



## REPORT TO CITY COUNCIL

**Approved by:**

*Matthew A. Watson*

Matthew A. Watson, Assistant Chief

*Arnoldo Rodriguez*

Arnoldo Rodriguez, City Manager

**Council Meeting of:** May 6, 2020

**Agenda Number:** D-4

**SUBJECT:**

Purchase of Real Property for the Fire Department

**RECOMMENDATION:**

Adopt a Resolution Approving Agreement for Purchase of Real Property Located At 621 East 4th Street for The Fire Department (APN: 007-093-003) for \$170,000 Plus Closing Costs

**SUMMARY:**

The sales agreement is for the acquisition of a single-family home located at 621 East 4<sup>th</sup> Street (APN 007-093-003). The parcel consists of 7,501 square feet of land located adjacent to Fire Station #56 located on North Lake Street. This parcel was on the market for sale and is needed for the future expansion of Station 56. Measure "K" Funds are available for the acquisition and funds are available in the City's Budget. Prior to execution of the agreement, the City will need to receive confirmation from the Planning Commission that the purchase is consistent with the General Plan.

**DISCUSSION:**

The City was recently made aware that the single-family home located proximate to Station #56 was placed on the market. After significant consideration, the City commissioned an appraisal which determined that as of March 27, 2020, the Fair Market Value of the home was \$160,000. The City's offer of \$170,000, plus up to \$10,000 in closing costs was accepted by the owner on April 17, 2020.

It is noted that the appraisal was prepared by Robert Gamble, of Appraisal Associates of Merced and the home was listed on the market for \$225,000. The home is vacant.

While the City does not have immediate plans to expand the Fire Station, it is advantageous to purchase property when you have a willing seller as opposed to utilizing eminent domain. With the purchase of the property, the City can begin to explore expansion opportunities to better serve the community.

**FINANCIAL IMPACT:**

The acquisition of this parcel will have an approximate \$180,000 impact on the Fire Departments Measure K Fund, with funding provided by Measure “K” Sales Tax revenues.

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

General Plan Policy HS-33: The City shall ensure the safety and protection of Madera and its community members by providing adequate first response capabilities to emergencies and by maintaining sufficient resources to expand protection as the community grows.

**ALTERNATIVES:**

If Council does not approve the Agreement for Purchase and Sale of Real Property Owner and Acceptance of the Grant Deed for the Fire Department Project, the parcel of land needed for future expansion of the Fire Department facility will be not be able to be acquired at the current accepted offer by owner.

**ATTACHMENTS:**

1. Resolution No. 20-\_\_\_\_\_  
Exhibit “A” to Resolution: Agreement for Purchase and Sale of Real Property and Escrow Instructions
  - Exhibit A to Agreement: Legal Description
  - Exhibit B to Agreement: Grant Deed
  
2. Map of subject site

**Attachment 1**

Resolution

Resolution No. 20-\_\_\_\_\_

**A RESOLUTION OF THE COUNCIL OF THE CITY OF MADERA, CALIFORNIA  
APPROVING AN AGREEMENT FOR PURCHASE AND SALE OF REAL PROPERTY  
LOCATED AT 621 EAST 4<sup>TH</sup> STREET (APN: 007-093-003)**

**WHEREAS**, the property owner of record, Jose and Rosalia Hernandez, have offered for sale the single-family home located at 621 East 4th Street, APN: 007-093-003, to the City of Madera; and

**WHEREAS**, the property is adjacent to the Fire Station #56; and

**WHEREAS**, the property to be acquired is more specifically described in the legal description included in the Agreement for Purchase and Sale of Real Property; and

**WHEREAS**, the City commissioned an appraisal which determined that the value of the property as of March 27, 2020 was \$160,000; and

**WHEREAS**, the appraisal was prepared by Robert Gamble, of Appraisal Associates of Merced; and

**WHEREAS**, the property was listed for \$225,000; and

**WHEREAS**, the owner accepted the City's offer of \$170,000 and up to \$10,000 in closing costs; and

**WHEREAS**, staff recommends approval of the purchase subject to confirmation from the Planning Commission that the purchase conforms to the General Plan.

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

1. The above recitals are true and correct.
2. Subject to confirmation by the Planning Commission that the purchase conforms to the General Plan, the City Council of the City of Madera approves the Agreement for Purchase and Sale of Real Property, a copy of which is attached hereto as Exhibit A and incorporated by reference.
3. The Mayor is authorized to execute the Agreement in substantially the form in Exhibit A as approved by the City Attorney.
4. The City Manager is authorized to take all actions and execute documents as necessary pursuant to the Escrow Instructions included in the Agreement.
5. The City Clerk is authorized to prepare the Certificate of Acceptance for the Grant Deed.
6. The City Engineer is authorized to initiate Escrow Services including the recording of the Grant Deed by the County of Madera Clerk/Recorder.

