



REPORT TO CITY COUNCIL

Approved by:

Wendy Silva
Wendy Silva, Director of Human Resources

Arnoldo Rodriguez
Arnoldo Rodriguez, City Manager

Council Meeting of: February 17, 2021

Agenda Number: B-13

SUBJECT:

Agreement with MyWorkplace, Inc., for access to their online employee benefits management system at an annual cost of approximately \$8,900

RECOMMENDATION:

Adopt a Minute Order approving a Client Access Agreement for the MyWorkplace Benefits Management and Enrollment System

SUMMARY:

In 2014, the City of Madera (City) began using an online platform from AdminDirect, now known as MyWorkplace, to manage benefit plan enrollments. MyWorkplace allows Human Resources staff to enter employee enrollment information one time for health and welfare benefits, then MyWorkplace manages electronic transfer of the information to the individual carriers. MyWorkplace also provides a paperless annual open enrollment process for the benefit plans. Access to the system was provided through the City's Broker of Record. With the recent change in broker for health and welfare benefits, it is recommended the City directly contract for the online platform access to ensure continuity of service.

DISCUSSION:

MyWorkplace has been used by the City since 2014 for employee enrollment in medical, dental, vision, life, long term disability, voluntary life, and flexible spending account benefits. The online platform also supports a paperless open enrollment process each year that employees can complete from any computer. Prior to the single platform, employees enrolling in health and welfare benefits were required to complete paper enrollment forms for each plan, and then Human Resources staff faxed the paper forms to each carrier for manual processing of enrollment. Utilizing MyWorkplace allows staff to input enrollment information one time in a single location. The system then electronically sends the information to all applicable carriers for processing. MyWorkplace is responsible for ensuring the data is sent timely, and that any data errors reported back from the carriers are corrected immediately.

The agreement for services with MyWorkplace was previously through the City's designated Broker of Record for health and welfare benefits. At its meeting of February 3, 2021, the City Council approved a change in broker to Alliant. With the change in broker, staff is recommending the City enter into a direct agreement with MyWorkplace for access to the online platform to ensure continuity of service regardless of broker.

The price proposed by MyWorkplace is \$3 per active employee, per month. The City's new broker, Alliant, has reviewed the proposed agreement from MyWorkplace, and believes the price to be competitive based on other platforms they work with and the proposed level of service.

FINANCIAL IMPACT:

The pricing in the proposed agreement is \$3 per active employee in the system, per month. Based on the current number of benefit eligible employees, this is equivalent to approximately \$8,900 per year. As this is a service the City has been using, there are sufficient funds available in the existing adopted budget to pay for the services.

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 evaluate alternative providers of similar services or return to manually processing paper benefit enrollments.

ATTACHMENTS:

1. MyWorkplace Benefits Management and Enrollment System Client Access Agreement

MyWorkplace Benefits Management and Enrollment System Client Access Agreement

The following agreement entered into by MyWorkplace, Inc., hereafter referred to as MyWorkplace, and City of Madera, hereafter referred to as Client or City, shall be for Client access and use of an employee benefits management and enrollment system developed and deployed by MyWorkplace, hereafter referred to as MyWorkplace. For the purpose of this agreement, the use of MyWorkplace shall be limited to the management and enrollment of the employee benefits of Client.

A. General Provisions and Responsibilities

1. MyWorkplace is an employee benefits management and enrollment software package developed and exclusively owned by MyWorkplace. No license, copyright, source code access, intellectual property, or any other rights to MyWorkplace or any of its components are implied or granted to Client unless expressly stated.
2. Client is granted access to and use of MyWorkplace via Internet connection. Client is responsible for purchasing and/or maintaining the minimum required computer equipment, software, and Internet connectivity necessary to connect to MyWorkplace from Client's place(s) of business. Client is responsible for maintaining and authorizing which of its employees will be granted access to MyWorkplace's administration module and understands that granting an employee authorization to the administration module requires the employee be trained on the proper handling of personal health information (PHI) as defined, and protected, under federal, state, and/or local law. Client is responsible for training its employees on the proper handling of PHI data.
3. Any modifications or enhancements built into MyWorkplace or any of its components to meet Client's needs shall be considered the sole property of MyWorkplace, including all intellectual property.

Regularly scheduled system enhancements or new versions of MyWorkplace's administration, EDI, self-serve enrollment, and agent/call center enrollment modules will be made available to Client at no additional charge. Client will have the option to elect new MyWorkplace modules that may be added in the future for an additional fee, if applicable.

4. Client is solely responsible for the data input and data maintenance of all information, including employee demographic and benefits plan data, it maintains on MyWorkplace. Client is solely responsible for the accuracy and integrity of its data.
5. Employee, dependent, and benefits data maintained on MyWorkplace shall be considered the exclusive property of Client for whose benefit package the data refers. MyWorkplace will not release any data to any party without the express written consent of Client. Client authorizes MyWorkplace to release data to its employee benefits carriers/providers and employee benefits brokers/consultants so that they may perform agreed-upon tasks for Client. MyWorkplace will maintain all data, including personal health information (PHI), in the strictest of confidence and in a secure manner, per Addendum C Controls and Data Security.
6. MyWorkplace shall maintain a nightly backup of all Client data in MyWorkplace and house this backup at secure, off-site location for a minimum of two (2) weeks.
7. MyWorkplace will maintain the MyWorkplace system and database at secure, replicated data centers. MyWorkplace shall secure Client's data using prudent procedures, industry protocols, and in accordance with HIPAA and SB1386, i.e. secured facility, implementation of commercial firewalls, SSL and other encryption methods, username and password requirements for data access, notification protocols, etc. MyWorkplace shall handle all personal health information (PHI) in accordance with Addendum B, Business Associate Agreement.
8. MyWorkplace shall maintain all internal computer hardware, network equipment, security appliances, licensing, and Internet connectivity required to maintain and deploy MyWorkplace.
9. MyWorkplace shall make technical support on MyWorkplace available to Client from 8:00 am to 8:00 pm EST, Monday through Friday, excluding holidays or other scheduled, non-business days. MyWorkplace will make every effort to return technical support calls that cannot be answered on the initial contact within 3 hours of the original call.

