

## REPORT TO CITY COUNCIL

**Approved by:**

  
\_\_\_\_\_  
Keith Helmuth, P.E., Department Director

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

**Council Meeting of:** April 21, 2021

**Agenda Number:** B-8

**SUBJECT:**

Ellis & D Street Subdivision (Tract No. 19-S-07)

**RECOMMENDATION:**

Adopt a Resolution:

- 1) Approving the Final Map for the Ellis & D Street Subdivision.
- 2) Approving Improvement Agreement (Agreement) for the Construction of Improvements for the Ellis & D Street Subdivision (Tract No. 19-S-07).
- 3) Authorizing staff to record the Final Map and Agreement for the Construction of Improvements for the Ellis & D Street Subdivision (Tract No. 19-S-07).
- 4) Accepting the Dedication of Land for Public Use.

**SUMMARY:**

On February 12, 2019, the City's Planning Commission approved Tentative Subdivision Map No. TSM 2018-07 and Rezone REZ 2018-08 for the Ellis & D Street Subdivision ("Project"). The Subdivider, Hengli 2, LLC, A California Limited Liability Company is now ready to proceed with development of the Project.

**DISCUSSION:**

The Final Map for Ellis & D Street Subdivision has been checked and approved by the City Engineer. The Final Map substantially complies with the approved tentative map. All taxes will be paid prior to recordation of the Final Map. Bonds and insurance requirements will be provided prior to recordation of the Final Map or as part of an application to construct off-site improvements in advance of the approval of the Agreement.

The Subdivider, Hengli 2, LLC, A California Limited Liability Company, has signed a Landowner's Consent for annexation into Zone of Benefit 51 of Citywide Landscape Maintenance District (LMD). Pursuant to the California Environmental Quality Act (CEQA) Guidelines Section 15268(b)(3), approval of final subdivision maps is a ministerial action and is exempt from the requirements of CEQA.

The Subdivider and Century Communities of California, LLC, a Delaware limited liability company (“Century”), are parties to an escrow for the purpose of effecting the transfer of all rights, title and interest in the land described by Final Map by the Subdivider to Century with an Assignment and Assumption Agreement vesting in Century all rights and obligations under the Agreement. The Subdivider and Century intend for the escrow to close soon after the City’s approval of the Final Map and the Agreement. After close of escrow, Century would submit to the City any and all documents required by the Agreement, including but not limited to security instruments and evidence of insurance, pay all fees, and satisfy all other conditions precedent to recording of the Final Map.

The Agreement also includes a requirement to relocate traffic signal equipment that was installed without notice to City sometime after approval of the tentative map at the intersection of Ellis Street and D Street. Had notice been received, it is anticipated that through standard encroachment permit application and associated plan review that portions of the equipment could have been installed in their permanent locations.

While not included in the Agreement beyond the requirement to excavate, it should be noted that this Project drains to a storm drainage basin owned and maintained by the County. Use of this basin was assumed in the conditions of approval with a requirement to secure an encroachment permit. The assumed use of this basin was however premature in that the County had not previously approved of such use. It was later determined to represent a concern to County staff primarily because the basin is now also used for recharge purposes. City and County staff discussed this basin at length and determined that use of the basin for this Project only can be granted subject to entering into a Memorandum of Understanding (MOU) that addresses the conditions under which the basin may be used for this project and potentially other locations. This MOU will be brought to Council at a future date following completion of MOU and determination of terms and conditions that will be included therein.

**FINANCIAL IMPACT:**

The Subdivision is included in the City’s Community Facilities District (CFD) to offset any impacts to the City’s General Fund. The Subdivider has also paid the required fees for the plan checking and inspection of the installation of required improvements for the subdivision.

**CONSISTENCY WITH THE VISION MADERA 2025 PLAN:**

Subdivisions are not specifically addressed in the vision or action plans. However, some components are consistent.

*Action 134.1: Consider establishment of design/landscape standards for neighborhoods and business construction - Current landscape design standards have been enforced which aid in the establishment of Well-Planned Neighborhoods and Housing.*

**ALTERNATIVES:**

Not approve one or more items associated with this Staff Report. If Council does not approve the Final Map and the execution of the Agreement, it would result in the inability to record the Final Map and for the Subdivider to complete the project. Disapproval will require the Council to make certain findings that specific conditions have not been met.

**ATTACHMENTS:**

1. Resolution – Approving Final Map and Agreement
  - Exhibit A – Improvement Agreement
  - Exhibit A – Legal Description
  - Exhibit B – Development Impact Fees
2. Resolution - Confirmation of the Diagram and Assessments for Zone of Benefit 51
  - Exhibit A – Legal Description
  - Exhibit B – Assessment Diagram
  - Exhibit C – Assessment Amounts
3. LMD Covenant
  - Exhibit A – Legal Description
4. LMD Zone Map
5. Project Location Map

**Attachment 1**

Resolution  
Final Map and Agreement

**RESOLUTION NO. 21-\_\_\_**

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MADERA,  
CALIFORNIA, APPROVING THE FINAL MAP FOR THE ELLIS & D  
STREET SUBDIVISION (TRACT NO. 19-S-07) AND IMPROVEMENT  
AGREEMENT**

**WHEREAS**, Hengli 2, LLC, A California Limited Liability Company, has offered for approval a Final Map designated as Tract No. 19-S-07; and

**WHEREAS**, the Planning Commission on February 12, 2019 adopted a negative declaration consistent with Section 15070(a) of the California Environmental Quality Act for the Ellis & D Street Subdivision as part of Tentative Subdivision TSM 2018-07 and Rezone REZ 2018-08; and

**WHEREAS**, the Final Map for the Ellis & D Street Subdivision, prepared by Precision Civil Engineering, Inc., for Hengli 2, LLC, A California Limited Liability Company has been certified by the City Engineer that all provisions of the law and of Chapter 2 of Title 10 of the Madera Municipal Code have been complied with and that said subdivision as shown is substantially the same as it appears on the tentative map thereof heretofore approved by the Planning Commission of the City of Madera on February 12, 2019; and

**WHEREAS**, prior to the delivery of said map and prior to its recordation, the Owner and Subdivider of said subdivision shall enter into and execute an agreement between the City and said Owner and Subdivider for said subdivision which is on file in the office of the City Clerk entitled, "Improvement Agreement Ellis & D Street Subdivision (Tract No. 19-S-07)," (hereafter "Improvement Agreement") wherein the Subdivider, in consideration of the approval of said map by the City and the acceptance by the City of the dedication of lands for public use therein contained, shall agree to construct and complete within the time specified in said Improvement Agreement all street and other improvements required of Subdivider under the provisions of Chapter 2 of Title 10 of the Madera Municipal Code relating to regulations and standards for the subdivision of lands in the City and the preparation of maps thereof, and such street or other improvements designated or mentioned in the Improvement Agreement and/or set forth in the plans and specifications for the improvements for the Ellis & D Street Subdivision is on file in the office of the City Engineer; and

**WHEREAS**, Subdivider shall, and as a condition precedent to the recordation of said Final Map, furnish to the City and file with the City Clerk a good and sufficient improvement security in a form to be approved by the City Attorney, securing the faithful performance by said Subdivider of all work and the construction of all improvements designated as required in the Improvement Agreement, and also security in form to be approved by the City Attorney securing the payment by said Subdivider of all bills for labor and materials incurred in the construction of any and all said improvements, and the doing of all other work therein agreed to be done by said Subdivider, within the time therein specified, the amount of said improvement securities to be not less than Five Million Two Hundred Seventy-Six Thousand Nine Hundred Forty-Eight Dollars and Ninety-Three Cents (\$5,276,948.93); and

**WHEREAS**, Subdivider and Century Communities of California, LLC, a Delaware limited liability company (“Century”), are parties to a purchase and sale agreement pursuant to which Century intends to acquire, and Subdivider intends to transfer to Century, all rights, title and interest in the land described by said Final Map, and the parties desire to obtain the City’s approval of the assignment of said Final Map and the Improvement Agreement to Century; and

**WHEREAS**, Subdivider shall, and as a condition precedent to the recordation of said Final Map, furnish to the City and file with the City Clerk certificates or policies of public liability and property damage insurance as required in the Improvement Agreement.

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

1. The above recitals are true and correct.
2. The Final Map for the Ellis & D Street Subdivision (Tract No. 19-S-07) is approved.
3. The Improvement Agreement entitled “Improvement Agreement Ellis & D Street Subdivision (Tract No. 19-S-07)” for the construction of improvements for the Ellis & D Street Subdivision is approved and attached as Exhibit “A.” A copy of the Improvement Agreement shall be kept on file in the office of the City Clerk.
4. The Staff is authorized to record the Final Map and Improvement Agreement for the construction of improvements for the Ellis & D Street Subdivision (Tract No. 19-S-07) subject to receipt of the bonds and insurance required by the Improvement Agreement.
5. The assignment of said Final Map and the Improvement Agreement, including all rights and obligations related thereto, to Century Communities of California, LLC is hereby approved effective upon Century’s acquisition of fee title interest in the land described by said Final Map.
6. The dedication of lands for public use is accepted.
7. This resolution is effective immediately upon adoption.

\* \* \* \* \*

**Exhibit A**

Improvement Agreement

RECORDING REQUESTED BY:

City of Madera  
AFTER RECORDING RETURN TO:  
City Clerk  
City of Madera  
205 W. 4th Street  
Madera, CA 93637

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Fee Waived Per Section 27383 & 27388.1(a)(2)(D) of the Government Code

**IMPROVEMENT AGREEMENT  
ELLIS & D STREET SUBDIVISION  
(TRACT NO. 19-S-07)**

THIS IMPROVEMENT AGREEMENT (“Agreement”) is entered into this \_\_\_ day of \_\_\_\_\_, 2021, (the “Effective Date”) by and between the City of Madera, a municipal corporation of the State of California, hereinafter called “City”; and Hengli 2 LLC, A California Limited Liability Company, hereinafter called “Subdivider” or “Owner” (individually a “Party” and collectively the “Parties”).

