall indemnify, defend, and hold harmless the City, its officers, and employees, agents and volunteers ("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 to the extent caused by the Consultant's performance breach of its obligations under this agreement, or, out of the operations conducted to the extent caused by Consultant's errors, omissions, negligence or willful misconduct., except for such loss or damage arising from the sole negligence or willful misconduct of the City. In the event the City indemnitees are made a party to any third-party action, lawsuit, or other adversarial proceeding arising from Consultant's performance breach of this agreement, errors, omissions, negligence, or willful misconduct, the Consultant shall provide a defense to the City indemnitees, or at the City's option and at its own expense may assume the defense of such claims, reimburse the City indemnitees their costs of defense, including reasonable legal counsels' fees, incurred in defense of such claims.

5.2. Insurance. During the term of this Agreement, Consultant shall maintain, keep in force, and pay all premiums required to maintain and keep in force general liability, workers' compensation, automobile liability, and professional liability insurance. The limits and nature of such policies shall be as required in Exhibit 2 of this Agreement. Exhibit 2 is attached and incorporated by reference.

6. Independent Contractor. In performance of the work, duties and obligations assumed by Consultant under this Agreement, it is mutually understood and agreed that Consultant, including any and all of Consultant's officers, agents, and employees, will at all times be acting and performing as an independent contractor, and shall act in an independent capacity and not as servant, employee, agent, partner, or associate of City. Because of its status as an independent contractor, Consultant and its employees shall have absolutely no right to employment rights and benefits available to City employees. Consultant shall be solely liable and responsible for providing to, or on behalf of, its employees all legally-required employee benefits. In addition, Consultant shall be solely responsible and hold City harmless from all matters related to payment of Consultant's employees, including compliance with social security, withholding, and all other regulations governing such matters.

7. Compliance with Law. Consultant shall comply with all applicable Federal, State, and local laws, rules, regulations, ordinances, and directives, that pertain to Consultant's provision of services under this Agreement.

8. Miscellaneous.

8.1 Consent. Whenever in this Agreement the approval or consent of a party is required, such approval or consent shall be in writing and shall be executed by a person having the express authority to grant such approval or consent.

8.2 Governing Law. The parties agree that this Agreement shall be governed and constructed by and in accordance with the Laws of the State of California.

8.3 Required License and Professional Credentials. Consultant and personnel providing services shall maintain all licenses and professional credentials necessary for the provision of such services. Consultant shall promptly notify City of changes of status or events that impact the provision of professional services to City.

8.4 Force Majeure. Neither party shall be deemed to be in default on account of any delay or failure to perform its obligations under this Agreement, which directly results from an Act of God or an act of a superior governmental authority.

8.5 Headings. The paragraph headings are not a part of this Agreement and shall have no effect upon the construction or interpretation of any part of this Agreement.

8.6 Incorporation of Documents. All documents constituting the Agreement documents and all documents which may, from time to time, be referred to in any duly executed amendment hereto are by such reference incorporated in the Agreement and shall be deemed to be part of this Agreement.

8.7 Integration. This Agreement and any amendments hereto between the parties constitute the entire Agreement between the parties. There are no other prior oral or written agreements between the parties that are not incorporated in this Agreement.

8.8 Modification of Agreement. This Agreement shall not be modified or be binding upon the parties unless such modification is agreed to in writing and signed by the parties.

8.9 Provision. Any agreement, covenant, condition, clause, qualification, restriction, reservation, term, or other stipulation in the Agreement shall define or otherwise control, establish or limit the performance required or permitted or to be required of or permitted by either party. All provisions, whether covenants or conditions, shall be deemed to be both covenants and conditions.

8.10 Severability. If a court of competent jurisdiction finds or rules that any provision of this Agreement is void or unenforceable, the provisions of this Agreement not so affected shall remain in full force and effect.

8.11 Successors and Assigns. The provisions of this Agreement shall inure to the benefit of, and shall apply to and bind, the successors and assigns of the parties.

8.12 Venue. In the event that suit is brought by either party hereunder, the parties agree that trial of such action shall be vested exclusively in the state courts of California in the County of Madera or in the United States District Court for the Eastern District of California.