10. MyWorkplace shall provide unlimited online training sessions to Client's administrative staff via GoToMeeting, WebEx, or other Internet meeting services. Client, to the extent possible, will allow for a one week notice to schedule Internet training classes. Training classes will be scheduled on dates/times mutually agreeable to Client and MyWorkplace.
11. Client shall notify MyWorkplace of any identified system problems in MyWorkplace or any of its components. Client shall provide MyWorkplace written detail of the system components that Client believes are not operating properly and examples of specific records for which Client feels unexpected results were returned. MyWorkplace shall research error reports from Client to determine whether a "bug" in the MyWorkplace code exists or if improper system use or data entry error has caused the problem reported by Client.

If a "bug" in the MyWorkplace code is found to be the cause of the reported error, MyWorkplace, at its expense, shall modify the system to correct the discrepancy, make any database adjustments necessary to return Client data to its proper state, and notify Client when corrections have been made.

If the error reported by Client has been caused by either improper system use or data entry error, MyWorkplace shall notify client of the results of its research and provide details on how Client can repair the discrepancies and/or instructions on how to properly use the system to avoid future problems. If Client wishes MyWorkplace to repair data discrepancies caused by improper system use or data entry error, MyWorkplace will provide Client with an estimate on the number of hours it believes the repair will take with a total estimated cost.

B. Insurance

Without limiting MyWorkplace's indemnification of City, MyWorkplace will obtain and continuously maintain at its own expense during the term of this Agreement, and shall require any and all subcontractors/subconsultants of every tier to obtain and maintain, policies of insurance of the type and amounts described herein and satisfactory to the City. Minimum scope and limits of insurance shall be:

1. Business General Liability coverage (including operations, products and completed operations) in an aggregate amount of no less than \$2,000,000.00
2. Workers Compensation coverage as required by the State of California and Employer's Liability per accident for bodily injury or disease in the amount of \$1,000,000.00
3. Technology and Telecommunications liability coverage in an aggregate amount of no less than \$5,000,000.00. Coverage shall be sufficiently broad to respond to the duties and obligations as is undertaken by MyWorkplace in this agreement and shall include, but not be limited to, claims involving infringement of intellectual property, including but not limited to infringement of copyright, trademark, trade dress, invasion of privacy violations, information theft, damage to or destruction of electronic information, release of private information, alteration of electronic information, extortion, and network security. The policy shall provide coverage for breach response costs as well as regulatory fines and penalties, and credit monitoring expenses with limits sufficient to respond to these obligations.

C. Hold Harmless - Indemnity Stipulation

Each party ("Indemnifying Party") will promptly defend, indemnify, and hold the other party ("Indemnified Party") harmless from and against any and all claims, suits, actions, liabilities, losses, expenses, or damages which the Indemnified Party may incur as a result of any violation by the Indemnifying Party of any law, or any loss or expense to the Indemnified Party caused by the misrepresentation, negligent act or omission, or any breach of any of the Indemnifying Party's obligations under this agreement.

D. Commencement and Duration of Agreement

This agreement shall become effective on 2/1/2021 and shall supersede any and all previous agreements. This agreement shall continue until terminated by either party as defined in section E.

E. Termination of Agreement

Client may terminate this agreement at any time by providing a 30-day written notification to MyWorkplace. Notification of termination shall be sent either by certified U.S. Mail, Federal Express, United Parcel Post (UPS), or Airborne Express. Client shall be responsible for all fees due MyWorkplace from the date of notification until the date of termination.

MyWorkplace may terminate this agreement at any time by providing a 30-day written notification to Client. Notification of termination shall be sent either by certified U.S. Mail, Federal Express, United Parcel Post (UPS), or Airborne Express. Client shall be

responsible for all fees due MyWorkplace from the date of notification until the date of termination, provided, however, MyWorkplace shall use its best efforts to minimize or cease fees from and after receipt of notice of termination.

MyWorkplace will return to Client all employee, dependent, benefit enrollment, and beneficiary data in its systems within 30 days of the termination date via an electronic means that allows Client to port the data to another system. MyWorkplace shall retain Client data in MyWorkplace for a period of 90 days after the termination date, after which Client data shall be purged from MyWorkplace.

F. MyWorkplace Functionality

MyWorkplace's administration portal, employee portal, benefit counselor portal, and electronic data interchange (EDI) module represented in this agreement are represented in their most current release versions. Updates to the modules shall be made available to Client during the term of this Agreement at no cost to Client.