**RECITALS**

- A. Owner has filed with City a certain subdivision map of a proposed division of land known as FINAL MAP OF TRACT NO. 19-S-07 Ellis & D Street Subdivision, recorded \_\_\_\_\_, in Book \_\_\_, Pages \_\_\_ through \_\_\_, recorded as document no. \_\_\_\_\_ Madera County records, situated in the City of Madera, County of Madera, State of California (the “Subject Property”) owned by Owner, located within the corporate limits of the City, and more particularly described as set forth in Exhibit “A.” A copy of said Tentative Tract Map No. 2018-07 (“Tentative Map”) is on file with the City Clerk.
- B. The City has conducted the appropriate environmental review of the proposed subdivision; the Planning Commission has determined the proposed subdivision is consistent with the City’s general plan in that the land use is compatible with the objectives, policies, general land uses, and programs specified in such a plan; and the Planning Commission has recommended approval of the proposed Tentative Map as conditioned.
- C. City requires as a condition precedent to the acceptance and approval of the Final Tract Map the dedications or deeds of such streets, highways, and public places for all areas delineated on said map for street and other public purposes as required under the Madera Municipal Code, this Agreement, and the Tentative Map.



- D. Owner is required to construct certain street, utility, and public improvements within the boundaries of said Final Tract Map. Owner shall, at the Owner's own cost and expense, construct all of the improvements, mentioned, all in accordance with and to the extent and as provided in those certain plans entitled, "Plans for Construction of: Ellis & D Street Subdivision Tract 19-S-07 Improvement Plans in the City of Madera," as approved by the City Engineer and on file with the City Engineer of the City of Madera and the City of Madera Standard Drawings and Specifications, as amended. Said work shall include but shall not necessarily be limited to, all of the following: asphalt concrete paving, aggregate base, concrete curb and gutters, sidewalks, water and sewer mains, water and sewer services, storm drainage facilities, street lights, fire hydrants, gas, electric and communication lines, landscape district improvements, implementation of any and all Best Management Practices (BMP's) as outlined in the City's Storm Water Quality Management Program and Storm Water Pollution Prevention Plan on file in the office of the City Engineer, implementation of any and all BMP's to prevent the infiltration of storm water into the City's sanitary sewer collection system, and all other work, improvements or construction required by or mentioned in the above referenced plans and specifications and all appurtenances reasonably necessary to complete the aforementioned improvements. Except for streets not having direct residential access, installation of sidewalks may be deferred and constructed with residential development subsequent to the acceptance of the subdivision improvements so long as each and every house has an ADA accessible route to a collector or arterial adjacent to the subdivision prior to occupancy of any house.
- E. Owner is required, at Owners sole cost, to relocate and/or construct certain traffic signal improvements at the intersection of Ellis Street and D Street not originally included in the Conditions of Approval for which the City was not notified of intent to construct through an encroachment permit. Such notification would have allowed for a plan review that might have resulted in such equipment being installed in the proper future locations. City will not as evidenced through the approval of this Agreement require that design drawings be completed prior to approval of the remainder of the off-site improvement plans entitled "Plans for Construction of: Ellis & D Street Subdivision Tract 19-S-07 Improvement Plans in the City of Madera.," Said drawings, will however, be completed and traffic signal improvements be completed prior to acceptance of public improvements. Said work shall include but shall not necessarily be limited to, all materials, equipment, and labor to complete a modified traffic signal system.
- F. Reference is made hereby to (a) that certain subdivision map entitled, "Final Map of Tract No. 19-S-07 Ellis & D Street Subdivision," (b) improvement construction plans, (c) those certain specifications on file in the office of the City Engineer entitled, "City of Madera Standard Plans and Specifications," and (d) "Madera Irrigation District Standards," as may be applicable this project, for a more particular description of the work and improvements generally outlined in this Agreement. Said subdivision map,

plans and specifications referred to in this paragraph are hereby incorporated herein and made a part of this Agreement by reference thereto.

- G. Owner desires and agrees to complete the improvements and subdivide the Subject Property through the Subdivision Map Act process.
- H. City Council approval of said Final Tract Map to divide the property and acceptance of the dedications therein offered are subject to and on the condition precedent that Owner first enter into and execute this Agreement with the City and provide the City with all other things as required herein and/or as required by the City.
- I. Recordation of said Final Tract Map to divide the property therein offered are subject to and on the condition precedent that Owner first provide the City with such bonds, improvement securities, monies, insurance and Homeowners Association as required herein and/or as required by the City.

## **AGREEMENT**

In consideration of the approval of the foregoing recitals which are made a substantive part of this Agreement and in consideration of the approval of the above-mentioned Final Tract Map by City for filing and recording as provided and required by law, Owner and City do hereby mutually agree as follows:

### **ARTICLE I. GENERAL PROVISIONS**

#### **A. AGREEMENT**

This Agreement is entered into pursuant to California Government Code Section 66410 *et seq.* (“the Subdivision Map Act”), and Section 10-2.701 *et seq.* of Chapter 2 of Title X of the Madera Municipal Code. The provisions of this Agreement and the improvements to be constructed as required by the Subdivision Map Act and this Agreement are necessary and proper to safeguard and serve the public health, safety and welfare.

#### **B. DEFINITIONS**

Wherever used in the Agreement, the following words and phrases shall have the meaning herein given, unless the context requires a different meaning:

1. “Engineer” shall mean the City Engineer of the City of Madera, or duly authorized representative.
2. “Inspector” shall mean the City Engineer of the City of Madera, or his duly authorized representative.
3. “Standard Specifications” shall mean the City of Madera Standard Drawings and Specifications, including attached details and amendments thereto.
4. “Division” shall mean and include the real property shown and described on the subdivision map as being divided into parcels, including street areas of adjacent existing public streets to the center lines thereof.
5. “Improvements” shall mean all work and improvements, including those depicted or required on the plans for the Final Map, which may include plans relating to sewer, water, streets, storm drainage, street lighting, concrete, paving, fencing, landscaping, irrigation, grading, and traffic signals.

#### **C. DEVELOPMENT FEES**

1. Development Impact Fees: Owner is obligated to pay all applicable Development Impact Fees for sewer, wastewater treatment plant, water, storm drainage, parks, administrative, fire, general government, police, public works, streets, transportation and traffic signals in the amounts shown in the City’s Master Fee Schedule, section “Development Impact Fees” on Exhibit “B” attached hereto and incorporated by reference. The impact fees shall be paid at time of application for each individual building permit in accordance with

the fees in place at the time of application.

2. Other Fees: In addition, Owner is obligated to pay plan check, improvement inspection, grading permit, building permit, encroachment permit, and similar miscellaneous fees as well as drainage and other utility fees required under the Madera Municipal Code and any resolution establishing fees and charges.
3. Fee Adjustments:
  - a) Development Impact Fees - In the event impact fees are updated as a result of recommendation included within any future Development Impact fee Study Report, Owner shall pay those adjusted fees with each building permit secured following adoption of said fees by the City Council.
  - b) Other Fees - In the event the improvements are not completed as set forth in Article II, Section D of this Agreement and an extension is secured by Owner, the City reserves the right to adjust the fees to those prevailing at the time of construction.

#### D. INDEMNIFICATION

Indemnity for Professional Liability: When the law establishes a professional standard of care for Owner's activities to the fullest extent permitted by law, Owner shall indemnify, protect, defend, and hold harmless City and any and all of its officials, employees and agents from and against any and all losses, liabilities, damages, costs, and expenses, including legal counsel's fees and costs but only to the extent the Owner (and its Subcontractors), are responsible for such damages, liabilities and costs on a comparative basis of fault between the Owner (and its Subcontractors) and the City in the performance of professional activities under this agreement.

Indemnity for Other Than Professional Liability: Other than in the performance of professional services and to the full extent permitted by law, Owner shall indemnify, defend, and hold harmless City, and any and all of its employees, officials and agents from and against any liability (including liability for claims, suits, actions, arbitration proceedings, administrative proceedings, regulatory proceedings, losses, expenses or costs of any kind, whether actual, alleged or threatened, including legal counsel's fees and costs, court costs, defense costs, and expert witness fees), where the same arise out of, are a consequence of, or are in any way attributable to, in whole or in part, the performance of this Agreement by Owner or by any individual or City for which Owner is legally liable, including, but not limited to officers, agents, employees, or subcontractors of Owner, except when caused by the active negligence, sole negligence, or willful misconduct of City.

E. INSURANCE

Prior to the recordation of the Final Map, Owner or Owner's contractors shall furnish to City satisfactory evidence of an insurance policy written upon a form and by a company which meets with the approval of City insuring City and the City Engineer, their officers, agents and employees against loss or liability which may arise during the work or which may result from any of the work herein required to be done, including all costs of defending any claim arising as a result thereof. The minimum limits of such policy shall be in the amount of Five Million Dollars (\$5,000,000.00) per occurrence for bodily injury, personal injury, and property damage, including without limitation, blanket contractual liability. If a general aggregate limit applies, either the general aggregate limit shall apply separately to this project/location or the general aggregate limit shall be twice the required occurrence limit. The general liability policies shall be primary and shall not seek contribution from the City's coverage and be endorsed using Insurance Services Office form CG 20 10 (or equivalent) to provide that Owner or its contractors and City and the City Engineer, their officers, agents and employees shall be additional insureds under such policies. An endorsement providing completed operations coverage for the additional insured, ISO form CG 20 37 (or equivalent), is also required. Any policy required by the Encroachment Permit shall include coverage for underground explosion and collapse. Said policy shall state by its terms and by an endorsement that said policy shall not be canceled until City shall have had at least thirty (30) days' notice in writing of such cancellation.