7. This resolution is effective immediately upon adoption.

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**EXHIBIT "A" TO RESOLUTION**

Agreement for Purchase and Sale of Real Property and Escrow Instructions

**AGREEMENT FOR PURCHASE AND SALE**  
**OF REAL PROPERTY AND JOINT ESCROW INSTRUCTIONS**

THIS AGREEMENT FOR PURCHASE AND SALE OF REAL PROPERTY AND JOINT ESCROW INSTRUCTIONS (“**Agreement**”) is made this \_\_\_ day of \_\_\_\_\_, 2020, (“**Agreement Date**”) by and between the CITY OF MADERA, a municipal corporation (“**Buyer**”), and JOSE HERNANDEZ AND ROSALIA HERNANDEZ (collectively “**Seller**”) with CHICAGO TITLE COMPANY, a California Corporation as escrow holder (“**Escrow Holder**”).

**RECITALS**

**A.** **Seller** owns real property and all improvements thereon located 621 E. 4<sup>th</sup> Street in the City of Madera, County of Madera, State of California, 007-093-003 (“**Property**”). The legal description is attached as Exhibit A to this Agreement.

**B.** **Buyer** wishes to buy the **Property**.

**C.** **Seller** and **Buyer** wish to enter an Agreement for Purchase and Sale of Real Property and Joint Escrow Instructions upon the terms and conditions more particularly set forth herein.

NOW, THEREFORE, in consideration of the mutual covenants set forth herein, the parties hereto agree as follows:

**TERMS AND CONDITIONS**

**1. PURCHASE AND SALE OF PROPERTY.** Pursuant to the terms and conditions of this Agreement, Buyer hereby agrees to purchase from Seller and Seller agrees to sell to Buyer, the Property in AS-IS condition. No personal property is included in this transaction.

**2. OPENING OF ESCROW.** Within five (5) days after the execution of this Agreement by both Buyer and Seller, the parties shall open an escrow (“**Escrow**”) at Chicago Title Company, 601 W. Yosemite Avenue, Ste. 101 as escrow officer (“**Escrow Officer**”) by causing an executed copy of this Agreement to be deposited with Escrow Holder together with Buyer’s Deposit (as defined in Section 3.2 below) (“**Opening of Escrow**”).

**3. PURCHASE PRICE; DEPOSIT; PAYMENT OF PURCHASE PRICE.**

**3.1 Purchase Price.** The purchase price for the Property is One Hundred Seventy Thousand Dollars (\$170,000.00) (“**Purchase Price**”).

**3.2 Deposit.** Concurrently with Opening of Escrow, Buyer shall deposit with Escrow Holder the sum equal to One Thousand Dollars (\$1,000) (“**Deposit**”) to be held by Escrow Holder for the benefit of the parties and applied against the Purchase Price at Closing (as defined in Section 5) or released, refunded or forfeited in accordance with the terms of this Agreement. The deposit

shall be refundable to Buyer if Buyer exercises its option to terminate the Purchase and Sale Agreement on or before the last day of the Due Diligence Period (as defined below). If Buyer does not exercise its option to terminate the Purchase and Sale Agreement, the Deposit shall become non-refundable and applicable to the Purchase Price. If escrow fails to close due to a material breach of the Purchase and Sale Agreement by Buyer, the Deposit shall be released from escrow to Seller as liquidated damages, and Seller agrees that this amount shall constitute Seller's sole and exclusive remedy.

**3.3 Payment of Purchase Price.** On or before 1:00 p.m. on the business day preceding the Closing Date or such earlier time as required by Escrow Holder in order to close Escrow on the Closing Date, Buyer shall deposit into Escrow the balance of the Purchase Price in Good Funds.

**3.4 Good Funds.** Prior to Closing, all funds deposited in Escrow shall be in "Good Funds" which shall mean a wire transfer of funds from a financial institution located in the State of California.

**4. CLOSING FUNDS AND DOCUMENTS REQUIRED FROM BUYER AND SELLER.**

**4.1 Seller.** Seller agrees that on or before 12:00 noon on the day preceding the Closing Date, Seller will deposit or cause to be deposited with Escrow Holder all of the following:

- a. A grant deed in the form attached hereto as Exhibit B executed by Seller ("**Grant Deed**").
- b. A Non-Foreign Affidavit as required by federal law.
- c. Such funds and other items and instruments as may be necessary in order for Escrow Holder or the Title Company to comply with this Agreement.

**4.2 Buyer.** Buyer agrees that on or before 12:00 noon on the day preceding the Closing Date, Buyer will deposit with Escrow Holder all additional funds and all of the following:

- a. A Preliminary Change of Ownership Statement completed in the manner required in Madera County.
- b. Such funds and other items and instruments as may be necessary in order for Escrow Holder or the Title Company to comply with this Agreement.

