

## REPORT TO CITY COUNCIL

**Approved by:**

A blue ink signature of Keith Helmuth, written in a cursive style, positioned above a horizontal line.

Keith Helmuth, Department Director

A blue ink signature of Arnaldo Rodriguez, written in a cursive style, positioned above a horizontal line.

Arnaldo Rodriguez, City Manager

**Council Meeting of:** October 21, 2020

**Agenda Item:**           D-4          

**SUBJECT:**

Purchase of Real Property Located at 103 East Yosemite Avenue (APN: 007-101-011)

**RECOMMENDATION:**

Adopt a Resolution:

1. Approving the Agreement for Purchase of Real Property located at 103 East Yosemite Avenue (APN: 007-101-011) for \$275,000 plus an estimated \$10,000 for closing costs.
2. Accepting the Grant Deed.
3. Amending the City's 2020/21 Budget to reflect expenditures related to the property purchase.

**SUMMARY:**

The Sales Agreement is for the acquisition of the 0.47-acre parcel located at the northeast corner of Yosemite Avenue & E Street (APN: 007-101-011). The vacant parcel was placed on the market by the owner after a devastating fire ripped through the two-story building. Unfortunately, the building was completely lost and has since been demolished. The property is zoned C-1, Light Commercial, and serves as the gateway into historic downtown Madera. According to archives, it is believed to be the location of one of the first buildings in the City and anchored the bustling commercial district.

**DISCUSSION:**

Following the fire, the owner placed the property on the market. As part of its due diligence, staff commissioned an appraisal which determined that the Fair Market Value is \$275,000 for the site.

While the City does not have immediate plans for the site, it is noted that the area has largely been by-passed by private development. However, ground recently broke on two, three-story residential buildings two blocks from the subject site while the former PG&E building at 319 S. Gateway Drive is in the process of being extensively remodeled. In addition, the City controls the intermodal station approximately 100 feet to the north of the subject site and the Chamber of Commerce building to the west. Thus, to further promote quality development in the City's central business district, staff is recommending acquisition of the site. Upon acquisition, the City will contemplate various options for the site.

The City's formal offer of \$275,000, plus an estimated \$10,000 for Escrow Costs was delivered to the property owner and subsequently accepted on October 14, 2020. It is worth noting that the parcel was listed on the market for \$375,000.

### *Appraisal*

The Fair Market Value of the subject parcel of land was established by an appraisal prepared by Peter S. Cooper, MAI, on October 6, 2020. Again, while the City does not have immediate plans for the site, it is advantageous to purchase property when there is a willing seller as opposed to utilizing eminent domain. With the purchase of the property, the City can begin to explore redevelopment opportunities.

### *General Plan Consistency*

On October 13, 2020, the Planning Commission considered conditions of the General Plan Conformity and Environmental Determination. The property is consistent with the C (Commercial) General Plan land use. The land acquisition qualifies as an exemption under Section 15061 (Review for Exemption) of the CEQA Guidelines.

### **FINANCIAL IMPACT:**

While the purchase of the property was not contemplated during the preparation of the 2020/21 Budget, unassigned funds, from the City's General Fund, are available subject to Council appropriation.

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

Approval of this agreement is consistent with 101.5, which calls for the City to, as part of the General Plan update process, create inventory of and utilize vacant land within the City limits.

### **ALTERNATIVES:**

An alternative would be to cancel or postpone the acquisition of the property.