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.

F. NOTICE OF COMPLETION

The offers of dedication made on the Subdivision Map shall remain open but will not be accepted by the City until the City Council accepts the Improvements and authorizes the recording of a Notice of Completion. The City may accept such offers in its sole discretion at any later date without further notice to Owner. Until such time as City formally accepts the Improvements and any lands, rights of way or easements, Owner shall be responsible to maintain such lands, rights of way, easements and improvements in a safe condition and good repair.

Owner agrees that the use of any or all streets and improvements specified in this Agreement shall be at all times, prior to the final acceptance of the subdivision by City, at the sole and exclusive risk of Owner, and the issuance of any occupancy permits by City for dwellings located within the subdivision shall not be construed in any manner to be an acceptance or approval of any or all of the streets and improvements in the subdivision, or that stage of development of the streets and improvements represented by their condition at the time of issuance of any occupancy permits, or any stage of their development

reached during the period commencing with the issuance of any occupancy permit and terminating upon the final acceptance of the tract.

G. BONDS AND OTHER SECURITY

Prior to recording the Final Map, or unless otherwise indicated, Owner shall furnish to the City performance guarantees as provided herein. Bonds or other security instruments shall be maintained in full force and effect during the term of this Agreement and may be released, in whole or in part, only upon the written approval of the City Engineer whose actions shall be reasonable and consistent with the provisions of this Agreement. Owner shall provide the following as security:

1. Performance Security. Owner shall provide to City performance security in an amount no less than Three Million Two Hundred Twenty Thousand Seven Hundred Seventy-Two Dollars and Eighteen Cents (\$3,220,772.18) which amount is equal to one hundred percent (100%) of the total estimated cost of all required work to be completed as required in this Agreement. Said performance security shall be in the form of (i) a letter of credit, from a bank insured by FDIC, (ii) a performance bond issued by a surety authorized to conduct business in the State of California, (iii) or cash. All required securities must be in a form approved by City's attorney.
2. Payment Security. Owner shall provide to City payment security in an amount no less than One Million Six Hundred Ten Thousand Three Hundred Eighty-Six Dollars and Nine Cents (\$1,610,386.09) which amount is equal to fifty percent (50%) of the estimated cost of all required work to secure payment to the contractor, his or her subcontractors, and persons renting equipment or furnishing labor or materials for such improvements. Said amount shall be determined by the City Engineer at the time such payment security is due when a successor in interest acquires fee simple interest in any portion of the property. Said payment security shall be in the form of (i) a letter of credit, from a bank insured by FDIC, (ii) a performance bond issued by a surety authorized to conduct business in the State of California, (iii) or cash. All required securities must be in a form approved by City's attorney. Payment security shall be released in accordance with Madera Municipal Code section 10-2.708.7.2. Security given to secure payment to the contractor, subcontractors, and to persons furnishing labor, materials, or equipment may, six (6) months after the completion and acceptance of the Improvements required under this Agreement, be reduced to an amount equal to the amount of all claims therefor filed and of which notice has been given to the City Council. The balance of the security shall be released upon the settlement of all such claims and obligations for which the security was given.
3. Warranty Security. Owner shall remedy any defective work, labor or

materials related to the Improvements, and shall pay City for any damage to the Improvements resulting therefrom, which occur within a period of one (1) year from the date of acceptance of the Improvements by the City. To ensure Owner complies with these obligations, on acceptance of the required work by the City Engineer, warranty security in the amount of the ten percent (10%) of the estimated cost of all required work shall be furnished to City in an amount no less than Three Hundred Twenty-Two Thousand Seventy-Seven Dollars and Twenty-Two Cents (\$322,077.22). The warranty security shall serve as a guarantee and warranty of the work for a period of one (1) year following acceptance against any defective work, labor or materials. The warranty security shall be released, less any amount required to be used for fulfillment of the warranty, one (1) year after final acceptance of the Improvements required under this Agreement.

#### H. MATERIALS AND LABOR

Owner and its contractors and subcontractors shall pay for any materials, provisions and other supplies or items used in, upon, for or about the performance of the work contracted to be done, and for any work or labor thereon of any kind and for amounts due under the Unemployment Insurance Act of the State of California, with respect to such work or labor, and shall file with the City pursuant to section 3800 of the Labor Code a Certificate of Worker's Compensation and shall maintain a valid policy of Worker's Compensation Insurance for the duration of the period of construction or provide under penalty of perjury a satisfactory demonstration of exemption from coverage.

#### I. LIGHTING AND LANDSCAPING DISTRICT

The Owner agrees to, if not already done so, complete annexation to or establishment of a Lighting and Landscaping District Zone of Benefit 51 pursuant to California Streets and Highway Code section 22500, *et. seq.*, and to maintain lighting and publicly landscaped areas until the City formally accepts the Improvements which are the subject of this Agreement. Prior to release and recordation of the Final Map, Owner shall, at Owner's sole cost and expense, submit to City all engineering reports, assessment data, and updated maps necessary to cause the Subject Property, to be annexed into Zone of Benefit 51 of the City-Wide Landscape and Lighting Assessment District. The annexation of the property into Zone of Benefit 51 shall be considered for recording concurrently with the City Council's consideration and approval of the Final Map. If annexation into Zone of Benefit 51 is not possible for any reason, the Owner shall cooperate with the City in forming a new Zone of Benefit or identification of another existing zone into which this subdivision can be annexed.

J. EASEMENTS

Owner shall grant City an easement for maintenance, repair or reconstruction of any water main or sewer main or other City-operated improvement which is constructed outside a dedicated public street.

K. FAILURE OF PERFORMANCE; ATTORNEY'S FEES

In addition to any other remedies provided in this Agreement or by law, in the event Owner fails to perform one or more of the covenants or conditions of this Agreement, City shall have recourse to the security given to guarantee the performance of such acts. City may do, or cause to be done, those acts required of Owner, and shall have recourse against so much of the security as is necessary to discharge the responsibility of Owner. In the event City seeks recourse against a security, City shall also have recourse against Owner for any and all amounts necessary to complete the obligations of Owner in the event the security is insufficient to pay such amounts. All administrative costs, including reasonable attorney's fees pursuant to Gov. Code, § 66499.4 incurred by the City, in addition to the costs of the Improvements, shall be a proper charge against the security and Owner.

In the event it becomes necessary for either party to bring an action with respect to enforcement of the provisions of this Agreement, or the security therefor, the prevailing party in such action shall be awarded reasonable costs and attorney's fees as may be determined by the Court.

L. TIME OF THE ESSENCE

Time is of the essence of this Agreement, and the same shall bind and inure to the benefit of the parties hereto, their successors and assigns.

M. SUCCESSORS AND ASSIGNS; COVENANT RUNNING WITH LAND

This Agreement shall inure to the benefit of, and be binding upon, the successors and assigns of the respective parties. It shall be recorded in the Official Records of the County of Madera concurrently with final map of the Subdivision and shall constitute a covenant running with the land and an equitable servitude upon the real property in the Subdivision.

N. INTEGRATION; INCORPORATION OF EXHIBITS

This Agreement is an integrated agreement, and includes the documents referenced herein and its Exhibits, which are included herewith and made a part of this Agreement. The Final Map has been recorded separately, and a copy is on file with the City Clerk. This Agreement supersedes all prior negotiations, representation, or agreements, whether written or oral.



O. CONDITIONS OF APPROVAL

Owner shall comply with all conditions of approval set forth in TSM 2018-07 approving the Tract Map and REZ 2018-08 as adopted on February 12, 2019 by the Planning Commission, including the requirements and conditions of the City Engineer, and all specifications or requirements set forth on the Final Map, all of which are on file with the City Clerk.

P. COMPLIANCE WITH LAW

In performing obligations set forth in this Agreement, Owner shall comply with all applicable laws, regulations, and rules of all local, state and federal governmental agencies having jurisdiction including, without limitation, applicable federal and state labor standards and environmental laws and regulations. Owner shall comply with the codes or ordinances of the City including the Madera Municipal Code and Building Codes.

Q. PREVAILING WAGES

Owner shall be required to comply with California Labor Code prevailing wage requirements for work required under this Agreement. Owner shall: (i) be required to pay, and shall cause its contractor and subcontractors to pay, prevailing wages for the construction of those specific Improvements for which Owner receives credits or reimbursements, if any, and those Improvements, if any, that are “public works” under Chapter 1, Part 7, Division 2 of the California Labor Code, including Section 1720(a); and (ii) comply with any applicable provisions of California Labor Code Sections 1720 *et seq.* and implementing regulations of the Department of Industrial Relations. Owner shall or shall cause its contractor and subcontractors to keep and retain such records as are necessary to determine that prevailing wages have been paid as may be required by law. During the construction of the Improvements, if any, Owner shall, or shall cause its contractor to, post at the Subject Property the applicable prevailing rates of per diem wages. As required by Section D of this Agreement, Owner shall indemnify, hold harmless and defend (with counsel reasonably acceptable to the City) City against any claim for damages, compensation, fines, penalties or other amounts arising out of the failure or alleged failure of any person or entity (including Owner, its contractors and subcontractors) to pay prevailing wages as required by law or to comply with the other applicable provisions of California Labor Code Sections 1720 *et seq.* and the implementing regulations of the Department of Industrial Relations in connection with construction of any Improvements, if any, that are public improvements.

R. ENFORCEMENT OF OBLIGATIONS

City may enforce this Agreement in any manner available at law or in equity, including, but not limited to, reversion to acreage.

S. LIMITATIONS OF LEGAL ACTS

Except as provided by the following subsection entitled "Attorney's Fees and Legal Expenses," in no event shall the City, or its officers, agents or employees, be liable in damages for any breach or violation of this Agreement, it being expressly understood and agreed Owner's sole legal remedy for breach or violation of this Agreement by City shall be a legal action in mandamus, specific performance or other injunctive or declaratory relief to enforce the provisions of this Agreement.