**4.3 Recordation, Completion and Distribution of Documents.** Escrow Holder shall confirm that any documents signed in counterpart are matching documents and shall combine the signature pages thereof to create fully executed documents. Escrow Holder will date all the documents with the date of Close of Escrow. Escrow Holder will cause the Grant Deed to be recorded when it can issue the Owner's Title Policy in accordance with Section 6.2, and holds for the account of Buyer and Seller, respectively, the funds and items described above to be delivered to Buyer and Seller, respectively, through Escrow, less costs, expenses and disbursements chargeable to the parties pursuant to this Agreement.



**5. CLOSING DATE; OPTIONS TO EXTEND CLOSING; TIME IS OF ESSENCE.**

**5.1 Closing Date.** Escrow shall close within Thirty (30) days after Opening of Escrow (“**Closing Date**”).

**5.2 Definition of Closing.** The terms “**Close of Escrow**” and/or “**Closing**” mean the time Grant Deed is recorded in the Official Records of Madera County.

**5.3 Time is of Essence.** The parties specifically agree that time is of the essence of this Agreement.

**5.4 Possession.** Upon the Close of Escrow, possession of the Property shall be delivered to Buyer.

**6. TITLE POLICY.**

**6.1 Approval of Title.**

(a) Promptly following execution of this Agreement but in no event later than fifteen (15) days following Opening of Escrow, a preliminary title report shall be issued by Chicago Title Company (“**Title Company**”), describing the state of title of the Property, together with legible copies of all exceptions and a map plotting all easements (“**Preliminary Title Report**”). Within Ten (10) business days after Buyer's receipt of the Preliminary Title Report, Buyer shall notify Seller in writing (“**Buyer's Title Notice**”) of Buyer's disapproval of any matters contained in the Preliminary Title Report (“**Disapproved Exceptions**”).

(b) In the event Buyer delivers Buyer's Title Notice within said period, Seller shall have a period of ten (10) days after receipt of Buyer's Title Notice in which to notify Buyer of Seller's election to either (i) agree to attempt to remove the Disapproved Exceptions prior to the Close of Escrow; or (ii) decline to remove any such Disapproved Exceptions (“**Seller's Notice**”). If Seller notifies Buyer of its election to decline to remove the Disapproved Exceptions, or if Seller is unable to remove the Disapproved Exceptions (other than any obligations of Buyer under Section 7), Buyer may elect either to terminate this Agreement and the Escrow or to accept title to the Property subject to the Disapproved Exception(s). Buyer shall exercise such election by delivery of written notice to Seller and Escrow Holder within five (5) days following the earlier of (i) the date of written advice from Seller that such Disapproved Exception(s) cannot be removed; or (ii) the date Seller declines to remove such Disapproved Exception(s).

(c) Upon the issuance of any amendment or supplement to the Preliminary Title Report which adds additional exceptions, the foregoing right of review and approval shall also apply to said amendment or supplement; provided, however, that Buyer's initial period of review and approval or disapproval of any such additional exceptions shall be limited to five (5) days following receipt of notice of such additional exceptions.

(d) Nothing to the contrary herein withstanding, Buyer shall be deemed to have automatically objected to all leases, deeds of trust, mortgages, judgment liens, federal and state income tax liens, delinquent general and special real property taxes and assessments and similar monetary encumbrances affecting the Property (excluding any such items caused by Buyer), and

Seller shall discharge any such non-permitted title matter of record prior to or concurrently with the Close of Escrow except as otherwise specifically provided in this Agreement.

**6.2 Owner's Title Policy.** At the Close of Escrow, an ALTA owner's non-extended policy of title insurance shall be furnished to Buyer ("**Owner's Title Policy**") insuring title to the Property vested in Buyer, containing only (i) non-delinquent real property taxes and assessments and (ii) exceptions approved by Buyer in accordance with Section 6.1. The amount of the insurance coverage shall be in the amount of the Purchase Price. The cost of the Owner's Title Policy shall be paid by Seller. If Buyer elects to obtain an extended ALTA owner's policy, Buyer shall be responsible to secure a survey at its own cost and expense which shall be delivered to the Title Company not less than thirty (30) days prior to Closing and Buyer shall be responsible to pay for any additional premium. The Title Policy shall include extended coverage or endorsements that Buyer may request but at Buyer's expense.

**7. DUE DILIGENCE AND DUE DILIGENCE PERIOD.** For a period of Twenty One (21) days following the Opening of Escrow ("**Due Diligence Period**"), Buyer shall have the right to perform any investigations, inspections, and review of documents as Buyer may reasonably determine in order to assess its willingness to purchase the Property pursuant to the terms of this Agreement. The Due Diligence Period may be extended by mutual agreement of the parties.