8.13 Recovery of Costs. The prevailing party in any action brought to enforce the terms of this Agreement or arising out of this Agreement may recover its reasonable costs, including reasonable attorney's fees, incurred or expended in connection with such action against the non-prevailing party.

9. Signatures. The individuals executing this Agreement represent and warrant that they have the right, power, legal capacity, and authority to enter into and to execute this Agreement on behalf of the respective legal entities of the Consultant and the City.

ALLIANT INSURANCE SERVICES, INC.

CITY OF MADERA

Mark Conway, SEVP & Managing Director

Santos Garcia, Mayor

Date: _____

Date: _____

ATTEST

APPROVED AS TO FORM

Alicia Gonzales, City Clerk

Hilda Cantú Montoy, City Attorney

Date: _____

Date: _____

Exhibit 1: Scope of Work

Strategic Benefit Consulting	
Annual benefit objective setting and development of strategic plan	Included
Annual benefit calendar	Included
Pre-renewal & Strategic planning guide	Included
Financial Analysis, Reporting and Plan Utilization Analysis (Based on carrier data available) <ul style="list-style-type: none"> ▪ Detailed utilization analysis ▪ Run health cost models and analysis ▪ Plan experience monthly reporting ▪ Funding analysis & projections ▪ Plan-IQ™ analysis (when data available) 	Included
Legislative updates and their impact on company plans <ul style="list-style-type: none"> ▪ Monthly compliance update newsletter ▪ Compliance alerts as needed with legislation changes throughout the year ▪ HIPAA Compliance support ▪ Annual Compliance seminar ▪ Weekly “Friday Fast Facts” ▪ Contract review 	Included
Introduction to new and progressive benefit concepts, including population health Management <ul style="list-style-type: none"> ▪ Alliant Learning Academy Events & Webinars 	Included
Communications on employee benefit trends and compliance issues	Included
Benchmarking <ul style="list-style-type: none"> ▪ De-identified client data ▪ Industry/population-specific surveys ▪ Large compensation/benefit survey houses 	Included
Voluntary Benefits - Marketing, Analysis, Recommendation & Implementation	Included
Annual Renewal Report & Financial Analysis	
Annual benefit budget	Included

Benefit analysis and plan design modeling	Included
Employee contribution strategy development and cost modeling	Included
Carrier & Vendor marketing	Included
Evaluation of contract terms and conditions	Included
Premium rate and service fee negotiation	Included
Annual final accountings (as required for participating insurance contracts)	Included
Underwriting calculations (insured and self-insured)	Included
Plan cost/claim pattern trending, including analysis relative to targeted benchmarking indices	Included
Rolling financial history exhibit	Included
Vendor selection and insurance marketing <ul style="list-style-type: none"> ▪ Pre-qualify potential vendors and develop bid specs ▪ Detailed evaluation of plan design, cost, and funding alternatives ▪ Evaluate financial suitability of carriers 	Included
Plan Implementation & Administrative Support	
Development and management of new vendor implementation plan (enrollment strategy and logistics)	Included
Create/print custom employee communication materials <ul style="list-style-type: none"> ▪ Create branded benefits brochures and announcements ▪ Create branded benefits electronic video presentation ▪ Review content/edit/final revisions ▪ MyBenefits.Life™ – Smartphone Application for Court Employees & Dependents 	Included
Coordinate/conduct enrollment meetings <ul style="list-style-type: none"> ▪ Presentations/conference calls/travel 	Included
Coordinate benefits/health fairs <ul style="list-style-type: none"> ▪ Alliant to manage vendors ▪ Alliant to produce communication pieces 	Included
Assist with internal management systems to simplify program administration	Included
Provide forms and templates to enable employer compliance with COBRA, HIPAA and FMLA	Included
Act as advocate to benefit management group	Included
Regular evaluation of service providers	Included
Resolve problems relating to vendor performance	Included