T. ATTORNEY'S FEES AND LEGAL EXPENSES

If either party is required to commence any proceeding or legal action to enforce or interpret any term or condition of this Agreement, the prevailing party in such proceeding or action shall be entitled to recover from the other party its reasonable attorney's fees and legal expenses. For the purposes of this Agreement, "attorneys' fees" and "legal expenses" include, without limitation, paralegals' fees and expenses, attorneys, consultants fees and expenses, expert witness fees and expenses, and all other expenses incurred by the prevailing party's attorneys in the course of the representation of the prevailing party in anticipation of and/or during the course of litigation, whether or not otherwise recoverable as "attorneys' fees" or as "costs" under California law, and the same may be sought and awarded in accordance with California procedure as pertaining to an award of contractual attorneys' fees.

U. OBLIGATION RUNNING WITH LAND

This Agreement shall burden the Subject Property described and constitute a covenant running with the land in favor of and for the benefit of City which shall be binding upon the successors, transferees, and heirs of Owner. Owner consents to the recordation of this Agreement with the Madera County Recorder.

V. WAIVER

The waiver by either party of a breach by the other of any provision of this Agreement shall not constitute a continuing waiver or a waiver of any subsequent breach of either the same or a different provision of this Agreement. No provisions of this Agreement may be waived unless in writing and signed by all parties to this Agreement. Waiver of any one provision herein shall not be deemed to be a waiver of any other provision herein.

W. SUBORDINATION

Owner hereby warrants that any and all parties having record title interest in the Final Map which may ripen into a fee have subordinated to this Agreement and all such

instruments of subordination, if any, are attached hereto and made a part of this Agreement.

X. NO ASSIGNMENT

No assignment of this Agreement or of any duty or obligation of performance hereunder shall be made in whole or in part by Owner without the written consent of City.

Y. CAPTIONS

Section, paragraph and other captions or headings contained in this Agreement are inserted as a matter of convenience and for reference, and in no way define, limit, extend or otherwise describe the scope or intent of the Agreement or any provision hereof and shall not affect in any way the meaning or interpretation of this Agreement.

Z. AMBIGUITIES OR UNCERTAINTIES

Any ambiguities or uncertainties herein shall be equally and fairly interpreted and construed without reference to the identity of the Party or Parties preparing this Agreement, on the express understanding and agreement the Parties participated equally in the negotiation and preparation of the Agreement or have had equal opportunity to do so. Accordingly, the Parties hereby waive the benefit of California Civil Code §1654 and any successor or amended statute, providing that in cases of uncertainty, language of a contract should be interpreted most strongly against the Party who caused the uncertainty to exist.

AA. SEVERABLE PROVISIONS

The provisions of this Agreement are severable. The invalidity or unenforceability of any one provision in this Agreement shall not affect the validity or enforceability of the other provisions, which shall remain in full force and effect.

BB. RELEASE OF CONDITIONS

The conditions and obligations of this Agreement shall remain in full force and effect until such time as City Engineer issues a written release finding the conditions and obligations of this Agreement have been fully satisfied and are no longer required for public health and safety reasons and thereafter records such release with the Madera County Recorder.

CC. PIPES AND MONUMENTS

All pipes and monuments shown on the final subdivision map hereinafter referred to which are destroyed or displaced during construction operations shall be replaced by Subdivider at the time of the final inspection of the Improvements hereunder by City.

DD. OWNERSHIP OF IMPROVEMENTS

It is agreed that title and ownership of any public improvements constructed hereunder by Subdivider shall vest absolutely in City upon completion and acceptance of such Improvements by City.

EE. RELEASE OF BONDS AND SECURITIES

The release of bonds and securities called for herein shall not occur until: (1) the work provided for in this agreement and more specifically described in the plans and specifications herein referred to, is approved and accepted by the City Engineer; and (2), work not in conformance with said plans and specifications is removed from the project site to the satisfaction of the City Engineer.

FF. SUBDIVIDER NOT A CITY AGENT OR EMPLOYEE

It is mutually understood and agreed that neither Owner nor any of Owner's agents, contractors, or subcontractors are or shall be considered to be agents or employees of the City of Madera in connection with the performance of Owner's obligations under this Agreement.

GG. DEPOSIT FOR CORRECTION OF DEFICIENCIES

In addition to the improvement security hereinabove referred to, Subdivider shall concurrently deposit with the City not less than 1% of engineer's estimate in an amount no less than Thirty-Two Thousand Two Hundred Seven Dollars and Seventy-Two Cents (\$32,207.72), which may be used at the discretion of the City to correct deficiencies and conditions caused by Subdivider or Subdivider's contractors during or after construction of the subdivision. Any unexpended amount thereof will be returned to Subdivider when all other bonds or improvement securities are released.

HH. REIMBURSEMENTS/FAIR SHARE CONTRIBUTIONS DUE FROM SUBDIVIDER

There are no reimbursements/fair share contributions due from Subdivider.

II. REIMBURSEMENTS TO BE PROVIDED TO SUBDIVIDER

In consideration of public improvements constructed through plans prepared by Precision Civil Engineering, Inc., for Ellis & D Street Subdivision (Tract No. 19-S-07), the City agrees to reimburse the Owner reasonable costs for construction of the following public improvements:

1. North D Street

- (i) Street Construction – Approximately 507 feet less overlaps with Ellis Street improvements of the center three lanes (includes 12-foot wide painted median) of this street construction (36 feet) are eligible for reimbursement through the City’s Impact Fee Program, subject to the availability of funds.
- (ii) Those portions of improvements that are not constructed to ultimate standard are not eligible for reimbursement.
- (iii) Storm Drain Main Construction – Approximately 564 linear feet of 24-inch pipeline and 56 linear feet of 18-inch is eligible for reimbursement through the City’s Impact Fee Program, subject to the availability of funds.

2. Ellis Street

- (i) Street Construction – Approximately 1,053 feet less overlaps with D Street improvements of the center three lanes (16-foot wide median) of this street construction (40 feet) are eligible for reimbursement through the City’s Impact Fee Program, subject to the availability of funds.
- (ii) Those portions of improvements that are not constructed to ultimate standard are not eligible for reimbursement.
- (iii) Water Main Construction – The oversize component of approximately 1,009 linear feet of 24-inch pipeline (difference in cost between 24-inch and 8-inch pipe) of the construction of this line is considered reimbursable through the City’s Development Impact Fee Program, subject to availability of funds. Half of the 8-inch component is reimbursable from adjacent properties as they develop and connect.
- (iv) Sewer Main Construction – The oversize component of approximately 3,231 linear feet of 21-inch pipeline, (difference in cost between 21-inch and 8-inch pipe) of the construction of this line is considered reimbursable through the City’s Development Impact Fee Program, subject to availability of funds. Half of the 8-inch component is reimbursable from adjacent properties as they develop and connect.

3. Ellis Street and North D Street Intersection

- (i) Traffic Signal Modification – Modify existing traffic signal to account for roadway improvements.

Construction of these improvements are considered reimbursable through the City's Development Impact Fee Program, subject to availability of funds.

JJ. TERMS OF REIMBURSEMENTS TO BE PROVIDED TO OWNER

The following terms shall apply to any and all reimbursements to be provided to Owner.

- i. City agrees to reimburse Owner the City's proportionate share of the cost of improvements as determined by the City Engineer at his sole discretion and whose decision shall be final and as set forth below. At the discretion of the City Engineer any reimbursements shall be in the form of credits toward storm drainage, water main, water well, and street impact fees or from the collection of storm drainage, water main, water well and street impact fees or connection fees as applicable from other developments using said facilities as said fees are collected or a combination thereof. City shall not reimburse any expenses beyond the actual and reasonable cost of installing the improvements. All reimbursements are subject to the conditions precedent that the Owner shall have submitted a financial statement within ninety (90) days of the City's acceptance of the improvements, showing evidence of the actual cost of the improvements described in this agreement. Evidence shall be provided in the form of receipted bills, canceled checks and/or construction contracts. Failure to timely submit evidence shall void the reimbursement agreement as to any items not timely submitted or not supported by such evidence. Any cost to be reimbursed for administration or overhead shall not exceed the usual and customary cost for such expenses in the industry, and in no event shall they exceed fifteen percent (15%). Such cost shall be determined in the sole discretion of the City Engineer. City agrees to reimburse Owner for the cost of interest in accordance with Government Code Section 66485. The interest begins to accrue at the time of City's acceptance of the improvements. The interest rate to be paid is the interest rate that the City pays at the time of the City's acceptance of the improvements when the City borrows money in accordance with Madera Municipal Code section 10-8.12(C).
- ii. City does not guarantee reimbursement, where reimbursements are made from impact fees or connection fees as those fees are collected. The City shall have no responsibility

for the delivery of the funds collected hereunder to Owner and only agrees to hold said funds collected and to make payment as directed by Owner upon contact by City. City will contact Owner within ninety (90) days of collection of funds at the address as specified in this agreement or as may thereafter be provided in writing to the City Clerk of the City. City shall have no obligation to locate or determine the true address of Owner other than the addresses provided under this Agreement. If no contact has been made at the address provided under this Agreement, City shall hold such funds collected hereunder for a period of one (1) year. Undistributed funds shall then be paid into the appropriate Impact or Connection Fee fund and all responsibilities and liabilities of City shall terminate. City cannot and does not pledge itself in advance that such charges will be collected or that they are valid or that there will be proceeds for reimbursement, but only that pursuant to this agreement City will, as a condition precedent to the issuance of permits for the development of such properties, levy such charges. Owner acknowledges that impact fees may be used to reimburse other developers based on a first in time payment process and additionally, may be pledged for the payment or repayment of other improvements to be constructed by or for City in advance of reimbursement to Owner. In no event shall reimbursement exceed the Subdivider's cost of construction as adjusted by the Engineering News Record Construction Cost Index (CCI) as determined by the City Engineer based upon duly verified records submitted to the city within 90 days from the completion of such facilities and approved by the City Engineer. For the purpose of determining the adjustment in the CCI, the time begins upon acceptance of improvements by City Council after execution of the Agreement.