**7.1 Review and Approval of Documents and Materials.** Within five (5) days of the Opening of Escrow, Seller shall deliver to Buyer any and all documents, reports, surveys, environmental assessments, engineering reports for the Property and other materials in Seller's possession or under its control or that of its agents, respecting the Property, including any hazardous substance conditions report concerning the Property, any natural hazard zone disclosure report, (collectively, "**Materials**"). During the Due Diligence Period, Buyer may review and evaluate the Materials to determine whether the Property is appropriate for Buyer's proposed use, in its sole discretion. Buyer is advised that there are no leases affecting the Property and there are no third parties in possession of the Property.

**7.2 Buyer's Due Diligence.** During the Due Diligence Period, Buyer and its agents may, at Buyer's sole expense, conduct tests and physical inspections of the property, including building inspections and environmental site assessments desired by Buyer. Buyer shall also conduct such investigations regarding zoning, building codes, and availability of permits and approvals for its intended construction and use of the Property, as it deems prudent in its sole discretion. Buyer shall provide evidence to Seller that Buyer has procured and paid premiums for an all-risk public liability insurance policy written on a per occurrence and not claims made basis in a combined single limit of not less than One Million Dollars (\$1,000,000) which insurance names Seller as additional insured. Buyer shall keep the Property free and clear of all mechanic liens, lis pendens and other liens arising out of the entry and work performed under this paragraph and shall maintain or assure maintenance of workers' compensation insurance (or state approved self-insurance) on all persons entering the Property in the amounts required by the State of California. Buyer shall promptly restore the Property to the condition that it was in prior to those tests and inspections and shall indemnify, defend and hold Seller harmless from all damages, costs, loss, expense (including attorney fees) and liability resulting from Buyer's activities, acts, and omissions on the Property, including, but not limited to, mechanic liens.

Notwithstanding anything to the contrary contained in this Agreement, (i) the defense, indemnity, and hold harmless provision contained in this Section shall not apply to the extent such liabilities arise in connection with the sole negligence or willful misconduct of Seller, its employees, agents, contractors, licensees or invitees and (ii) provided further that Buyer shall have no liability to Seller or to its employees, agents, or contractors by reason of, nor shall Buyer have any duty to indemnify, defend, or hold any person or entity harmless from or against, any liabilities, including, without limitation, any claim for diminution in value of the Property or for environmental remediation or clean-up costs, resulting directly from Buyer having merely discovered and/or reported (to the extent required by applicable law) any adverse physical condition, title condition, environmental condition, or other defect with respect to the Property. The foregoing provisions shall survive the Closing or any termination of this Agreement. At Closing, Buyer shall take the Property subject to any title exceptions caused by Buyer exercising this license to enter the Property.

Copies of any final non-privileged, non-attorney-client work product reports including any survey prepared for Buyer this Agreement shall be delivered to Seller (at no cost to Seller) and, if the Closing does not occur, Seller shall be entitled to use without the consent of the preparer.

**7.3 Buyer's Termination Right.** Buyer shall have the right at any time on or before the expiration of the Due Diligence Period to terminate this Agreement if, during the course of Buyer's due diligence investigations of the Property, Buyer determines in its sole and absolute discretion that the Property is not acceptable to Buyer. Buyer may exercise its right to terminate by delivering written notice of termination to Seller and Escrow Agent ("**Termination Notice**") on or before the expiration of the Due Diligence Period. Upon the timely delivery of such Termination Notice, (i) Escrow Agent shall immediately return the Deposit (less any cancellation charges) to Buyer without the need for further instruction or approval of the parties, and (ii) this Agreement shall automatically terminate and be of no further force or effect and neither party shall have any further rights or obligations hereunder. Notwithstanding anything contained herein to the contrary, if Buyer fails to provide a Termination Notice, then Buyer shall be conclusively deemed to have elected to approve its Due Diligence of the Property.

## **8. CONDITIONS PRECEDENT TO CLOSE OF ESCROW.**

**8.1 Conditions to Buyer's Obligations.** The obligations of Buyer under this Agreement are subject to the satisfaction or written waiver, in whole or in part, by Buyer of each of the following conditions precedent ("**Buyer's Conditions Precedent**"):

- (a) Title Company will issue the Owner's Title Policy as specified in Section 6.2.
- (b) Buyer has not issued a Termination Notice in accordance with Section 7.3.
- (c) Escrow Holder holds and will deliver to Buyer the instruments and funds, if any, accruing to Buyer pursuant to this Agreement.
- (d) Seller is not in default of its obligations under this Agreement.

**8.2 Conditions to Seller's Obligations.** The obligations of Seller under this Agreement are subject to the satisfaction or written waiver, in whole or in part, by Seller of the following conditions precedent (“**Seller’s Conditions Precedent**”):

- (a) Escrow Holder holds and will deliver to Seller the instruments and funds accruing to Seller pursuant to this Agreement.
- (b) Title Company will issue the Owner’s Title Policy as specified in Section 6.2.
- (c) Buyer is not in default of its obligations under this Agreement.