Assist in resolving claim problems or procedures, plan design issues, billing & eligibility problems on-boarding platforms etc.	Included
Ongoing Educational Webinars & Seminars <ul style="list-style-type: none"> ▪ Formats include: public event, online webinar, on-site training, and train the trainer 	Included
Legislative Review & Compliance	
Federal and state updates and seminars	Included
ACA Compliance <ul style="list-style-type: none"> ▪ Comprehensive audit ▪ Ongoing alerts as legislation changes ▪ Pay or Play Calculator 	Included
ERISA Compliance <ul style="list-style-type: none"> ▪ Wrap-SPD/Summary Material Modifications (when applicable) ▪ Form 5500 preparation/Schedule A form (when applicable) ▪ Summary Annual Reports ▪ Auditing of plan documents 	Included
COBRA Compliance <ul style="list-style-type: none"> ▪ Sample documents ▪ Legislative updates 	Included
HIPAA Compliance <ul style="list-style-type: none"> ▪ Review and recommendations with respect to plan set up and HIPAA compliance strategy ▪ Sample policies and procedures (insured and self-insured plans) ▪ Sample authorizations 	Included
Wellness Program	
Facilitate RFP to third party wellness vendor, fitness/yoga services, etc. (if applicable)	Included
Work with HR and Vendor on implementation	Included
Ongoing program support from Alliant's Director of Wellness	Included
Alliant Wellness and Health & Productivity Resources <ul style="list-style-type: none"> ▪ Monthly Newsletters – City logo can be applied 	Included
Alliant Free Wellness Program Resources	Included

Documentation & Succession Planning	
Written program objectives	Included
Meeting agendas, notes, and follow-up items	Included
Benefit Plan Overview (BPO) / Annual & Multi-Year Work Plan	Included
Technology	
MyBenefits.Life™	Included
Legislative Review & Compliance (as applicable)	
Federal and state updates and seminars	Included
ACA Compliance <ul style="list-style-type: none"> ▪ Comprehensive audit ▪ Ongoing alerts as legislation changes ▪ Pay or Play Calculator ▪ Assistance in selecting ACA Reporting/Tracking Vendors (if applicable) 	Included
COBRA Compliance <ul style="list-style-type: none"> ▪ Sample documents ▪ Legislative updates 	Included
HIPAA Compliance <ul style="list-style-type: none"> ▪ Review and recommendations with respect to plan set up and HIPAA compliance strategy ▪ Sample policies and procedures (insured and self-insured plans) ▪ Sample authorizations 	Included
ThinkHR Membership	Included

Exhibit 2: Insurance Requirements for Consultants

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

Consultant 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 form CG 20 10 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 Consultant 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. Consultant 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.
- **\$1,000,000 Professional Liability (Errors & Omissions)** per claim and in the aggregate. Consultant shall maintain professional liability insurance that insures against professional errors and omission that may be made in performing the Services to be rendered in connection with this Agreement. Any policy inception date, continuity date, or retroactive date must be before the effective date of this Agreement, and Consultant agrees to maintain continuous coverage through a period no less than three years after completion of the services required by this Agreement. The cost of such insurance shall be included in Consultant's bid.

Maintenance of Coverage

Consultant 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 Consultant, its agents, representatives, employees, subcontractors or subconsultants as specified in this Agreement.

Proof of Insurance

Consultant 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 term of this Agreement. As a privately held company we do not provide copies of insurance policies as they contain confidential underwriting material about our businesses - many of which are not relevant to this proposal.

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

The General Liability, Automobile Liability and Worker's Compensation insurance coverages 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 Consultant, or others providing insurance evidence in compliance with these specifications, to waive their right of recovery prior to a loss. Consultant 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. Insurance carriers will not provide a waiver of subrogation on Professional Liability / Errors & Omissions policies.

Enforcement of Contract Provisions (non estoppel)

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

Notice of Cancellation

Consultant 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 the General Liability, Automobile Liability and Worker's Compensation coverages. .

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. Alliant maintains a \$2,500,000 Deductible per Each Wrongful Act.

Timely Notice of Claims

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

Additional Insurance

Consultant 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.