G. Service Fees

Client agrees to pay MyWorkplace for MyWorkplace access and additional services as follows:

Initial Setup Fee: No set up fee required. Includes setup of Client's employee benefit structures in administration module, enrollment module, EDI processes with Client's employee benefit carriers/vendor (where carrier/vendor can accept EDI transactions), import of Client's employee benefit data obtained from various sources to establish a central employee benefit data repository of Client's data, data interchange with Client's payroll system (where payroll system can accept data interchange). Due prior to beginning of build process. Setup fee is non-refundable once MyWorkplace build process begins.

Monthly System Access Fee: \$3.00 per active employee. An "active employee" is defined as any employee who exists in a non-terminated primary record as of the day the headcounts are done by MyWorkplace for billing purposes. Headcount samplings are done on or about the 25th of each month.

Programming/Technical Services Rate: \$150.00 per hour. At MyWorkplace's sole discretion, MyWorkplace may charge for programming and/or technical services requested by Client. In such cases where a charge will be incurred, MyWorkplace will provide Client with a quote and will require Client's acceptance/approval prior to job implementation. Fifty percent (50%) of quoted rate will be required before programming begins, balance due at completion of project. To the extent that actual work performed costs less than the initial up-front payment, MyWorkplace will rebate the excess funds to Client.

Benefit Plan Renewal Changes/Bulk Data Changes or Additions: \$100.00 per hour. At MyWorkplace's sole discretion, MyWorkplace may charge for benefit plan renewal changes/data changes or additions requested by Client that will exceed the eight (8) hours of MyWorkplace staff time allowed to client for renewal functions. In such cases where a charge will be incurred, MyWorkplace will provide Client with a quote and will require Client's acceptance/approval prior to job implementation. Fifty percent (50%) of quoted rate will be required before programming begins, balance due at completion of project. To the extent that actual work performed costs less than the initial up-front payment, MyWorkplace will rebate the excess funds to Client.

Service fees are guaranteed for twelve (12) months from date of agreement. Fee schedules are subject to change thereafter with a 90 day written notice to Client from MyWorkplace. Fees expressed are not inclusive of any taxes or fees imposed by governmental bodies. All taxes or fees imposed by governmental bodies pertaining to this agreement shall be considered the sole responsibility of Client.

H. Data Security and Controls

MyWorkplace maintains a SOC 1 and SOC 2, Type 2 audit/certification. Moss Adams LLP of Seattle, WA has been retained as the independent auditor. MyWorkplace, at its sole discretion, may change certified auditors at any time. Should MyWorkplace not complete the annual SOC audits, and/or fail to mitigate any deficiencies found during the SOC audits within a reasonable period, Client shall have the right to terminate this agreement immediately and without fiscal penalty.

I. Force Majeure

Neither party shall be in breach of this Agreement if it is unable to perform its obligations under this Agreement as a result of extraordinary events beyond its control and that cannot be overcome by the exercise of commercially reasonable efforts (each such event, a "Force Majeure Event"). Force Majeure Events include, but are not limited to, Internet outages or interruptions, labor disturbances, riots, fires, natural disasters, wars, hostilities, expropriation or confiscation of properties, and interference by civil or military authorities (irrespective of whether purporting to act in accordance with law). If a Force Majeure Event occurs, the party claiming the Force Majeure Event shall as soon as practicable give notice thereof to the other party, stating with reasonable

particularity the nature of the Force Majeure Event and the anticipated duration and effect thereof.

J. Governing Law

This Agreement and the rights and obligations of the parties and their successors and assigns hereunder shall be interpreted, construed, and enforced in accordance with the laws of the State of California.

K. Entire Agreement

This Agreement contains the entire agreement of the parties, and supersedes any and all prior agreements, understandings, negotiations, and agreements, whether oral or written, with respect to the subject matter hereof.

L. Amendments

No variations, modifications, or changes in, of, or to this Agreement shall be binding upon either party hereto unless set forth in a document duly executed by both parties.

M. Waiver

Any waiver of or consent to (whether express, implied, or deemed) any breach or default by either party of any term of this Agreement is not a waiver of or consent to any breach or default by such party of such term in any future instance, or of any other term in any instance. Failure on the part of a party to complain of any act of the other party or to declare the other party in breach of or default under this Agreement, irrespective of how long that failure continues, does not constitute a waiver by that party of its rights with respect to that breach or default until the applicable statute-of-limitations period has run. All waivers and consents hereunder shall be in writing to the respective parties. A party may grant or withhold any waiver or consent in its sole discretion.

N. Severability

If any provision of this Agreement or the application thereof to any person or circumstance shall be invalid or unenforceable to any extent, the remainder of this Agreement and the application of such provision to other persons or circumstances shall not be affected thereby and shall be enforced to the greatest extent permitted by law.

O. Binding Agreement; Third Party Beneficiaries

This Agreement shall inure to the benefit of and be binding upon the undersigned parties and their respective successors and permitted assigns. Whenever in this Agreement a reference to any party is made, such reference shall be deemed to include a reference to the successors and permitted assigns of such party. Nothing in this Agreement shall provide any benefit to any third party or entitle any third party to any claim, cause of action, remedy, or right of any kind, it being the intent of the parties that this Agreement shall not be construed as a third-party beneficiary agreement.

P. Assignment

Neither this Agreement nor any of the rights, interests, or obligations hereunder shall be assigned by either party hereto (whether by operation of law or otherwise) without the prior written consent of the other party, such consent not being withheld without good reason, and any attempted assignment thereof without such consent shall be null and void.

Q. Further Assurance

Each party agrees to execute and deliver such additional documents and instruments and perform such additional acts as the other party may reasonably request to effectuate and facilitate the performance of the provisions of this Agreement.