#### KK. ASSIGNABILITY OF AGREEMENT

This Agreement shall not be assignable by Owner without the express written consent of City, which consent shall not be unreasonably withheld. Subject to the limitations on assignment, this Agreement shall inure to the interest of the Parties hereto. Notwithstanding the foregoing, Owner and Century Communities of California, LLC, a Delaware limited liability company ("Century"), are parties to a purchase and sale agreement pursuant to which Century (i) intends to acquire, and Owner intends to transfer to Century, all rights, title and interest in the Subject Property; and (ii) effective upon transfer of the Subject Property to Century, Owner's rights and obligations under this Agreement shall be assigned to Century. City hereby approves such assignment, which

shall automatically occur upon Century's acquisition of fee title interest in the Subject Property.

LL. VENUE

This Agreement shall be governed by, and construed and enforced in accordance with, the laws of the State of California, excluding, however, any conflict of laws rule which would apply the law of another jurisdiction. Venue for purposes of the filing of any action regarding the enforcement or interpretation of this Agreement and any rights and duties hereunder shall be Madera County, California.

MM. ACKNOWLEDGEMENT OF CONTENT

Each Party acknowledges that they have read and fully understand the contents of this Agreement. This Agreement represents the entire and integrated agreement between the parties with respect to the subject matter hereof and supersedes all prior negotiations, representations or agreements, either written or oral. This Agreement may be modified only by written instrument duly authorized and executed by both City and Owner.

**ARTICLE II. CONSTRUCTION REQUIREMENTS**

A. STANDARD SPECIFICATIONS

All of the work and improvements and materials shall be performed, installed and provided in strict accordance with the City of Madera Standard Specifications incorporated herein by this reference, as though set forth in full. All of said work and improvements shall also comply with the requirements of the Madera Municipal Code. In case there are not any Standard specifications of the City for any said work, it is agreed that the same shall be done and performed in accordance with the standards and specifications of the State of California, Department of Transportation. All of said work and improvements and materials shall be done, performed and installed under the supervision of the City Engineer, under whose direction the work shall be inspected as it progresses.

Any work required under this Agreement shall also be performed, installed and provided in accordance with the standards of the State Water Resources Control Board, State Regional Water Quality Control Board, San Joaquin Unified Air Pollution Control District and those of other agencies identified in the Tentative Map Conditions of Approval insofar as they apply.

Until final acceptance of the Improvements, Owner shall give prominent and adequate warning to the public of each and every dangerous condition that may exist in the Subdivision and shall take all reasonable actions to protect the public from any such dangerous condition.



B. SCOPE OF IMPROVEMENTS

The work and Improvements, including those depicted or required on the plans for the Final Map, which may include plans relating to sewer, water, streets, storm drainage, street lighting, landscape and irrigation, grading, traffic signals, etc., as well as those required by Conditions of Approval (herein collectively referred to as "Improvements") are incorporated by reference and made a part of this Agreement.

C. APPROVED PLANS

Notwithstanding the fact that Owner's plans and specifications have been approved by the City, and that completion of the work and other acts are subject to approval of the City, it is understood and agreed that any approval by the City hereof shall in no way relieve Owner of satisfactorily performing said work or its obligations hereunder.

Owner agrees to perform and construct all work and improvements shown on the approved plans on file in the office of the City Engineer as well as any new design drawings necessary to relocate and/or install new traffic signal equipment as a result of existing equipment being placed in locations that would conflict with proposed roadway improvements. Owner agrees it shall comply with Madera Municipal Code section 10-2.707(C), which gives the City the right to modify plans and specifications.

D. SCHEDULE

Owner shall perform the work and improvements hereinafter specified to the satisfaction of the City Engineer. Owner understands and agrees that the following schedule of work is intended to provide a guideline as to diligent prosecution of the work under this Agreement.

The Owner agrees to complete the improvements within 24 months from the recording of the Final Map as required by Madera Municipal Code Section 10-2.711.1 unless Owner requests an extension and is granted an extension by the City Council. Owner is responsible for following the extension request process under Madera Municipal Code Section 10-2.711.3.

If the construction of the Improvements shall be delayed without the fault of Owner, the time for completion thereof may be extended by the City in writing signed by the City Engineer for such period of time as City may deem reasonable. However, City reserves the right to not issue Certificates of Occupancies for any structures constructed within this tract until improvements are constructed to the satisfaction of the City Engineer. Without limitation of the foregoing sentence, it is agreed that City shall have right to determine whether to issue or withhold Certificates of Occupancy if there is then existing a breach or

failure to properly perform the obligations of this agreement, or if issuance would not serve the public health, safety or welfare.

Concrete curbs and gutters, the sanitary sewer system and house connections, storm drainage pipeline and structures, together with water mains, gas mains and their respective service connection and all other underground services or facilities, shall be completed before starting the street surfacing.

E. COMPACTION AND MATERIALS TESTING

Compaction and soil tests shall be paid for by Owner and Owner shall contract with the soils lab directly. Street and utility trench tests shall be taken in varying locations, depths, and frequencies as required and directed by the City Engineer. Compaction shall meet all City requirements.

F. CODES AND PERMITS

Owner shall comply with Street, Plumbing, Building, Electrical and Zoning Codes and any other Codes of the City and Owner shall secure an Encroachment Permit from City and the necessary insurance policies required under said permit before working on any City right-of-way or property.

Owner shall install all street improvements in accordance with City of Madera Standard Specifications, applicable sections of the State Standard Specifications, and the construction plans.

G. COORDINATION OF CONTRACTORS

It shall be the responsibility of Owner to coordinate all work done by its contractors and subcontractors, such as scheduling the sequence of operations and the determination of liability if one operation delays another. In no case shall representatives of City be placed in the position of making decisions that are the responsibility of Owner. It shall further be the responsibility of Owner to give the Engineer written notice not less than two (2) working days in advance of the actual date on which work is to be started. Failure on the part of Owner to notify the City Engineer may cause delay for which Owner shall be solely responsible.

H. INSPECTION

Whenever Owner varies the period during which work is carried on each day, Owner shall give due notice to the City Engineer so that proper inspection may be provided. Any work done in the absence of the City Engineer will be subject to rejection. The inspection of the work shall not relieve Owner of any of his obligations to fulfill the Agreement as prescribed. Defective work shall be made good and unsuitable materials will be rejected,

notwithstanding the fact that such defective work and unsuitable materials have been previously overlooked by the City Engineer or Inspector and accepted.

I. REPAIR OF DAMAGED IMPROVEMENTS

Any damage to the water or sewer systems, concrete work or street paving, or other facilities and improvements constructed in connection with the Agreement that occurs after installation and prior to Final Acceptance shall be repaired to the satisfaction of the City Engineer by Owner before release of bond or final acceptance of completed work. City may, at its sole option, perform such repair or replacement if Owner has failed to commence such repair within 20 days after City has mailed written notice of the need for repairs or replacement to Owner and to Owner's surety. In such event, Owner agrees to pay the cost of such repair and replacement by City, and City may at its option recover such cost as a lien against the Subdivision or the lands therein.

If City determines that public safety requires repairs or replacements to be made before Owner or surety can be notified, City may complete such repairs or replacements and recover the costs thereof as provided above.

J. DUST CONTROL

Adequate dust and mud control shall be maintained by Owner on all streets within and without the subdivision until the paving of the streets is completed. "Adequate dust control" as used herein shall mean the sprinkling of the streets with water with sufficient frequency to prevent the scattering of dust by wind or the activity of vehicles and equipment onto any street area or private property adjacent to the subdivision. Whenever in the opinion of the City Engineer adequate dust control is not being maintained on any street or streets as required by this paragraph, the City Engineer shall give notice to Owner to comply with the provision of the paragraph forthwith. Such notice may be personally served upon Owner or, if Owner is not an individual, upon any person who has signed this Agreement on behalf of Owner or a superintendent or foreman of Owner's or Owner's subcontractor at the subdivision or, at the election of the Engineer, such notice may be mailed to Owner at his address on file with the City Engineer. If within 24 hours after such personal service of such notice or within 48 hours after the mailing thereof as herein provided, Owner shall not have commenced to maintain adequate dust control or shall at any time thereafter fail to maintain adequate dust control, the City Engineer may, without further notice of any kind, cause any such street or streets to be sprinkled, as he may deem advisable to eliminate the scattering of dust, by equipment and personnel of City or by contract as the City Engineer shall determine, and City may deduct the cost thereof from any deposits which the Owner has placed with the City. When the surfacing on any existing street is disturbed, this surfacing shall be replaced with temporary or permanent surfacing within fourteen (14) calendar days, and the roadway shall be maintained in a safe and passable condition at all times between the commencement and final completion, and adequate dust control shall be maintained during these operations.

## STREET SURFACING AND UNDERGROUNDING OF UTILITIES

Owner agrees all existing overhead utilities within the boundaries of this subdivision, and on adjacent streets and/or alleys to the centerlines thereof shall be relocated into underground installations except for transformers consistent with the Construction Plans for Ellis & D Street Subdivision (Tract No. 19-S-07). All new utilities shall be undergrounded, and all work shall be completed before installation of street surfacing, if any.

### K. STREET SWEEPING

Owner shall pay for sweeping of streets within this tract following installation of paving and prior to acceptance of the Improvements by the City. City may provide such street sweeping services at its sole discretion and convenience. Owner shall keep streets and gutters free of any mud, debris or materials. If Owner fails to maintain streets in such condition which allows sweeping, City may remove any debris and deduct the cost thereof from any deposits which the Owner has placed with the City.