### **ATTACHMENTS:**

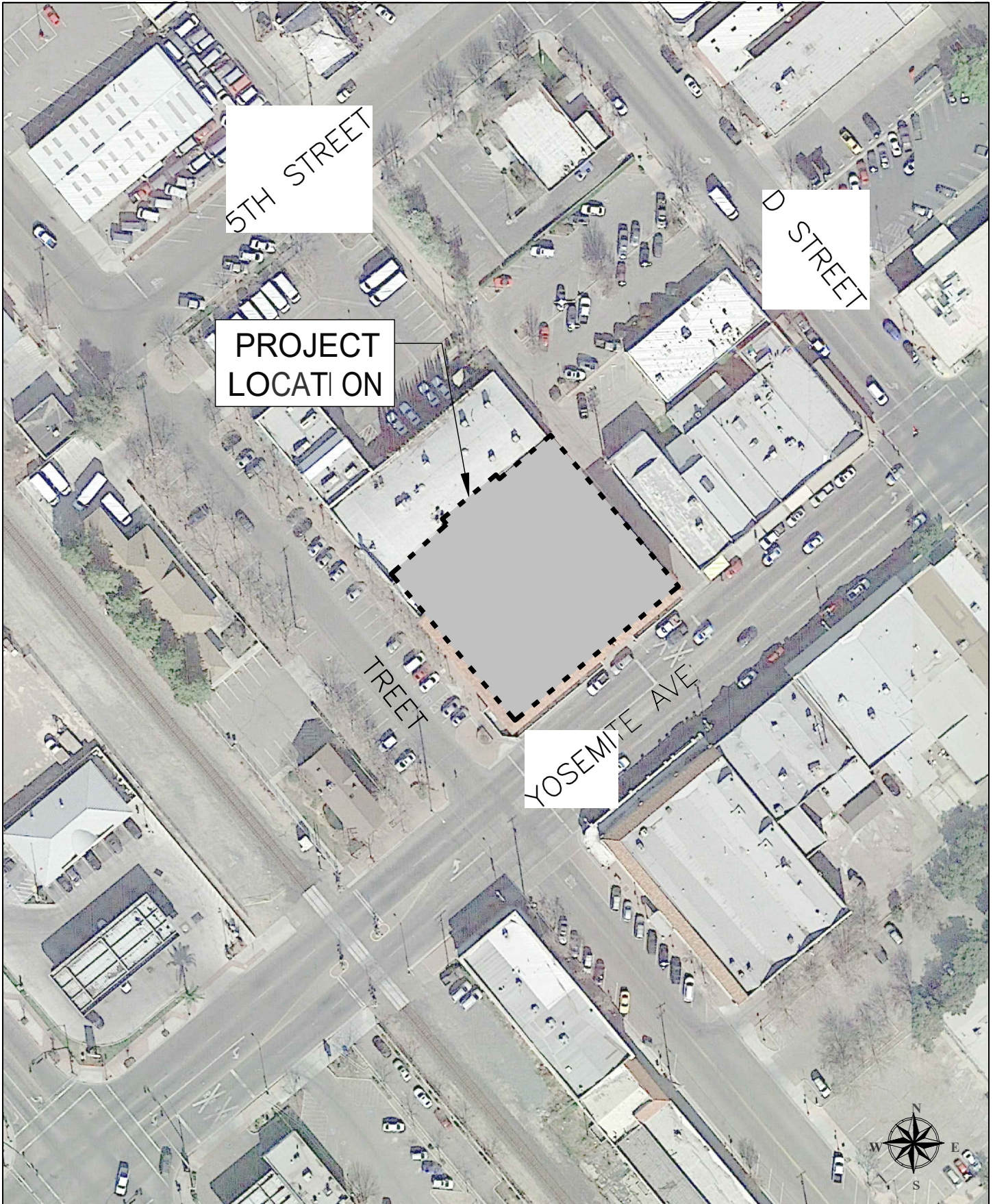
1. Parcel Location Map
2. Resolution No. 20\_\_

- a. Exhibit "A" to Resolution: Agreement for Purchase and Sale of Real Property
- b. Exhibit "B" to Resolution: Amendments to the City of Madera Fiscal Year 2020/2021 Budget.

**ATTACHMENT 1**  
**Parcel Location Map**



# LOCATION MAP



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

103 E YOSEMITE AVE  
APN 007-101-011

DR BY: \_\_\_\_\_ EP  
CH BY: \_\_\_\_\_ TL  
DATE: 10/01/20  
SCALE: NTS  
SHT \_ OF \_

**RESOLUTION NO. 20-\_\_\_\_\_**

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MADERA,  
CALIFORNIA, APPROVING AN AGREEMENT FOR PURCHASE AND SALE OF  
REAL PROPERTY FOR APN: 007-101-011 AND AUTHORIZING AND  
APPROVING AMENDMENTS TO THE CITY OF MADER FISCAL YEAR  
2020/2021 BUDGET**

**WHEREAS**, the property owner of record, Susan Savage, has offered for sale, the 0.47-acre, vacant parcel located at 103 East Yosemite Avenue, APN: 007-101-011, to the City of Madera; and

**WHEREAS**, the property serves as the gateway to the City's historic downtown; and

**WHEREAS**, the City wishes to acquire the subject parcel of land; and

**WHEREAS**, the City commissioned an appraisal which determined that the value of the property as of October 6, 2020 was \$275,000; and

**WHEREAS**, the property was listed for \$375,000 on the multiple list service (MLS); and

**WHEREAS**, the property owner has accepted the City's offer of \$275,000 for the parcel of land and whereas escrow costs are anticipated to be less than \$10,000; and

**WHEREAS**, the funds for the acquisition of the subject parcel are available in the City's Unrestricted General Fund Reserves, and

**WHEREAS**, the property to be acquired is more specifically described in the legal description included within the Grant Deed attached to and included as Exhibit A to the Agreement for Purchase and Sale of Real Property; and

**WHEREAS**, the purchase price offered for the property was confirmed to be Fair Market Value by an appraisal prepared by Peter S. Cooper, MAI of Fresno, California; and

**WHEREAS**, the environmental determination of the land acquisition qualifies as exempt under Section 15061 (Review for Exemption) of the CEQA Guidelines and on October 13, 2020, the City of Madera Planning Commission confirmed the purchase is in conformance with the General Plan; and

**WHEREAS**, the City Council has authorized the City Manager to spend general fund reserves in the amount of \$275,000 plus an estimated \$10,000 for Escrow Costs; and

**WHEREAS**, the amendments to the City of Madera Fiscal Year 2020/2021 Budget, listed in Exhibit B, attached hereto, are necessary to purchase the property located at 103 East