R. Interpretation

1. Captions. All captions in this Agreement are inserted for reference only and are not to be considered in the construction or interpretation of any provision hereof.
2. "Person". Except as otherwise expressly provided herein, all references to the word "person" in this Agreement include individuals, partnerships, corporations, limited liability companies, trusts, and any other legal entity or association.
3. Exhibits and Schedules. All of the exhibits and schedules attached to this Agreement constitute a part of this Agreement for all purposes.

4. Singular. Words showing the singular numbers shall include the plural and vice versa
5. References. References to any Agreement or instrument shall be deemed to include references to such Agreements or instruments as amended, notated, supplemented, varied, or replaced from time to time.
6. Counting of days. Any reference to "day" in this Agreement shall refer to calendar days, not business days, unless noted as such. However, when any act is to be performed on or by a week end or holiday, then such act shall be performed on or by the next business day.

S. Warranty

Except as otherwise set forth herein, MyWorkplace makes Client and Client receives no warranties or conditions, expressed, implied, statutory or otherwise, and MyWorkplace specifically disclaims any conditions of quality and any implied warranties, including, without limitation, any warranty of merchantability or fitness for a particular purpose. MyWorkplace does not warrant that the use of MyWorkplace and its various modules will be uninterrupted or error free.

MyWorkplace shall use best efforts to restore operational service and functionality to Client in the event of an interruption of service. If an interruption of service occurs due to a failure within MyWorkplace’s primary data center, and the outage is expected to last longer than one business day, MyWorkplace will temporarily switch from its main data center to MyWorkplace’s backup data center until normal operations within MyWorkplace’s primary facility are re-established.

If MyWorkplace experiences a system service issue that prevents Client from using MyWorkplace and the service level drops below a 98.0% availability during business hours in any given calendar month, Client, at its sole discretion, may request and receive a credit of 1% of the total monthly system access fee for each subsequent .1% drop below 98.0% in availability of the system, to a maximum of 5% of the monthly fee. Service interruptions due to normal and/or unscheduled system maintenance are excluded from availability periods. MyWorkplace shall schedule normal maintenance periods outside of normal business hours. Unscheduled maintenance periods are periods of time allotted for system security updates to address imminent Internet security threats. Normal business hours are defined as Monday through Friday, excluding holidays, from 8 am to 8 pm, eastern standard time.

MyWorkplace shall defend, indemnify, and hold harmless Client in the event of an infringement claim related to MyWorkplace. MyWorkplace represents and warrants that it owns MyWorkplace and the intellectual property related therein, that MyWorkplace is not subject to any known infringement claims, and that MyWorkplace has the right to enter into this agreement. MyWorkplace further represents and warrants that all services to be provided hereunder will be provided in a professional and workmanlike manner.

T. Notifications

Notifications shall be addressed to the following:

MyWorkplace

MyWorkplace, Inc.
 Attn: Greg Kinder
 400 N. Loop 1604 East, Ste. 110
 San Antonio, TX 78232

Client

City of Madera
 Attn: Wendy Silva
205 W. 4th Street
Madera, CA 93637
 Client EIN:946000365

This Agreement is entered on 2/1/2021 by the following authorized representative of MyWorkplace and Client:

Name: Seth Bostelman
 Title: Vice President Sales and Marketing

Name: Santos Garcia
 Title: Mayor

Seth Bostelman

 (signature)

 (signature)

Addendum A – Authorized Broker / Consultant

The following brokerage and/or consulting firm(s) is appointed by Client to represent Client in the management, maintenance, and/or implementation of Client's employee benefits package on MyWorkplace. This appointment shall remain in effect until MyWorkplace is notified by Client of a change in writing.

Brokerage/Consulting Firm is granted access to the MyWorkplace benefits administration module by Client. If access is granted, Client acknowledges that brokerage/consulting is authorized to make adds, changes, and other updates to Client data on Client's behalf.

Brokerage/Consultant: Alliant Insurance Services, Inc.

Addendum B - BUSINESS ASSOCIATE AGREEMENT

This Agreement is entered between Client, a "Covered Entity", and **MyWorkplace, Inc.**, "Business Associate".

RECITALS

WHEREAS, Covered Entity will make available and/or transfer to Business Associate certain information, including Protected Health Information (PHI) in conjunction with goods or services that are being provided by Business Associate to Covered Entity, that is confidential and must be afforded special treatment and protection;

WHEREAS, Business Associate will have access to and/or receive from Covered Entity certain information that can be used or disclosed only in accordance with this Agreement and the Health and Human Services Privacy Regulations;

In consideration of the mutual promises made below and the exchange of information pursuant to the agreement, the Covered Entity and Business Associate agree as follows:

1. **Definitions.** Terms used, but not otherwise defined, in this Agreement shall have the same meaning as those terms in 45 CFR 160.103 and 164.501.
 - a) *Business Associate.* "Business Associate" shall mean MyWorkplace, Inc.
 - b) *Covered Entity.* "Covered Entity" shall mean the Client.
 - c) *Individual.* "Individual" shall have the same meaning as the term "individual" in 45 CFR 164.501 and shall include a person who qualifies as a personal representative in accordance with 45 CFR 164.502(g).
 - d) *Privacy Rule.* "Privacy Rule" shall mean the Standards for Privacy of Individually Identifiable Health Information at 45 CFR part 160 and part 164, subparts A and E.
 - e) *Protected Health Information.* "Protected Health Information" shall have the same meaning as the term "protected health information" in 45 CFR 164.501, limited to the information created or received by Business Associate from or on behalf of Covered Entity.
 - f) *Required By Law.* "Required by Law" shall have the same meaning as the term "Required by Law" in 45 CFR 164.501.
 - g) *Secretary.* "Secretary" shall mean the Secretary of the Department of Health and Human Services or his/her designee.
2. **Obligations and Activities of Business Associate.**
 - a) Permitted uses and disclosures. Business Associate agrees to not use or disclose Protected Health Information other than as permitted or required by the Agreement or as Required By Law.
 - b) Safeguards. Business Associate agrees to use appropriate safeguards to prevent use or disclosure of the Protected Health Information other than as provided for by this Agreement.
 - c) Obligation to Mitigate. Business Associate agrees to mitigate, to the extent practicable, any harmful effect that is known to Business Associate of a use or disclosure of Protected Health Information by Business Associate in violation of the requirements of this Agreement.
 - d) Reporting of Disclosure. Business Associate agrees to promptly report to Covered Entity any use or disclosure of the Protected Health Information not provided for by this Agreement of which Business Associate becomes aware.
 - e) Business Associate's Agents. Business Associate agrees to ensure that any agent, including a subagreementor, to whom it provides Protected Health Information received from, or created or received by Business Associate on behalf of Covered

Entity agrees to the same restrictions and conditions that apply through this Agreement to Business Associate with respect to such information.

- f) Availability of Information in a Designated Record Set. Business Associate agrees to provide access, at the request of Covered Entity, and in a reasonable time and manner mutually agreed upon between the parties, to Protected Health Information in a Designated Record Set, to Covered Entity or, as directed by Covered Entity, to an Individual in order to meet the requirements under 45 CFR 164.524.
- g) Amendment of Private Health Information in a Designated Record Set. Business Associate agrees to make any amendment(s) to Protected Health Information in a Designated Record Set that the Covered Entity directs or agrees to pursuant to 45 CFR 164.526 at the request of the Covered Entity or an Individual, and in a reasonable time and manner mutually agreed upon by the parties.
- h) Access for Regulatory Compliance. Business Associate agrees to make 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 Covered Entity, or at the request of the Covered Entity to the Secretary, in a reasonable time and manner or as designated by the Secretary, for purposes of the Secretary determining Covered Entity's compliance with the Privacy Rule.
- i) Documenting Disclosures. Business Associate agrees to document such disclosures of Protected Health Information and information related to such disclosures as would be required for Covered Entity to respond to a request by an Individual for an accounting of disclosures of Protected Health Information in accordance with 45 CFR 164.528.
- j) Availability of Information. Business Associate agrees to provide to Covered Entity or an Individual, in a reasonable time and manner, information collected in accordance with Subsection 2(i) of this Agreement, to permit Covered Entity to respond to a request by an Individual for an accounting of disclosures of Protected Health Information in accordance with CFR 164.528.
- k) Standard Transactions. Business Associate shall conduct electronic health care transactions in accordance with the requirements (including effective date) of the HIPAA Transaction Rule (45 CFR Parts 160 and 162).

3. Permitted Uses and Disclosures by Business Associate.

- a) General Use and Disclosure Provisions. Except as otherwise limited in this Agreement, Business Associate may use or disclose Protected Health Information to perform such functions, activities, or services for, or on behalf of, Covered Entity provided that such use or disclosure would not violate the Privacy Rule if done by Covered Entity or violate the policies and procedures of the Covered Entity.
- b) Specific Use and Disclosure Provisions.
 - i) Except as otherwise limited in this Agreement, Business Associate may disclose Protected Health Information for the proper management and administration of the Business Associate, provided that disclosures are Required by Law, or Business Associate obtains reasonable assurances from the person to whom the information is disclosed that it will remain confidential and used or further disclosed only as Required by Law or for the purpose for which it was disclosed to the person, and the person notifies the Business Associate of any instances of which it is aware in which the confidentiality of the information has been breached.
 - ii) Except as otherwise limited in the Agreement, Business Associate may use Protected Health Information to provide Data Aggregation services to Covered Entity as permitted by 42 CFR 164.504(e)(2)(i)(B).
 - iii) Business Associate may use Protected Health Information to report violations of law to appropriate Federal or State authorities, consistent with 164.502(j)(1).

4. Obligations of Covered Entity.

(Provisions for Covered Entity to Inform Business Associate of Privacy Practices and Restrictions.)

- a) Covered Entity shall notify Business Associate of any limitation(s) in its notice of privacy practices of Covered Entity in accordance with 45 CFR 164.520, to the extent that such limitation may affect Business Associate's use or disclosure of Protected Health Information.

- b) Covered Entity shall notify Business Associate of any changes in, or revocation of, permission by an Individual to use or disclose Protected Health Information, to the extent that such changes may affect Business Associate's use or disclosure of Protected Health Information.
- c) Covered Entity shall notify Business Associate of any restriction to the use or disclosure of Protected Health Information that Covered Entity has agreed to in accordance with 45 CFR 164.522., to the extent that such restriction may affect Business Associate's use or disclosure of Protected Health Information.

5. Permissible Requests by Covered Entity.

Covered Entity shall not request Business Associate to use or disclose Protected Health Information in any manner that would not be permissible under the Privacy Rule if done by Covered Entity, except for data aggregation or management and administrative activities of the Business Associate as authorized under Subsection 3(c).