### L. WARRANTY

Owner warrants that construction will not adversely affect any portion of adjacent properties.

### M. PRECONSTRUCTION MEETING

Owner agrees to meet with the City at a preconstruction meeting upon request of the City. Subcontractors for public improvements shall be required to attend. Failure to do so may result in a stoppage of work until a preconstruction meeting is held.

### N. BUILDING MATERIALS RECYCLING

Owner agrees to participate in any building materials recycling program as directed by the City. Participation shall also be required by all sub-contractors for both public improvements and home construction, to fullest extent possible.

## **ARTICLE III. SPECIAL PROVISIONS**

A. SUCCESSORS IN INTEREST: Successors in interest to any portion of the Subject Property shall comply with all terms and conditions of this Agreement. In particular, they shall provide all required insurance, bonds, and security to the City for that portion of any remaining Improvements which may yet to be completed at the time of transfer. Said insurance, bonds, and security must be provided to the City within 30 days of obtaining a fee interest in a portion of the Subject Property.

**IN WITNESS WHEREOF**, the Parties hereto have duly executed this Agreement.

**CITY OF MADERA:**

By: \_\_\_\_\_  
Santos Garcia, Mayor

**APPROVED:**

By: \_\_\_\_\_  
Keith Helmuth, P.E., City Engineer

**APPROVED AS TO FORM:**

By: \_\_\_\_\_  
Hilda Cantú Montoy, City Attorney

**SUBDIVIDER/OWNER:**

Hengli 2, LLC, A California Limited Liability  
Company

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

**ATTEST:**

By: \_\_\_\_\_  
Alicia Gonzales, City Clerk

***NOTARY ACKNOWLEDGEMENT REQUIRED***

EXHIBIT "A"  
Legal Description

THE LAND REFERED TO IS SITUATED IN THE COUNTY OF MADERA, CITY OF MADERA, STATE OF CALIFORNIA, AND IS DESCRIBE AS FOLLOWS:

LOTS 157 AND 158 IN SECTION 12, TOWNSHIP 11 SOUTH, RANGE 17 EAST, M.D.B. &M., ACCORIDING TO THE MAP ENTITLED: "MAP OF MILLER AND LUX'S SUBDIVISION OF LANDS AT MADERA, FRESNO COUNTY, CALIFORNIA", FILED FOR RECORD IN THE OFFICE OF THE COUNTY RECORDER OF MADERA COUNTY, CALIFORNIA, ON FEBRUARY 2, 1895, IN BOOK 1 OF MAPS, AT PAGE 11.

**EXHIBIT "B"**  
**Development Impact Fees**

Impact Fee Category	SFD Fee	MFD Fee	Commercial Fee (sq.ft.)	Industrial Fee (sq.ft.)
Administrative impact fee	93.72	56.67	0.024	n/a
Fire department impact fees	336.75	247.38	0.036	0.0240
General government impact fees	231.04	168.92	0.012	n/a
Police department impact fee	541.63	398.87	0.072	0.0599
Parks department impact fee	2,652.57	1,945.29	n/a	n/a
Public Works impact fee	323.67	99.17	0.133	0.0970
Sewer additional obl. impact fee - northwest	185.27	134.05	0.048	[1]
Sewer additional obl. impact fee - northeast	992.81	724.72	0.169	[1]
Sewer additional obl. impact fee - southwest	569.97	381.43	0.193	[1]
Sewer additional obl. impact fee - southeast	1,495.21	1,093.07	0.278	[1]
Sewer additional obl. impact fee - SCCC	888.19	625.55	0.181	[1]
Sewer additional obl. impact fee - exist. area	135.14	93.72	0.024	[1]
Storm drain impact fee - northwest	2,028.12	1,044.03	1.330	0.5558
Storm drain impact fee - northeast	3,099.39	1,453.79	1.210	0.5558
Storm drain impact fee - southwest	1,250.00	559.07	1.188	0.5558
Storm drain impact fee - southeast	3,472.10	1,394.94	1.090	0.5558
Storm drain impact fee - existing service area	1,132.30	545.99	0.632	0.5558
Storm drain impact fee - SCCC	n/a	n/a	n/a	n/a
Sewer exist. obl. impact fee - northwest	272.45	272.45	0.036	\$272/unit [1]
Sewer exist. obl. impact fee - northeast	272.45	272.45	0.036	\$272/unit [1]
Sewer exist. obl. impact fee - southwest	272.45	272.45	0.036	\$272/unit [1]
Sewer exist. obl. impact fee - southeast	716.00	716.00	0.085	\$716/unit [1]
Sewer exist. obl. impact fee - SCCC	n/a	n/a	n/a	n/a
Streets 16 ft. arterial street median island	387.97	237.58	0.142	n/a
Streets 24 ft. collector street lane	697.47	428.29	0.251	n/a
Streets 12 ft. arterial street lane	697.47	428.29	0.251	n/a
Transportation facility impact fee - city wide	951.40	584.13	0.254	0.3869
Traffic signals	235.40	144.94	0.087	n/a
Water impact fees - pipes	283.33	151.48	0.133	n/a
Wastewater treatment plan impact fee	1,314.30	923.06	0.763	1.5148
Water impact fees - Wells	562.34	300.78	0.072	[2]
<b>Industrial Fee Notes</b>				
[1] Westberry Blvd/Ellis Street interceptor to be based on a dwelling unit equivalency at \$272 per unit. Road 28 interceptor to be based on a dwelling unit equivalency at \$716 per unit.				
[2] A minimum of \$413 or the amount determined by the City Engineer by multiplying \$413 for water supply by either (1) the proposed users estimated daily use in gallons per day divided by 1050, or (2) the estimated number of employees divided by 6, whichever is greater.				

## **Attachment 2**

Resolution

Confirmation of the Diagram and Assessments for Zone of Benefit 51



RESOLUTION NO. 21-\_\_\_\_\_

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MADERA, CALIFORNIA, APPROVING ANNEXATION OF ELLIS & D STREET SUBDIVISION (TRACT NO. 19-S-07) INTO ZONE OF BENEFIT 51; CONFIRMING THE DIAGRAM AND ASSESSMENT FOR CITY WIDE LANDSCAPE AND LIGHTING ASSESSMENT DISTRICT ZONE OF BENEFIT 51 FOR FISCAL YEAR (FY) 2021/2022; AUTHORIZING THE MAYOR TO EXECUTE THE COVENANT ON BEHALF OF THE CITY AND AUTHORIZING THE CITY CLERK TO FILE THE DIAGRAM AND ASSESSMENT WITH THE MADERA COUNTY AUDITOR**

**WHEREAS**, the City of Madera Landscape Maintenance District (District) was formed by Resolution No. 91-67, approved June 17, 1991, pursuant to Part 2 of Division 15 of the Streets and Highways Code (Landscape and Lighting Act of 1972), herein the "Act"; and

**WHEREAS**, the recommended assessments for FY 2021/2022 reflect the cost of landscape maintenance provided by the City for said fiscal year; and

**WHEREAS**, all of the owners of property proposed to be annexed to the Zone of Benefit 51 of said District consisting of Ellis & D Street Subdivision, as described in Exhibit "A" attached hereto and incorporated herein by reference, have consented to said annexation and such annexation may be ordered without notice and hearing or filing of engineer's report, or both;

**WHEREAS**, the property owner has agreed that the annual assessment is proportional to, and no greater than, the special benefit conferred on the property by being annexed into the Landscape Maintenance District (LMD); and

**WHEREAS**, the property owner has consented to an annual change in the range of the assessment in the amount of the Engineering News Record Construction Cost (ENRCC) Index (Los Angeles), plus two percent (2%). The property owner agreed that if such change in the range of the assessment is implemented less frequently than an annual basis, the change may be based upon the ENRCC Index since the most recent change in the assessment plus two percent per year;

**WHEREAS**, the property owner further agrees that temporary decreases in assessment do not represent a waiver of other provisions of this covenant and that the assessment may later be reset to an amount consistent with the assessment prior to the reduction plus the total change in the ENRCC Index plus two percent per year but only to the degree necessary to cover actual and reasonable costs, provided such assessment is consistent with the terms of this covenant.

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

1. The above recitals are true and correct.

2. That the public interest and convenience require that certain property described in Exhibit "A" and as diagramed in Exhibit "B," both of which are attached hereto and by reference incorporated herein, be annexed to City Landscape Maintenance District as Zone of Benefit 51 for the maintenance and servicing of landscaping facilities.
3. The Mayor is authorized to execute the Covenant Landscape Maintenance District Zone of Benefit 51 on behalf of the City.
4. The City Council hereby confirms the diagram and annual assessments and levies the assessments for FY 2021/2022 for the same, as identified in Exhibits "A," "B" and "C," and as set forth in the agreement "Covenant Landscape Maintenance District Zone of Benefit 51."
5. Pursuant to Section 22641 of the Streets and Highways Code, the City Clerk is authorized and directed to forthwith file the diagram and assessments with Auditor of Madera County.
6. This resolution is effective immediately upon adoption.