BUSINESS ASSOCIATE AGREEMENT

This Business Associate Agreement (“Agreement”) is entered into by and between the City of Madera (“Covered Entity”), as administered by ASi Administrative Solutions (“Plan Sponsor”) and Alliant Insurance Services, Inc., a California corporation (“Business Associate”), as of the date last written below. Each Covered Entity and Business Associate are sometimes referred to herein singularly as “Party” and collectively as “Parties.”

Business Associate has agreed to perform certain services for or on behalf of Covered Entity that may involve the creation, maintenance, use, transmission or disclosure of protected health information within the meaning of the Health Insurance Portability and Accountability Act of 1996 (“HIPAA”), and its implementing regulations, 45 CFR Parts 160 and 164 (“HIPAA Rules”).

This Agreement supplements all other concurrent and future agreements between the Parties that may involve protected health information and compliance with HIPAA. The Agreement is intended to and shall be interpreted to satisfy the requirements for business associate agreements as set forth in the HIPAA Rules as they have been amended, including but not limited to privacy and security amendments of the Affordable Care Act and the Health and Human Services (“HHS”) Omnibus Final Rule.

Business Associate understands and acknowledges that it is subject to the HIPAA Rules, and that violation of the HIPAA Rules carries significant penalties as described in 45 CFR § 160.404. Business Associate also understands that it is subject to and must comply with the Health Information Technology for Economic and Clinical Health Act (“HITECH”) privacy provisions of the American Recovery and Reinvestment Act, as well as with any applicable state privacy laws.

WHEREFORE, for valuable consideration, including the mutual promises and benefits as set forth below, the Parties agree as follows:

DEFINITIONS

- I. **General Definitions.** The following terms used in this Agreement shall have the same meaning as those terms in the HIPAA Rules: Breach, Data Aggregation, Designated Record Set, Disclosure, Health Care Operations, Individual, Minimum Necessary, Notice of Privacy Practices, Required By Law, Secretary, Security Incident, Subcontractor, Unsecured Protected Health Information, and Use.
- II. **Specific Definitions.**
 - (A) **Business Associate** shall generally have the same meaning as the term “business associate” at 45 CFR § 160.103, and in reference to the Party to this Agreement, shall mean Business Associate.
 - (B) **Covered Entity** shall generally have the same meaning as the term “covered entity” at 45 CFR § 160.103, and in reference to the Party to this Agreement, shall mean Covered Entity.
 - (C) **Protected Health Information (“PHI”)** shall generally have the same meaning as the term “protected health information” at 45 CFR § 160.103, and shall include any individually identifiable information that is created, received, maintained, or transmitted by Business Associate on behalf of Covered Entity that relates to an Individual’s past, present, or future physical or mental health, health care, or payment for health care, whether such information is in oral, hard copy, electronic, or any other form or medium.