**9. DISCLAIMER OF WARRANTIES.** Buyer shall acquire the Property in its “AS IS” condition and shall be responsible for any and all defects in the Property, whether patent or latent, including, without limitation, the physical, environmental, and geotechnical condition of the Property, and the existence of any contamination, hazardous materials, vaults, debris, pipelines, wells, or other structures located on, under, or about the Property. Seller makes no representation or warranty concerning the physical, environmental, geotechnical or other condition of the Property. Buyer acknowledges that, once Buyer obtains title to the Property, any liability of Seller for the environmental condition of the Property shall be extinguished, and that Seller shall have no liability for remediating any environmental condition of the Property. Buyer shall indemnify Seller against any claim or liability relating to the environmental condition of the Property.

**10. ESCROW PROVISIONS.**

**10.1 Escrow Instructions.** Sections 1 through 6, inclusive; 8, 10, 13 and 14 constitute the escrow instructions to Escrow Holder. If required by Escrow Holder, Buyer and Seller agree to execute Escrow Holder's standard escrow instructions, provided that the same are consistent with and do not conflict with the provisions of this Agreement. In the event of any such conflict, the provisions of this Agreement shall prevail. The terms and conditions in sections of this Agreement not specifically referenced above are additional matters for information of Escrow Holder, but about which Escrow Holder need not be concerned. Buyer and Seller will receive Escrow Holder’s general provisions directly from Escrow Holder and will execute such provision upon Escrow Holder’s request. To the extent that the general provisions are inconsistent or conflict with this Agreement, the general provisions will control as to the duties and obligations of Escrow Holder only. Buyer and Seller agree to execute additional instructions, documents and forms provide by Escrow Holder that are reasonably necessary to close Escrow.

**10.2 General Escrow Provisions.** Escrow Holder shall deliver the Owner’s Title Policy to the Buyer and instruct the Madera County Recorder to mail the Grant Deed to Buyer at the address set forth in Section 14 after recordation. All funds received in this Escrow shall be deposited in one or more general escrow accounts of the Escrow Holder with any bank doing business in Madera County, California, and may be disbursed to any other general escrow account or accounts. All disbursements shall be according to that party's instructions.

**10.3 Real Property Taxes.** All general and special real property taxes and assessments shall be paid by Seller prior to the Close of Escrow.

#### **10.4 Payment of Costs.**

(a) **Cost Allocation.** Buyer shall pay the costs for the Owner's Title Policy, documentary transfer taxes and the escrow costs up to Ten Thousand Dollars (\$10,000.00) and be responsible for any recording charges ("**Buyer's Charges**"). All other costs of Escrow not otherwise specifically allocated by this Agreement shall be apportioned between the parties in a manner consistent with the custom and usage of Escrow Holder for commercial real estate transactions in the Madera area.

(b) **Closing Statement.** At least two (2) days prior to the Closing Date, Escrow Holder shall furnish Buyer and Seller with a preliminary escrow closing statement which shall include each party's respective shares of costs. The preliminary closing statement shall be approved in writing by the parties. As soon as reasonably possible following the Close of Escrow, Escrow Holder shall deliver a copy of the final Escrow closing statement to the parties.

**10.5 Termination and Cancellation of Escrow.** If Escrow fails to close as provided above, either party may elect to cancel this Escrow upon written notice to the other party and Escrow Holder. Cancellation of Escrow, as provided herein, shall be without prejudice to whatever legal rights Buyer or Seller may have against each other arising from the Escrow or this Agreement.

**10.6 Information Report.** Escrow Holder shall file and Buyer and Seller agree to cooperate with Escrow Holder and with each other in completing any report ("**Information Report**") and/or other information required to be delivered to the Internal Revenue Service pursuant to Internal Revenue Code Section 6045(e) regarding the real estate sales transaction contemplated by this Agreement, including without limitation, Internal Revenue Service Form 1099-B as such may be hereinafter modified or amended by the Internal Revenue Service, or as may be required pursuant to any regulation now or hereinafter promulgated by the Treasury Department with respect thereto. Buyer and Seller also agree that Buyer and Seller, their respective employees and attorneys, and escrow Holder and its employees, may disclose to the Internal Revenue Service, whether pursuant to such Information Report or otherwise, any information regarding this Agreement or the transactions contemplated herein as such party reasonably deems to be required to be disclosed to the Internal Revenue Service by such party pursuant to Internal Revenue Code Section 6045(e), and further agree that neither Buyer nor Seller shall seek to hold any such party liable for the disclosure to the Internal Revenue Service of any such information.

**10.7 No Withholding as Foreign Seller.** Seller represents and warrants to Buyer that Seller is not, and as of the Close of Escrow will not be, a foreign person within the meaning of Internal Revenue Code Section 1445 or an out-of-state seller under California Revenue and Tax Code Section 18805 and that it will deliver to Buyer on or before the Close of Escrow a non-foreign affidavit on Escrow Holder's standard form pursuant to Internal Revenue Code Section 1445(b)(2) and the Regulations promulgated thereunder and a California Form 590-RE.