\* \* \* \* \*

## **Exhibit A**

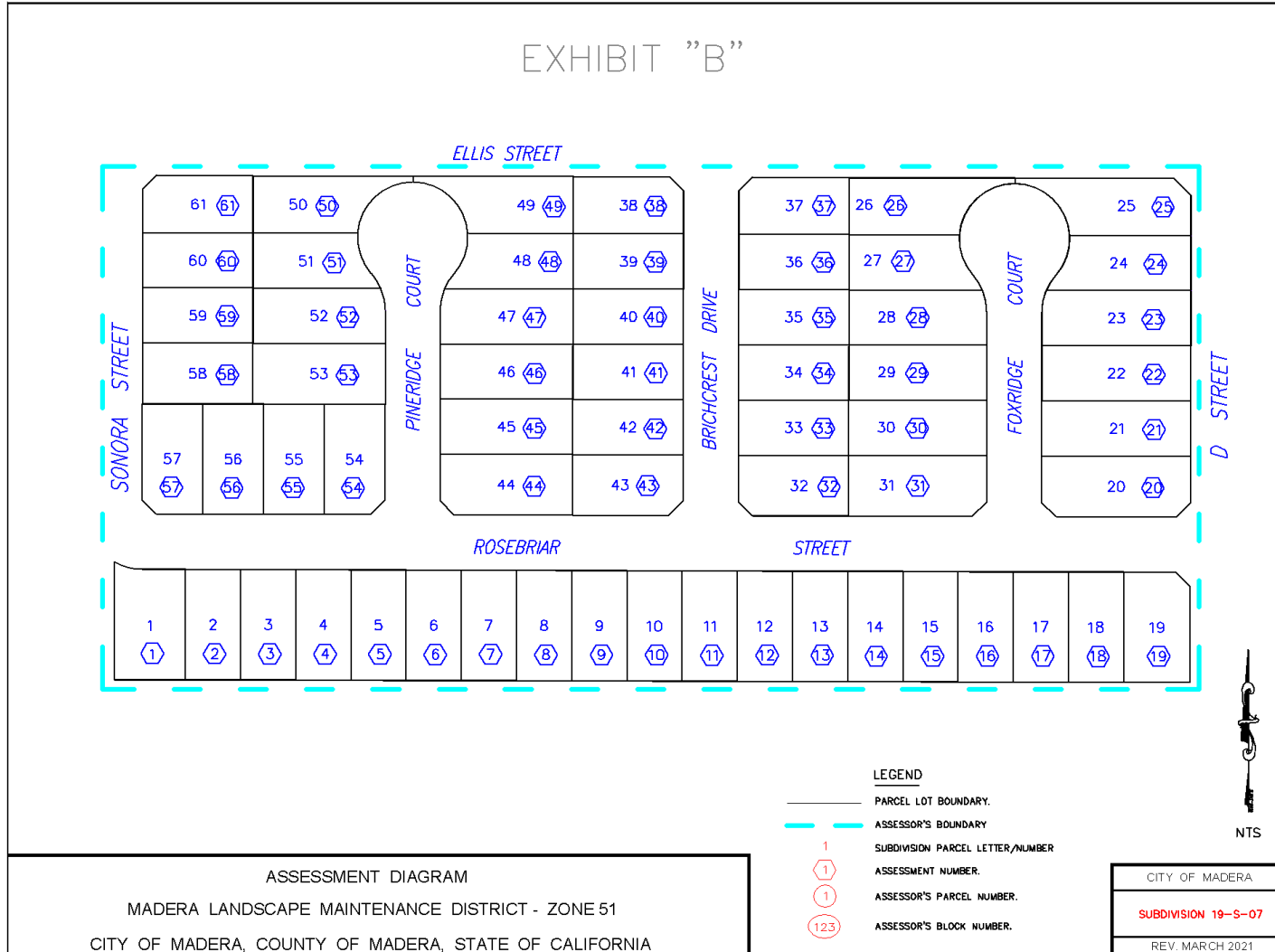
### Legal Description

THE LAND REFERED TO IS SITUATED IN THE COUNTY OF MADERA, CITY OF MADERA, STATE OF CALIFORNIA, AND IS DESCRIBE AS FOLLOWS:

LOTS 157 AND 158 IN SECTION 12, TOWNSHIP 11 SOUTH, RANGE 17 EAST, M.D.B. &M., ACCORIDING TO THE MAP ENTITLED: "MAP OF MILLER AND LUX'S SUBDIVISION OF LANDS AT MADERA, FRESNO COUNTY, CALIFORNIA", FILED FOR RECORD IN THE OFFICE OF THE COUNTY RECORDER OF MADERA COUNTY, CALIFORNIA, ON FEBRUARY 2, 1895, IN BOOK 1 OF MAPS, AT PAGE 11.

# Exhibit B

## Assessment Diagram



## Exhibit C

### Assessment Amounts (Sheet 1 of 4)

Lot	Owner	Assessment Amount (FY 2020/2021)
1	Hengli 2, LLC, A California Limited Liability Company	\$ 15.00
2	Hengli 2, LLC, A California Limited Liability Company	\$ 15.00
3	Hengli 2, LLC, A California Limited Liability Company	\$ 15.00
4	Hengli 2, LLC, A California Limited Liability Company	\$ 15.00
5	Hengli 2, LLC, A California Limited Liability Company	\$ 15.00
6	Hengli 2, LLC, A California Limited Liability Company	\$ 15.00
7	Hengli 2, LLC, A California Limited Liability Company	\$ 15.00
8	Hengli 2, LLC, A California Limited Liability Company	\$ 15.00
9	Hengli 2, LLC, A California Limited Liability Company	\$ 15.00
10	Hengli 2, LLC, A California Limited Liability Company	\$ 15.00
11	Hengli 2, LLC, A California Limited Liability Company	\$ 15.00
12	Hengli 2, LLC, A California Limited Liability Company	\$ 15.00
13	Hengli 2, LLC, A California Limited Liability Company	\$ 15.00
14	Hengli 2, LLC, A California Limited Liability Company	\$ 15.00
15	Hengli 2, LLC, A California Limited Liability Company	\$ 15.00
16	Hengli 2, LLC, A California Limited Liability Company	\$ 15.00
17	Hengli 2, LLC, A California Limited Liability Company	\$ 15.00
18	Hengli 2, LLC, A California Limited Liability Company	\$ 15.00
19	Hengli 2, LLC, A California Limited Liability Company	\$ 15.00
20	Hengli 2, LLC, A California Limited Liability Company	\$ 15.00

## Exhibit C

### Assessment Amounts (Sheet 2 of 4)

21	Hengli 2, LLC, A California Limited Liability Company	\$	15.00
22	Hengli 2, LLC, A California Limited Liability Company	\$	15.00
23	Hengli 2, LLC, A California Limited Liability Company	\$	15.00
24	Hengli 2, LLC, A California Limited Liability Company	\$	15.00
25	Hengli 2, LLC, A California Limited Liability Company	\$	15.00
26	Hengli 2, LLC, A California Limited Liability Company	\$	15.00
27	Hengli 2, LLC, A California Limited Liability Company	\$	15.00
28	Hengli 2, LLC, A California Limited Liability Company	\$	15.00
29	Hengli 2, LLC, A California Limited Liability Company	\$	15.00
30	Hengli 2, LLC, A California Limited Liability Company	\$	15.00
31	Hengli 2, LLC, A California Limited Liability Company	\$	15.00
32	Hengli 2, LLC, A California Limited Liability Company	\$	15.00
33	Hengli 2, LLC, A California Limited Liability Company	\$	15.00
34	Hengli 2, LLC, A California Limited Liability Company	\$	15.00
35	Hengli 2, LLC, A California Limited Liability Company	\$	15.00
36	Hengli 2, LLC, A California Limited Liability Company	\$	15.00
37	Hengli 2, LLC, A California Limited Liability Company	\$	15.00
38	Hengli 2, LLC, A California Limited Liability Company	\$	15.00
39	Hengli 2, LLC, A California Limited Liability Company	\$	15.00
40	Hengli 2, LLC, A California Limited Liability Company	\$	15.00

## Exhibit C

### Assessment Amounts (Sheet 3 of 4)

41	Hengli 2, LLC, A California Limited Liability Company	\$	15.00
42	Hengli 2, LLC, A California Limited Liability Company	\$	15.00
43	Hengli 2, LLC, A California Limited Liability Company	\$	15.00
44	Hengli 2, LLC, A California Limited Liability Company	\$	15.00
45	Hengli 2, LLC, A California Limited Liability Company	\$	15.00
46	Hengli 2, LLC, A California Limited Liability Company	\$	15.00
47	Hengli 2, LLC, A California Limited Liability Company	\$	15.00
48	Hengli 2, LLC, A California Limited Liability Company	\$	15.00
49	Hengli 2, LLC, A California Limited Liability Company	\$	15.00
50	Hengli 2, LLC, A California Limited Liability Company	\$	15.00
51	Hengli 2, LLC, A California Limited Liability Company	\$	15.00
52	Hengli 2, LLC, A California Limited Liability Company	\$	15.00
53	Hengli 2, LLC, A California Limited Liability Company	\$	15.00
54	Hengli 2, LLC, A California Limited Liability Company	\$	15.00
55	Hengli 2, LLC, A California Limited Liability Company	\$	15.00
56	Hengli 2, LLC, A California Limited Liability Company	\$	15.00
57	Hengli 2, LLC, A California Limited Liability Company	\$	15.00
58	Hengli 2, LLC, A California Limited Liability Company	\$	15.00
59	Hengli 2, LLC, A California Limited Liability Company	\$	15.00
60	Hengli 2, LLC, A California Limited Liability Company	\$	15.00

## Exhibit C

### Assessment Amounts (Sheet 4 of 4)

61	Hengli 2, LLC, A California Limited Liability Company	\$	15.00
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**Attachment 3**

LMD Covenant

RECORDING REQUESTED BY:  
City of Madera  
WHEN RECORDED RETURN TO:  
City of Madera  
205 W. 4th Street  
Madera, CA 93637  
Attention: City Clerk

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Fee Waived per Section 27383 & 27388.1(a)(2)(D) of the Government Code

**COVENANT  
LANDSCAPE MAINTENANCE DISTRICT  
ZONE OF BENEFIT 51**

**WHEREAS, Hengli 2, LLC, A California Limited Liability Company** n hereinafter referred to as “Covenantor”, is the owner of the real property situated in the City of Madera, County of Madera, State of California, hereinafter referred to as “Subject Property” and more particularly described in attached Exhibit “A” which is incorporated by reference; and

**WHEREAS,** the Covenantor hereby warrants that any and all parties having record title interest in the Subject Property which may ripen into a fee have subordinated to this instrument; and

**WHEREAS,** all such instruments of Subordination, if any, are attached hereto and made a part of this instrument; and

**WHEREAS,** Covenantor is required by the City as a condition of Tentative Subdivision Map (TSM) 2018-07 Rezone REZ 2018-08 approval and the Improvement Agreement to annex to the City’s Landscape Maintenance District; and

**WHEREAS,** the Planning Commission on February 12, 2019 approved TSM 2018-07 REZ 2018-08 for the Ellis & D Street Subdivision which provided for the annexation of this

subdivision into the aforementioned Zone of Benefit; and

**WHEREAS**, maintenance of the landscaping associated with the Subject Property shall be the responsibility of the City's Landscape Maintenance District subject to acceptance of the subdivision and all improvements including said landscaping.