6. Term and Termination.

- a) *Term.* The term of this Agreement shall be effective as of the date defined in Section C and shall terminate when all of the Protected Health Information provided by Covered Entity to Business Associate, or created or received by Business Associate on behalf of Covered Entity, is destroyed or returned to Covered Entity, or, if it is infeasible to return or destroy Protected Health Information, protections are extended to such information, in accordance with the termination provisions in this section.
- b) *Termination for Cause.* Upon Covered Entity's knowledge of a material breach by Business Associate, Covered Entity shall provide an opportunity for Business Associate to cure the breach or end the violation and terminate this Agreement if Business Associate does not cure the breach or end the violation within the time specified by Covered Entity, or immediately terminate this Agreement if Business Associate has breached a material Term of this Agreement and cure is not possible.
- c) *Effect of Termination.*
 - i) Except as provided in paragraph (ii) of this section below, upon termination of this Agreement, for any reason, Business Associate shall return or destroy all Protected Health Information received from Covered Entity, or created or received by Business Associate on behalf of Covered Entity. This provision shall apply to Protected Health Information that is in the possession of subcontractors or agents of Business Associate. Business Associate shall retain no copies of the Protected Health Information.
 - ii) In the event that Business Associate determines that returning or destroying the Protected Health Information is infeasible, Business Associate shall provide to Covered Entity notification of the conditions that make return or destruction infeasible. Upon mutual agreement of the Parties that return or destruction of Protected Health Information is infeasible, Business Associate shall extend the protections of this Agreement to such Protected Health Information and limit further uses and disclosures of such Protected Health Information to those purposes that make the return or destruction infeasible, for so long as Business Associate maintains such Protected Health Information.

7. Miscellaneous.

- a) *Regulatory References.* A reference in this Agreement to a section in the Privacy Rule means the section as in effect or as amended, and for which compliance is required.
- b) *Amendment.* The parties agree to take such action as is necessary to amend this Agreement from time to time as is necessary for Covered Entity to comply with the requirements of the Privacy Rule and the Health Insurance Portability and Accountability Act of 1996, Public Law 104-191.
- c) *Survival.* The respective rights and obligations of Business Associate under Section 6(c) of this Agreement shall survive the termination of this Agreement.
- d) *Interpretation.* Any ambiguity in this Agreement shall be resolved in favor of a meaning that permits Covered Entity to comply with the Privacy Rule.

8. Third Party Beneficiaries

Nothing express or implied in this Agreement is intended to confer, nor shall anything herein confer, upon any person other than Covered Entity and Business Associate and their respective successors or assigns, any rights, remedies, obligations or liabilities whatsoever.

9. Authorizations

Covered Entity authorizes Business Associate to disclose Protected Health Information only to Covered Entity or insurance carriers, third party administrators, or other benefit vendors retained by Covered Entity. Business Associate is not authorized to disclose Protected Health Information to any other entity without the expressed written permission of Covered Entity, unless otherwise prescribed by law.

Covered Entity will immediately notify Business Associate of any insurance carrier, third party administrator, or other benefit vendor to which disclosure of Protected Health Information is no longer authorized.

10. Compensation

Covered Entity agrees to compensate Business Associate at Business Associate’s contracted hourly rate for any amendment(s) to Protected Health Information made by Business Associate at the direction of Covered Entity or an Individual.

IN WITNESS WHEREOF, Business Associate and Covered Entity have caused this Agreement to be signed and delivered by their duly authorized representatives, effective as of the date set forth above

MyWorkplace

Client

Seth Bostelman

By: Seth Bostelman

By: Santos Garcia

Title: Vice President Sales and Marketing

Title: Mayor

Date: 2/11/2021

Date:

Addendum C

Controls and Data Security Addendum

1. Definitions – as used in this Addendum, the following terms have the following meanings:
 - a. **“Addendum”** – this document.
 - b. **“Confidential Information”** shall mean any non-public information of one party received by the other party that is designated as confidential or proprietary, that the receiving party knew or reasonably should have known was confidential or proprietary, or that derives independent value from not being generally known to the public. Without limiting the generality of the foregoing, Client’s Confidential Information shall include Personal Information, and information regarding Client, its customers, sales, marketing, financial information, personnel matters, or means of doing business and projections and marketing strategy; MyWorkplace’s Confidential Information shall include its proprietary methodologies and software codes. The confidentiality obligations hereunder will not extend to information that: (i) already known by or available to the receiving party without obligation of confidentiality prior to disclosure under this Agreement; (ii) is or becomes publicly known without breach by the receiving party; (iii) is rightfully received by the receiving party from a third party without a duty of confidentiality; (iv) is independently developed or learned by the receiving party without use of the disclosing Party’s Confidential Information; (v) is disclosed by the receiving party with the disclosing party’s prior written approval. (vi) is required to be disclosed pursuant to a lawful order of a governmental authority, so long as the Party required to disclose the information provides the Party owning Confidential Information with timely prior notice of such requirement.
 - c. **“Personal Information”** Recorded information that is designated by any applicable law or regulation as “personal information” as to any individual who is an employee, officer, agent, shareholder, director or customer of Client and including, without limitation information that includes one or more of his or her (i) name, address, email address, phone number, social security number, (ii) credit or debit card numbers, expiration dates, security codes, bank account information, credit ratings, other financial or financial payment information, (iii) race, nationality, ethnicity, origin, color, religious or political beliefs or associations, (iv) age, sex, sexual orientation, marital status, family status, (v) identifying number, code, symbol, (vi) finger prints, blood type, inherited characteristics, (vii) health care history including information on physical/mental disability, (viii) educational, financial, criminal, employment history.
 - d. **“Security Breach”** - any actual, probable or reasonably suspected unauthorized access to, or acquisition, use, loss, destruction, compromise or disclosure of, any Client Confidential Information, including without limitation any Personal Information, while such information is or was in the possession or control of MyWorkplace or its subcontractors or agents.
2. Responsibility for Data Security.
 - a. MyWorkplace is fully responsible for any authorized or unauthorized collection, storage, disclosure and use of, and access to, Client Confidential Information while in the possession or control of MyWorkplace or its subcontractors or agents.
 - b. MyWorkplace shall implement and maintain appropriate information and cyber security safeguards ("Safeguards") that prevent any collection, use or disclosure of, or access to, Confidential Information that this Agreement does not expressly authorize, including, without limitation, an information security program that meets the standards of best industry practice to safeguard Personal Information. In addition, MyWorkplace shall store and maintain access to security-related log information from systems, network devices, security solutions, etc. for not less than six (6) months.
 - c. MyWorkplace agrees to store all Client Confidential Information in backup data as part of its designated backup and recovery processes in encrypted form, using a commercially supported encryption solution. MyWorkplace further agrees that any and all Client Confidential Information stored on any portable or laptop computing device or any