**11. NON-COLLUSION.** No official, officer, or employee of the Seller has any financial interest, direct or indirect, in this Agreement, nor shall any official, officer, or employee of the Seller participate in any decision relating to this Agreement which may affect his/her financial

interest or the financial interest of any corporation, partnership, or association in which (s)he is directly or indirectly interested, or in violation of any interest of any corporation, partnership, or association in which (s)he is directly or indirectly interested, or in violation of any State or municipal statute or regulation. The determination of "financial interest" shall be consistent with State law and shall not include interest found to be "remote" or "non-interest" pursuant to California Government Code Sections 1091 and 1091.5. Seller warrants and represents that (s)he/it has not paid or given, and will not pay or give, to any third party including, but not limited to, any official, officer, or employee of Buyer, any money, consideration, or other thing of value as a result or consequence of obtaining or being awarded this Agreement. Seller further warrants and represents that (s)he/it has not engaged in any act(s), omission(s), or other conduct or collusion that would result in the payment of any money, consideration, or other thing of value to any third party including, but not limited to, any official, officer, or employee of Buyer, as a result or consequence of obtaining or being awarded any agreement. Seller is aware of and understands that any such act(s), omission(s) or other conduct resulting in the payment of money, consideration, or other thing of value will render this Agreement void and of no force or effect.

Seller's Initials: \_\_\_\_\_ Buyer's \_\_\_\_\_

**12. DEFAULT**

**12.1 DEFAULT OF BUYER; LIQUIDATED DAMAGES. IF BUYER SHOULD DEFAULT UNDER THIS AGREEMENT, THEN BUYER AND SELLER AGREE THAT SELLER WILL INCUR DAMAGES BY REASON OF SUCH DEFAULT BY BUYER OR FAILURE OF ESCROW TO CLOSE ON OR BEFORE THE CLOSING DATE, WHICH DAMAGES SHALL BE IMPRACTICAL AND EXTREMELY DIFFICULT, IF NOT IMPOSSIBLE, TO ASCERTAIN. BUYER AND SELLER, IN A REASONABLE EFFORT TO ASCERTAIN WHAT SELLER'S DAMAGES WOULD BE IN THE EVENT OF SUCH DEFAULT BY BUYER HAVE AGREED BY PLACING THEIR INITIALS BELOW THAT THE DEPOSIT SHALL BE DEEMED TO CONSTITUTE A REASONABLE ESTIMATE OF SELLER'S DAMAGES UNDER THE PROVISIONS OF SECTION 1671 OF THE CALIFORNIA CODE OF CIVIL PROCEDURE. IN THE EVENT OF AND FOR SUCH DEFAULT BY BUYER, THE DEPOSIT SHALL BE SELLER'S SOLE MONETARY REMEDY THEREFOR, UNLESS BUYER WRONGFULLY REFUSES TO CAUSE ESCROW HOLDER TO CANCEL THE ESCROW, IN WHICH INSTANCE SELLER SHALL ALSO BE ENTITLED TO ALL COSTS AND EXPENSES, INCLUDING ACTUAL ATTORNEYS' FEES INCURRED BY SELLER WHICH MAY RESULT FROM BUYER'S WRONGFUL FAILURE TO CANCEL THE ESCROW AND THIS AGREEMENT. FURTHERMORE, THE FOREGOING LIMITATION OF DAMAGES SHALL NOT APPLY TO ANY INDEMNIFICATION OBLIGATIONS OF BUYER.**

\_\_\_\_\_  
Seller's Initials

\_\_\_\_\_  
Buyer's Initials

**12.2 Default by Seller.** If all conditions precedent to Seller's obligations to sell the Property have occurred but Seller fails to Close under this Agreement for any reason other than the default by Buyer under this Agreement, Buyer shall have the right to either (i) terminate this Agreement and receive the return of the Deposit; or (ii) bring an action for specific performance.

**12.3 BANKRUPTCY; INSOLVENCY.** In addition to any other grounds for default under this Agreement, the existence of any of the following shall constitute a material default under this Agreement. It shall be a material default by a party if that party shall: (i) voluntarily be adjudicated as bankrupt or insolvent; (ii) seek, consent to or not contest the appointment of a receiver or trustee for itself or for all or any part of its property; (iii) file a petition seeking relief under the bankruptcy, arrangement, reorganization or other debtor relief laws of the United States, any state or any other competent jurisdiction; or (iv) make a general assignment for the benefit of its creditors; or (v) a petition is filed against a party seeking relief under the bankruptcy, arrangement, reorganization or other debtor relief laws of the United States, any state or any other competent jurisdiction, and such petition is not dismissed within sixty (60) days immediately following the date of such filing; or (vi) a court of competent jurisdiction enters an order, judgment or decree appointing, without the party's consent, a receiver or trustee for a party, or for all or any part of a party's property; and such petition, order, judgment or decree is not discharged or stayed within sixty (60) days immediately following its entry.