**NOW, THEREFORE**, it is agreed:

1. In consideration of the foregoing and the approval of the Rezoning, Precise Plan, and Tentative Subdivision Map for the residential parcels, by the City of Madera, the undersigned hereby covenants, promises and agrees with the City of Madera for the benefit of said City.

2. The Covenantor consents to annexation of said Subject Property to the City's Landscape Maintenance District, has petitioned the City to annex said Subject Property to said district pursuant to Streets and Highways Code Section 22605, and pursuant to California Constitution Article, XIII D, section 5(b), waives any right to protest or object to such annexation.

3. The Covenantor agrees that the Subject Property receives a special benefit, as the term is defined in California Constitution Article, XIII D, section 2(i), from being annexed to Landscape Maintenance District, and that special benefit includes, but is not limited to, the right and ability to develop the Subject Property.

4. The Covenantor consents to an annual assessment on the Subject Property currently in an amount not to exceed \$15.00 per each of the 61 lots. The Covenantor agrees that this assessment is proportional to, and no greater than, the special benefit conferred on the Subject Property by being annexed into the Landscape Maintenance District. The

Covenantor also consents to an annual change in the range of the assessment in the amount of the Engineering News Record Construction Cost Index (ENRCC), plus two percent (2%). The Covenantor agrees that if such change in the range of the assessment is implemented less frequently than an annual basis, the change may be based upon the total change in the ENRCC Index since the most recent change in the assessment plus two percent per year. The Covenantor further agrees that temporary decreases in assessment do not represent a waiver of other provisions of this covenant and that the assessment may later be reset to an amount consistent with the assessment prior to the reduction plus the total change in the ENRCC Index plus two percent per year but only to the degree necessary to cover actual and reasonable costs.

5. The Covenantor agrees that he/she has received the written notice required by California Constitution Article, XIII D, Section 4(c).

6. The Covenantor agrees that this shall constitute a ballot in support of the proposed assessment pursuant to California Constitution Article, XIII D, Section 4(d).

7. Furthermore, should City hold a hearing notwithstanding such waiver, Covenantor waives the requirement of 45 days' notice of such hearing in favor of a five-day notice of such hearing.

8. The Covenantor shall fully disclose this covenant to every potential purchaser of the Subject Property.

9. It is the intention of the parties hereof that this document shall constitute a covenant in favor of the City of Madera and shall run with the land and be binding upon the undersigned, its grantees, heirs, successors and assigns.

10. The Covenant shall be released and be of no further effect upon written determination by the undersigned and the City Engineer of the City of Madera that its continued existence and enforcement are no longer necessary.

11. The provisions of this Covenant shall be deemed independent and severable and the validity or partial invalidity or unenforceability of any other provision or portion thereof shall not affect the validity or enforceability of any one provision thereof. Whenever the context of the Covenant so requires, in interpreting this Covenant, any gender includes the other genders, the singular includes the plural, and the plural includes the singular.

12. This Covenant shall be effective on April 21, 2021.

**IN WITNESS WHEREOF**, the parties duly executed this Covenant.

**CITY OF MADERA:**

By: \_\_\_\_\_  
Santos Garcia, Mayor

**APPROVED:**

By: \_\_\_\_\_  
Keith B. Helmuth, P.E.,  
City Engineer

**APPROVED AS TO FORM:**

By: \_\_\_\_\_  
Hilda Cantú Montoy, City Attorney

**COVENANTOR:**

By: \_\_\_\_\_  
Hengli 2, LLC, A California Limited Liability  
Company

**ATTEST:**

By: \_\_\_\_\_  
Alicia Gonzales, City Clerk

**NOTARY ACKNOWLEDGEMENT  
REQUIRED**

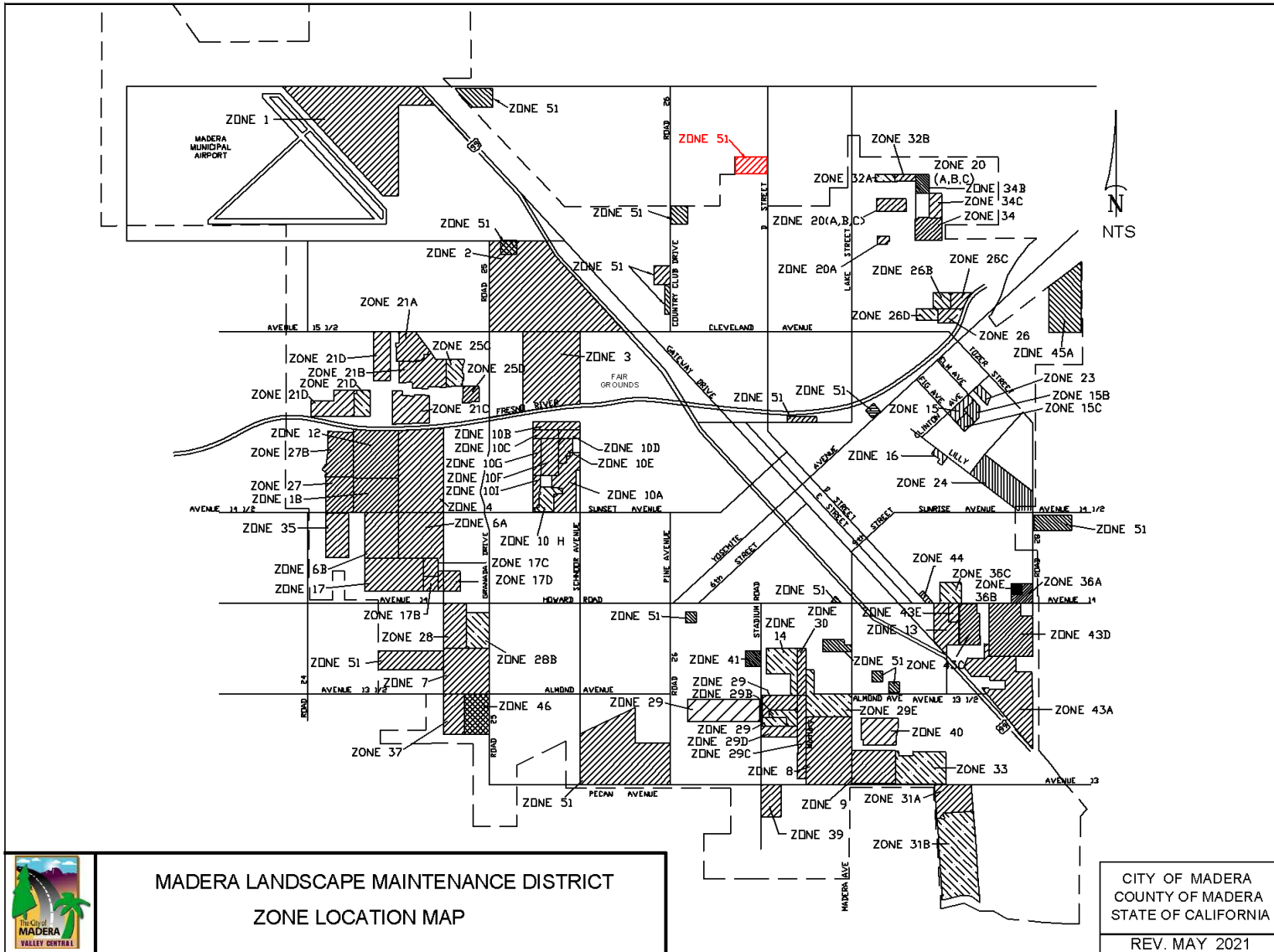
EXHIBIT "A"  
Legal Description

THE LAND REFERED TO IS SITUATED IN THE COUNTY OF MADERA, CITY OF MADERA, STATE OF CALIFORNIA, AND IS DESCRIBE AS FOLLOWS:

LOTS 157 AND 158 IN SECTION 12, TOWNSHIP 11 SOUTH, RANGE 17 EAST, M.D.B. &M., ACCORIDING TO THE MAP ENTITLED: "MAP OF MILLER AND LUX'S SUBDIVISION OF LANDS AT MADERA, FRESNO COUNTY, CALIFORNIA", FILED FOR RECORD IN THE OFFICE OF THE COUNTY RECORDER OF MADERA COUNTY, CALIFORNIA, ON FEBRUARY 2, 1895, IN BOOK 1 OF MAPS, AT PAGE 11.

**Attachment 4**

LMD Zone Map



MADERA LANDSCAPE MAINTENANCE DISTRICT  
 ZONE LOCATION MAP

CITY OF MADERA  
 COUNTY OF MADERA  
 STATE OF CALIFORNIA

REV. MAY 2021



**Attachment 5**

Project Location Map

# LOCATION MAP



**CITY OF MADERA**  
ENGINEERING DEPARTMENT  
428 E. YOSEMITE AVE  
MADERA, CA 93638

TRACT 19-S-07

DR BY: EP  
CH BY: \_\_\_\_\_  
DATE: 4/5/21  
SCALE: NTS  
SHT 1 OF 1