portable storage medium be likewise encrypted. Encryption solutions will be deployed with no less than a 128-bit key for symmetric encryption and a 1024 (or larger) bit key length for asymmetric encryption.

3. Audit Requirements.

- a. Client or an appointed audit firm (“Auditors”) has the right to audit the MyWorkplace and the MyWorkplace’s sub-agreements or affiliates that provide a service for the processing, transport or storage of Client Confidential Information. Client will announce its intent to audit the MyWorkplace by providing at a minimum two weeks (10 business days) notice to the MyWorkplace. A scope document along with a request for deliverables will be provided at the time of notification of an audit. If the documentation requested cannot be removed from the MyWorkplace’s premises, MyWorkplace will allow the Auditors access to its site. Where necessary, MyWorkplace will provide a personal site guide for the Auditors while on site. MyWorkplace will provide a private accommodation on site for data analysis and meetings; the accommodation will allow for a reasonable workspace, with appropriate lighting, electrical, a printer and Internet connectivity. MyWorkplace will make necessary employees or contractors available for interviews in person or on the phone during the time frame of the audit.
- b. MyWorkplace is responsible for establishing and maintaining appropriate internal controls designed for the protection, confidentiality and integrity of transactions and data processed on behalf of Client. Accordingly, MyWorkplace agrees that it shall:
 - i. Ensure completion of an annual third-party examination of the design and operating effectiveness of MyWorkplace’s controls by a reputable certified public accounting firm in accordance with the Statement on Standards for Attestation Engagements No. 16 (SSAE 16) and shall obtain a SSAE 16 Service Organization Control (SOC) 2 report.
 - ii. At Client’s request, Deliver to Client a full and complete electronic copy of such (SOC) 2 report with an effective date no later than September 30 of each year.
 - iii. At Client’s request, prepare and deliver to Client a detailed plan for remediating all identified deficiencies and a description of mitigating controls, if applicable, within a reasonable period of time following identification of deficiencies based on the nature and complexity of the deficiencies to be remediated, not to exceed thirty days following identification of such deficiencies; and
 - iv. Bear all costs and expenses associated with correcting deficiencies.
- c. If an adverse opinion on the design and operating effectiveness of MyWorkplace’s internal controls is rendered by the independent certified public accounting firm, Client shall, at its option, have the right to terminate MyWorkplace’s services under the Agreement without cost to Client.

4. Notification. MyWorkplace shall immediately notify Client of any actual, probable or reasonably suspected Security Breach with respect to Client’s Confidential Information. The notification of any such breach and the notifications required under Section 3 above shall be by email or hand delivery or by telephone followed by an email to the following contact person:

Client Contact Person: Wendy Silva
Business Telephone Number: (559) 661-5481
Cell phone Number: (559) 479-0517
Email Address: wsilva@madera.gov
Physical Address: 205 W. 4th Street, Madera, CA 93637

Immediate notification shall mean as soon as reasonably possible following MyWorkplace’s learning of a Security Breach.

5. Investigation.

- a. MyWorkplace shall (i) assist Client in investigating, remedying and taking any other action Client deems necessary regarding any Security Breach and any dispute, inquiry or claim that concerns the Security Breach; and (ii) shall provide Client with assurance satisfactory to Client that such Security Breach or potential Security Breach will not recur. Unless prohibited by an applicable statute or court order, MyWorkplace shall also notify Client of any third-

party legal process relating to any Security Breach, including, but not limited to, any legal process initiated by any governmental entity (foreign or domestic).

- b. Client may retain a computer forensics firm to conduct a subsequent investigation if the Client in good faith believes that MyWorkplace did not complete a thorough investigation. Client and any government investigative body and such forensic firm shall be give reasonable access to MyWorkplace's systems and logs with full right to make copies of all such logs which may reasonably relate to the Security Breach. Client and the forensic firms shall enter into a confidentiality agreement with MyWorkplace with respect to any such information derived from MyWorkplace's records and systems.