**13. NOTICES.** All notices required or permitted under this Agreement shall be in writing and shall be served on the parties at the addresses set forth below. Any such notices shall, unless otherwise provided herein, be given or served (i) by depositing the same in the United States mail, postage paid, certified and addressed to the party to be notified, with return receipt requested, (ii) by overnight delivery using a nationally recognized overnight courier, or (iii) by personal delivery. Notice deposited in the mail in the manner hereinabove described shall be effective upon receipt or rejection of such notice. Notice given in any other manner shall be effective only if and when received (or rejected) by the party to be notified between the hours of 8:00 a.m. and 5:00 p.m. California time of any business day with delivery made after such hours to be deemed received the following business day. A party's address may be changed by written notice to the other party; however, no notice of a change of address shall be effective until actual receipt of such notice. Copies of notices are for informational purposes only, and a failure to give or receive copies of any notice shall not be deemed a failure to give notice.

**To Seller:** Jose Hernandez  
Rosalia Hernandez  
621 E. 4<sup>th</sup> Street  
Madera, California 93638

**To Buyer:** City of Madera  
Attention: Arnoldo Rodriguez, City Manager  
205 W. Fourth Street  
Madera, CA 93637

**To Escrow Holder:** Chicago Title Company  
205 W. 4<sup>th</sup> Street  
Madera, CA 93637  
Attn: Assigned Escrow Officer

**14. GENERAL PROVISIONS.**

**14.1 Assignment.** Neither party shall have the right to assign this Agreement or any interest or right hereunder or under the Escrow without the prior written consent of the other party. This Agreement shall be binding upon and shall inure to the benefit of Buyer and Seller and their respective heirs, personal representatives, successors and assigns.

**14.2 Attorney's Fees.** In any action between the parties hereto, seeking enforcement of any of the terms and provisions of this Agreement or the Escrow, or in connection with the Property, the prevailing party in such action shall be entitled, to have and to recover from the other party its reasonable attorneys' fees and other reasonable expenses in connection with such action or proceeding, in addition to its recoverable court costs.

**14.3 Interpretation; Governing Law.** This Agreement shall be construed according to its fair meaning and as if prepared by both parties hereto. This Agreement shall be construed in accordance with the laws of the State of California in effect at the time of the execution of this Agreement. Titles and captions are for convenience only and shall not constitute a portion of this Agreement. As used in this Agreement, masculine, feminine or neuter gender and the singular or plural number shall each be deemed to include the others wherever and whenever the context so dictates.

**14.4 No Waiver.** No delay or omission by either party in exercising any right or power accruing upon the compliance or failure of performance by the other party under the provisions of this Agreement shall impair any such right or power or be construed to be a waiver thereof. A waiver by either party of a breach of any of the covenants, conditions or agreements hereof to be performed by the other party shall not be construed as a waiver of any succeeding breach of the same or other covenants, agreements, restrictions or conditions hereof.

**14.5 Modifications.** Any alteration, change, or modification of or to this Agreement shall be made by written instrument or endorsement thereon and in each such instance executed on behalf of each party hereto.

**14.6 Severability.** If any term, provision, condition or covenant of this Agreement or the application thereof to any party or circumstances shall, to any extent, be held invalid or unenforceable, the remainder of this instrument, or the application of such term, provisions, condition or covenant to persons or circumstances other than those as to whom or which it is held invalid or unenforceable, shall not be affected thereby, and each term and provision of this Agreement shall be valid and enforceable to the fullest extent permitted by law.



**14.7 Merger.** This Agreement and other documents incorporated herein by reference contain the entire understanding between the parties relating to the transaction contemplated hereby and all prior to contemporaneous agreements, understandings, representations and statements (including letters of intent), oral or written, are merged herein and shall be of no further force or effect.

**14.8 Execution of Documents.** The parties agree to execute such instructions to Title Company and such other instruments and to do such further acts as may be reasonably necessary to carry out the provisions of this Agreement.

**14.9 Inducement.** The making, execution and delivery of this Agreement by the parties hereto have been induced by no representations, statements, warranties or agreements other than those expressly set forth herein.

**14.10 Relationship of Parties.** Notwithstanding anything to the contrary contained herein, this Agreement shall not be deemed or construed to make the parties hereto partners or joint venturers, or to render either party liable for any of the debts or obligations of the other, it being the intention of the parties to merely create the relationship of Seller and Buyer with respect to the Property to be conveyed as contemplated hereby.

**14.11 No Personal Liability.** No member, official, employee, agent or contractor of Seller shall be personally liable to Buyer in the event of any default or breach by Seller or for any amount which may become due to Buyer or on any obligations under the terms of the Agreement.