AGREEMENT

- I. **Recitals Incorporated.** The recitals above are expressly incorporated into the terms of this Agreement.
- II. **Relationship of the Parties.** Business Associate is, and at all times during this Agreement shall, be acting as an independent contractor to Covered Entity, and not as Covered Entity's agent. Covered Entity shall not have authority to control the method or manner in which Business Associate performs its services on behalf of Covered Entity, provided that Business Associate complies with the terms of this Agreement and the HIPAA Rules. Business Associate shall not have authority to bind Covered Entity to any liability unless expressly authorized by Covered Entity in writing, and Covered Entity shall not be liable for the acts or omissions of Business Associate. Business Associate shall not represent itself as the agent of Covered Entity. Nothing in this Agreement shall be deemed to establish an agency, partnership, joint venture or other relationship except that of independently contracting entities.
- III. **Business Associate Responsibilities.** Business Associate agrees to:
 - (A) Fully comply with the HIPAA Rules as they apply to business associates.
 - (B) Not use or disclose PHI except as permitted by this Agreement or as otherwise required by law.
 - (C) Use appropriate safeguards to prevent the use or disclosure of PHI other than as permitted by this Agreement. Business Associate shall comply with the requirements in 45 CFR Part 164, Subpart C applicable to business associates, including the use of administrative, physical and technical safeguards to protect electronic PHI.
 - (D) Within thirty (30) days after discovery, report to Covered Entity any use or disclosure of PHI not permitted by this Agreement, applicable state privacy laws, or the HIPAA Rules of which Business Associate becomes aware, including but not limited to reporting breaches of unsecured PHI as required by 45 CFR § 164.410, reporting security incidents as required by 45 CFR § 164.314(a)(2)(i)(C), and reporting breaches and security incidents of Business Associate's contractors and subcontractors.
 - (E) Fully cooperate with Covered Entity's efforts to promptly investigate, mitigate, and notify third parties of breaches of unsecured PHI or security incidents as required by the HIPAA Rules.
 - (F) Ensure that any subcontractors that create, receive, maintain, or transmit PHI on behalf of Business Associate agree to the same or equivalent restrictions, conditions, and requirements set forth in this Agreement, applicable state privacy laws, HITECH, and the HIPAA Rules applicable to such subcontractors. Without limitation, Business Associate shall ensure that any subcontractors comply with the applicable requirements of 45 C.F.R. Parts 160, 162, and 164. Business Associate shall fulfill this requirement by executing a written agreement with any subcontractors in compliance with the requirements of the HIPAA Rules.
 - (G) Within fifteen (15) days following Covered Entity's request, make available to Covered Entity any PHI in Business Associate's control as necessary to enable Covered Entity to satisfy its obligations to provide an Individual with access to PHI under 45 CFR § 164.524.
 - (H) Within fifteen (15) days following Covered Entity's request, make available to Covered Entity any PHI for amendment and incorporate any amendments to PHI as necessary to enable Covered Entity to satisfy its obligations under 45 CFR § 164.526.
 - (I) Maintain information concerning Business Associate's or subcontractors' disclosures of PHI as required by 45 CFR § 164.528(a)-(b) and, within fifteen (15) days following Covered Entity's request, make such information available to Covered Entity as necessary to enable Covered Entity to render an accounting of disclosures pursuant to 45 CFR § 164.528.

- (J) To the extent Business Associate is to carry out Covered Entity's obligations under 45 CFR Part 164, Subpart E, comply with the requirements of Subpart E that apply to Covered Entity in the performance of such obligations.
- (K) Make Business Associate's internal practices, books, and records relating to the use and disclosure of Protected Health Information received from, or created or received by, Business Associate on behalf of Covered Entity, available to the Secretary for purposes of determining Covered Entity's compliance with the HIPAA Rules.

IV. Uses and Disclosures by Business Associate.

- (A) **Permissible Uses and Disclosures.** Business Associate may use or disclose PHI only as follows:
 - (1) As necessary to perform the services set forth in the Service Agreement.
 - (2) To de-identify PHI in accordance with 45 CFR § 164.514(a)-(c).
 - (3) As required by law.
 - (4) For the proper management and administration of Business Associate or to carry out the legal responsibilities of Business Associate, provided that any disclosures for these purposes (a) are required by law, or (b)(i) Business Associate obtains reasonable assurances from the person to whom the information is disclosed that the information will remain confidential and used or further disclosed only as required by law or for the purposes for which it was disclosed to the person, and (b)(ii) the person notifies Business Associate of any instances of which it is aware in which the confidentiality of the information has been breached.
 - (5) To provide data aggregation services relating to the health care operations of Covered Entity as defined in 45 CFR § 164.501.
- (B) **Impermissible Uses or Disclosures.** Business Associate may not use or disclose PHI in a manner that would violate 45 CFR Part 164, Subpart E, if done by Covered Entity except for the specific uses and disclosures set forth in Sections IV(A)(1)-(5), if applicable.
- (C) **Minimum Necessary.** Business Associate agrees to use or disclose the minimum amount of PHI necessary for a permitted purpose pursuant to this Section IV, Covered Entity's policies and procedures, and 45 CFR § 164.502(b).