6. Breach Notification.

- c. MyWorkplace agrees to comply with all applicable laws that require the notification of individuals in the event of unauthorized release of personally identifiable information or other event requiring notification. In the event of a breach of any of MyWorkplace's security obligations, or other event requiring notification under applicable law.
- d. MyWorkplace agrees to assume responsibility for informing all such individuals in accordance with applicable law; provided however, that no press release which includes a reference to Client, notification to any Client Related Party or public pronouncement which includes a reference to Client shall be made without Client's prior approval not to be unreasonably withheld or delayed.

7. Indemnity

- a. MyWorkplace will defend and indemnify Client, its parent, subsidiaries and affiliates, and each of their respective officers, shareholders, directors and employees from and against any third party claims, losses, liabilities and expenses (including, without limitation, reasonable attorneys' fees and expenses) that relate to any failure to comply with any obligation enumerated in this this Addendum.
- b. The party seeking to be indemnified (the "Indemnified Party") by the other party (the "Indemnifying Party") under this Agreement agrees to give the Indemnifying Party prompt written notice of any third party claim (a "Claim"); provided, however, that such notice shall not be a condition to the Indemnifying Party's indemnity obligations hereunder unless the Indemnifying Party is materially and adversely affected by the Indemnified Party's failure or delay in giving such notice. If the Indemnifying Party has reconfirmed, in writing and in a timely manner, its obligations to indemnify the Indemnified Party for a particular Claim, and the Indemnifying Party has provided the Indemnified Party with assurances satisfactory to the Indemnified Party, acting reasonably, that the Indemnifying Party has sufficient resources to satisfy its indemnity obligations hereunder, then the Indemnified Party will allow the Indemnifying Party to control the defense of such Claim as long as the Indemnifying Party acts promptly and reasonably. The Indemnified Party will reasonably cooperate with the Indemnifying Party in the defense of such claim. Any settlement by the Indemnifying Party must be approved by the Indemnified Party, with such approval not to be unreasonably withheld if the Indemnified Party receives a complete release of any such Claim. Notwithstanding anything herein stated, if in the Indemnified Party's reasonable judgment, the interests of the parties conflict, the Indemnified Party may select, at the Indemnifying Party's expense, its counsel as long as the Indemnified Party provides the Indemnifying Party notice of such selection within ten (10) business days after receiving service of a summons and complaint. Further, notwithstanding anything herein stated, the Indemnified Party shall at all times have the right to fully participate in such defense at its own expense directly or through counsel; provided, however, if representation of both parties by the same counsel would be inappropriate under applicable standards of professional conduct and either party obtains a written legal opinion to such effect, then the reasonable expense of separate counsel for the Indemnified Party shall be paid by the Indemnifying Party.

8. Agreement Termination. MyWorkplace agrees that upon termination of its services under the Existing Agreement it shall erase, destroy, and render unrecoverable all Client data and certify in writing that these actions have been completed within 90 days of the termination of the Existing Agreement or within 7 days of the request of an agent of Client, whichever shall come first; provided, however that records shall be retained as necessary to comply with applicable law. At a minimum, a "Clear" media sanitization is to be performed according to the standards enumerated by the National Institute of Standards, Guidelines for Media Sanitization, SP800-88.

9. Miscellaneous.

- A. Headings. The captions and headings used in this Addendum are for convenience only and do not in any way limit, amplify, or otherwise modify the provisions of this Addendum.
- B. Construction. All parties acknowledge that they have had meaningful input into the terms and conditions contained in this Addendum. Any doubtful or ambiguous provisions contained herein shall not be construed against the party who drafted the Addendum. Captions and headings in this Addendum are for convenience of reference only and shall not affect the construction of this Addendum.
- C. Venue; Applicable Law. The rights, obligations and remedies of the parties specified under this Addendum shall be interpreted and governed in all respects by the laws of the State of the laws of which apply to the Existing Agreement.
- D. Parties to Addendum; Successors and Assigns. This is an Addendum solely between the persons who are signatory parties to this Addendum. The execution and delivery hereof shall not be deemed to confer any rights or privileges on any person not a party hereto. This Addendum shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns.
- E. Counterparts. This Addendum may be executed in several counterparts, each of which shall be deemed an original, and all of such counterparts together shall constitute one and the same instrument and may be delivered by facsimile or other electronic means with facsimile or other electronic signatures having the same effect as original ink signatures.
- F. Waivers. Except as otherwise provided herein, all waivers, amendments or modifications of this Addendum must be in writing and signed by all parties. Any failures or delays by any party in insisting upon strict performance of the provisions hereof, or asserting any of its rights and remedies as to any default shall not constitute a waiver of any other default or of any such rights or remedies. Except with respect to rights and remedies expressly declared to be exclusive in this Addendum, the rights and remedies of the parties hereto are cumulative, and the exercise by any party of one or more of such rights or remedies shall not preclude the exercise by it, at the same or different times, or any other rights or remedies for the same default or any other default by any other party.
- G. Survival. This Addendum shall survive the termination of the Existing Agreement.
- H. Amendment. This Addendum may be amended by the parties hereto only upon the execution of a written amendment or modification signed by the parties.

IN WITNESS WHEREOF, the parties hereto have executed this Addendum as of the date first above written.

Client:

By: Santos Garcia, Mayor

MyWorkplace:

Seth Bostelman

By: Seth Bostelman

Addendum D

Additional Scope of Work

No additional work to be offered by MyWorkplace.