**14.12 Force Majeure.** If either party is delayed or prevented from performing any act required in this Agreement by reason of any event beyond the reasonable control of either party, including without limitation, by labor disputes, fire, unusual delay in deliveries, weather or acts of God, terrorism, delay in the issuance of permits or approvals, acts of governmental entities, unavoidable casualties or any other such causes beyond such party's control, then the time herein fixed for completion of such obligation(s) shall be extended by the number of days that such party has been delayed.

**14.13 Representation by Counsel.** Each party hereto represents and agrees with each other that it has been represented by or had the opportunity to be represented by, independent counsel of its own choosing, and that it has had the full right and opportunity to consult with its respective attorney(s), that to the extent, if any, that it desired, it availed itself of this right and opportunity, that it or its authorized officers (as the case may be) have carefully read and fully understand this Agreement in its entirety and have had it fully explained to them by such party's respective counsel, that each is fully aware of the contents thereof and its meaning, intent and legal effect, and that it or its authorized officer (as the case may be) is competent to execute this Agreement and has executed this Agreement free from coercion, duress or undue influence.

**14.14 Execution in Counterparts.** This Agreement may be executed in several counterparts, and all so executed shall constitute one agreement binding on all parties hereto, notwithstanding that all parties are not signatories to the original or the same counterpart.

**14.15 Exhibits.** Exhibits A and B are attached hereto and incorporated herein by reference.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement for Purchase and Sale of Real Property and Joint Escrow Instructions as of the Agreement Date.

**Note: Sections 11 and 12.1 need to be separately initialed by the parties.**

**SELLER:**

Jose Hernandez  
Rosalia Hernandez

By: \_\_\_\_\_  
Jose Hernandez

\_\_\_\_\_  
Rosalia Hernandez

\_\_\_\_\_, 2020

**BUYER:**

CITY OF MADERA,  
a Municipal Corporation

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

\_\_\_\_\_, 2020

**ATTEST:**

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

**APPROVED AS TO FORM:**

\_\_\_\_\_  
Hilda Cantu Montoy, City Attorney

**Accepted and Agreed to:**

**ESCROW HOLDER:**

Chicago Title Company

By: \_\_\_\_\_  
Escrow Officer

Dated: \_\_\_\_\_, 2020

**EXHIBIT A TO PURCHASE SALE AGREEMENT**  
**LEGAL DESCRIPTION OF PROPERTY**

## **LEGAL DESCRIPTION OF PROPERTY**

The following described in real property in the City of Madera, County of Madera, State of California

The Southwesterly 50 feet or the Northeasterly 100 feet of lots 8. 9. And 10, Block 63 of the City of Madera, according to the map entitled "Map of Part of the Town of Madera" filed and recorded in the office of the County Recorder of the County of Madera, State of California, March 8, 1904 in Book 2 of Maps, at page 2

**EXHIBIT B TO PURCHASE SALE AGREEMENT**  
**GRANT DEED**

RECORDING REQUESTED BY:

City of Madera

AFTER RECORDING RETURN TO:

City of Madera

City Clerk

205 W. 4th Street

Madera, CA 93637

Fee waived per Section 27383 of the Government Code  
APN: 007 093 003

No Fee Due \_\_\_\_\_  
No Doc Tax Due \_\_\_\_\_

**GRANT DEED**

FOR A VALUABLE CONSIDERATION, RECEIPT OF WHICH IS HEREBY ACKNOWLEDGED, JOSE HERNANDEZ AND ROSALIA HERNANDEZ DO HEREBY GRANT TO **THE CITY OF MADERA**, A MUNICIPAL CORPORATION OF THE STATE OF CALIFORNIA

The real property for storm drain basin and any and all other municipal purposes over, under, through and across, on and in the following described real property in the City of Madera, County of Madera, State of California, being more particularly described in the **LEGAL DESCRIPTION**, EXHIBIT "A", attached hereto and made a part hereof:

Date: \_\_\_\_\_

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

Date: \_\_\_\_\_

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

**NOTARY ACKNOWLEDGMENTS REQUIRED**

**EXHIBIT "A" TO GRANT DEED**  
**LEGAL DESCRIPTION OF PROPERTY**

The following described in real property in the City of Madera, County of Madera, State of California

The Southwesterly 50 feet or the Northeasterly 100 feet of lots 8. 9. And 10, Block 63 of the City of Madera, according to the map entitled "Map of Part of the Town of Madera" filed and recorded in the office of the County Recorder of the County of Madera, State of California, March 8, 1904 in Book 2 of Maps, at page 2



City of Madera Fire  
Department (Station #56)

Community Garden

N Lake St

N Lake St

E 4th St

Flume St

E 4th St

Flume St

E Central Ave

E Central Ave

E Central Ave

E 4th St

Centennial P  
Temporarily cl

City of Madera  
Parks & Community...

City of Mad