V. Obligations and Duties of Covered Entity.

- (A) **Notice of Privacy Practices.** Covered Entity shall notify Business Associate of any limitation(s) in its notice of privacy practices in accordance with 45 C.F.R. § 164.520, to the extent that such limitation(s), if any, may affect Business Associate's use or disclosure of PHI. Covered Entity may satisfy this requirement by providing Business Associate with the notice of privacy practices that it delivers in accordance with 45 C.F.R. § 164.520, as well as any changes to such notice.
- (B) **Notice of Individual Permission.** Covered Entity shall notify Business Associate of any changes in, or revocation of, permission by Individual to use or disclose PHI, to the extent that such changes may affect Business Associate's use or disclosure of PHI.
- (C) **Notice of Other Restrictions.** Covered Entity shall notify Business Associate of any restriction to the use or disclosure of PHI to which Covered Entity has agreed in accordance with 45 C.F.R. § 164.522, to the extent that such restriction may affect Business Associate's use or disclosure of PHI.
- (D) **Impermissible Requests.** Covered Entity shall not request Business Associate to use or disclose PHI in any manner that would not be permissible under the HIPAA Privacy Rule if

done by Covered Entity.

VI. Term and Termination. Unless otherwise agreed in writing by the Parties, this Agreement shall be effective as of the date executed by the Parties and shall continue until terminated as provided below.

(A) Termination. This Agreement shall terminate on the date on which a broker other than Business Associate is designated as the "broker of record" for the Covered Entity. In addition, this Agreement may be terminated earlier as follows:

- (1)** Covered Entity may terminate this Agreement without cause upon sixty (60) days' prior written notice to Business Associate.
- (2)** Covered Entity may terminate this Agreement upon thirty (30) days' prior notice if Covered Entity determines that Business Associate or any subcontractor has violated the HIPAA Rules, a material term of this Agreement, or otherwise engaged in conduct that may compromise the PHI. Subject to Section VI(A)(3), Business Associate shall have the opportunity to cure the breach or violation within the 30-day notice period. If Business Associate fails to cure the breach or violation within the 30-day notice period, Covered Entity may immediately terminate this Agreement.
- (3)** Notwithstanding Section VI(A)(2), Covered Entity may terminate this Agreement immediately if Business Associate or any subcontractor engages in any conduct that Covered Entity reasonably believes may result in adverse action against Covered Entity by any governmental agency or third party.

(B) Obligations of Business Associate Upon Termination. Upon termination of this Agreement for any reason, Business Associate shall with respect to PHI received from Covered Entity, or created, maintained, used, or received by Business Associate on behalf of Covered Entity:

- (1)** If feasible, return all PHI to Covered Entity or, if Covered Entity agrees, destroy such PHI.
- (2)** If the return or destruction of PHI is not feasible, continue to extend the protections of this Agreement and the HIPAA Rules to such information, and not use or further disclose the information in a manner that is not permitted by this Agreement or the HIPAA Rules, and Business Associate will notify the Covered Entity of the retained information in writing. The notification shall include: (a) a statement that the Business Associate has determined that it is infeasible to return or destroy the PHI in its possession; and (b) the specific reasons for such determination. Business Associate further agrees to extend any and all protections, limitations and restrictions contained in this Agreement to the Business Associate's use and/or disclosure of any PHI retained after the termination of this Agreement, and to limit any further uses and/or disclosures to the purposes that make the return or destruction of the PHI infeasible. If it is infeasible for the Business Associate to obtain from employees, contractors, subcontractors, or agents any PHI in their possession, the Business Associate must provide a written explanation to Covered Entity and require the employees, contractors, subcontractors, or agents to agree to extend any and all protections, limitations, and restrictions contained in this Agreement to their use and/or disclosure of any PHI retained after the termination of the Agreement, and to limit any further uses and/or disclosures to the purposes that make the return or destruction of the PHI infeasible.

(C) Survival. Business Associate's obligations under Section VI shall survive termination of this Agreement.

VII. Regulatory References. A reference in this Agreement to a section in the HIPAA Rules means the section as in effect or as amended.

VIII. Amendment. The Parties agree to take such action as is necessary to amend this Agreement

from time to time to comply with the requirements of the HIPAA Rules and any other applicable laws.

- IX. Governing Law.** This Agreement shall be construed to comply with the requirements of the HIPAA Rules, and any ambiguity in this Agreement shall be interpreted to permit compliance with the HIPAA Rules. All other aspects of this Agreement shall be governed under the laws of California and all actions shall be venued in the state or district courts of California.
- X. Assignment/Subcontracting.** This Agreement shall inure to the benefit of and be binding upon the Parties and their respective legal representatives, successors, and assigns. Business Associate may assign or subcontract rights or obligations under this Agreement to subcontractors or third parties without the express written consent of Covered Entity provided that Business Associate complies with Section III(F), above. Covered Entity may assign its rights and obligations under this Agreement to any successor or affiliated entity.
- XI. Cooperation.** The Parties agree to cooperate with each other's efforts to comply with the requirements of the HIPAA Rules and other applicable laws; to assist each other in responding to and mitigating the effects of any breach of PHI in violation of the HIPAA Rules or this Agreement; and to assist the other Party in responding to any investigation, complaint, or action by any government agency or third party relating to the performance of this Agreement. In addition to any other cooperation reasonably requested by Covered Entity, Business Associate shall make its officers, members, employees, and agents available without charge for interview or testimony.
- XII. Notice.** All notices, requests, and other communications given under this BAA, shall be in writing and deemed duly given: (A) when delivered personally to the recipient; (B) one (1) business day after being sent to the recipient by reputable overnight courier service (charges prepaid); or (C) five (5) business days after being sent by U.S. certified mail (charges prepaid). Except as otherwise provided herein, all notices requests or communications under this BAA shall be addressed as follows:

If to Covered Entity:

Wendy Silva
 Director of Human Resources
 City of Madera
 205 W. 4th Street
 Madera, CA 93637

If to Business Associate:

Erin Thomas
 Vice President
 Alliant Insurance Services, Inc.
 100 Pine Street, 11th Floor
 San Francisco, CA 94111

With a copy to:
 General Counsel
 701 B Street, 6th Floor
 San Diego, CA 92101

- XIII. No Third Party Beneficiaries.** Nothing in this Agreement is intended to nor shall it confer any rights on any other persons except Covered Entity and Business Associate and their respective successors and assigns.
- XIV. Insurance.** Unless waived in writing by Covered Entity, Business Associate shall obtain and maintain insurance or equivalent programs of self-insurance with appropriate limits sufficient to cover costs, losses and damages that may arise from Business Associate's breach of this Agreement or any unauthorized use or disclosure of PHI by Business Associate. Upon Covered Entity's request, Business Associate shall provide proof of such insurance to Covered Entity.
- XV. Indemnification.** Business Associate agrees to defend, indemnify, and hold harmless Covered Entity and Covered Entity's officers, members, employees and agents from and against any and all claims, fines, penalties, liabilities, demands, damages, losses, costs, expenses (including without limitation costs, reasonable attorneys' fees, fines, penalties, and assessments) resulting from Business Associate's breach of this Agreement, or any acts or omissions of Business Associate or Business Associate's officers, members, employees, agents, or subcontractors

arising out of or related to the use or disclosure of PHI or violation of the HIPAA Rules, HITECH, or any other state or federal laws governing information privacy. Likewise, Covered Entity agrees to defend, indemnify, and hold harmless Business Associate and Business Associate's officers, members, employees and agents from and against any and all claims, fines, penalties, liabilities, demands, damages, losses, costs, expenses (including without limitation costs, reasonable attorneys' fees, fines, penalties, and assessments) resulting from Covered Entity's breach of this Agreement, or any acts or omissions of Covered Entity or Covered Entity's officers, members, employees, agents, or subcontractors arising out of or related to the use or disclosure of PHI or violation of the HIPAA Rules, HITECH, or any other state or federal laws governing information privacy.

XVI. Entire Agreement. This Agreement contains the entire agreement between the Parties as it relates to the use or disclosure of PHI, and supersedes all prior discussions, negotiations and services relating to the same to the extent such other prior communications are inconsistent with this Agreement.

COVERED ENTITY

BUSINESS ASSOCIATE

By _____
Print: Santos Garcia
Title: Mayor
Date: _____

By _____
Print Erin M. Thomas
Title: Vice President
Date: January 28, 2021