Yosemite Avenue (APN: 007-101-011); and

**WHEREAS**, the agreement and deed recommended for approval and acceptance are attached hereto.

**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. The City Council of the City of Madera approves the Agreement for Purchase and Sale of Real Property attached hereto as Exhibit A and approves amendments to the City of Madera Fiscal Year 2020/2021 Budget attached hereto as Exhibit B.
3. The City Manager is authorized to take all actions necessary to make the amendments to the budget for the purchase of the property and execute documents as necessary for Escrow requirements.
4. The City Clerk is authorized to prepare the Certificate of Acceptance for the Grant Deed.
5. The City Finance Manager is authorized to transfer \$285,000 from the Unrestricted General Fund Reserves to an Acquisition Expenditure Account.
6. The City Engineer is authorized to initiate Escrow Services for the acquisition of the land and 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**

**Agreement for Purchase and Sale of Property, APN: 007-101-011**



**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 SUSAN SAVAGE (“**Seller**”) with CHICAGO TITLE COMPANY, a California Corporation as escrow holder (“**Escrow Holder**”).

**RECITALS**

**A.** **Seller** owns all that real property situated in the City of Madera, County of Madera, State of California, more particularly described as Lots 6 & 7 and a portion of Lot 5, in Block 39 of the Town, now City of Madera, Assessor Parcel Number 007-101-011 which is the subject of this Agreement, and which is hereunder for convenience referred to as the “**Property**.”

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

**C.** **Seller** warrants the **Property** is not being acquired under threat of eminent domain.

**D.** **Seller** warrants that there are no lease agreements regarding **Property**.

**E.** **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 Two Hundred Seventy Five Thousand Dollars (\$275,000.00) (“**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 A 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:**

Susan Savage  
531 E. Mallard Cir. Street  
Fresno, California 93730

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

**To Escrow Holder:** Chicago Title Company  
Attention: Cathy Padilla, Escrow Officer  
601 W. Yosemite Avenue, Suite 101  
Madera, CA 93637

#### **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.** Exhibit A is

**14.16** 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:**

SUSAN SAVAGE

By: \_\_\_\_\_  
Susan Savage

\_\_\_\_\_  
Tax I.D. (SSN)  
\_\_\_\_\_, 2020

**Accepted and Agreed to:**

**ESCROW HOLDER:**

Chicago Title Company

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

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, **SUSAN SAVAGE**, DOES HEREBY GRANT TO **THE CITY OF MADERA**, A MUNICIPAL CORPORATION OF THE STATE OF CALIFORNIA

The following described real property in Exhibit "A" attached hereto and by this reference incorporated herein in the City of Madera, County of Madera, State of California, being more particularly known and described as Lots 6 & 7 and a portion of Lot 5, Block 39 of the Town, now the City of Madera, Assessor Parcel Number: 007-101-011.

By: \_\_\_\_\_  
Susan Savage

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

CALIFORNIA ALL-PURPOSE ACKNOWLEDGEMENT CIVIL CODE #1189

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of the document.

State of California)  
County of Madera)

On \_\_\_\_\_ before me, \_\_\_\_\_, Notary Public,  
personally appeared \_\_\_\_\_

\_\_\_\_\_ wh  
o proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify, under PENALTY OF PERJURY, under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS MY HAND AND OFFICIAL SEAL

Signature: \_\_\_\_\_ (Seal)

## Legal Description

**For APN/Parcel ID(s): 007-101-011**

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THE LAND REFERRED TO HEREIN BELOW IS SITUATED IN THE CITY OF MADERA, COUNTY OF MADERA, STATE OF CALIFORNIA AND IS DESCRIBED AS FOLLOWS:

Lots 5, 6 and 7 in Block 39 of the Town, now city of Madera, according to map entitled, "Map of the Town of Madera", filed and recorded in the office of the Fresno County Recorder, CA., 3-1-1887, in Vol. 3 of Maps at page 40.

EXCEPTING THEREFROM the Northwesterly 18.35 feet of Lot 5, and

All that portion of Lot 5 in Block 39, City of Madera, as shown and designated on map recorded in Vol. 3 of Maps, page 49, Records of Fresno County, CA, bounded and described as follows:

Beginning at a point on the Northeasterly line of said Lot 5, 18.35 feet SE of the Northeasterly corner of said Lot 5, thence Southwesterly along a line parallel to the Northwesterly line of Lot 5, a distance of 96.8 feet, thence Northwesterly along a line parallel to the Northeasterly line of Lot 5, a distance of 7.45 feet, thence Northeasterly along a line parallel to the Northwesterly line of Lot 5, a distance of 68.7 feet, thence Southeasterly along a line parallel to the Northeasterly line of Lot 5, a distance of 7.2 feet, thence Northeasterly along a line parallel to the Northwesterly line of Lot 5, a distance of 28.1 feet, thence Southeasterly along the Northeasterly line of Lot 5, a distance of .25 feet to the point of beginning.



**EXHIBIT B**

**Amendments to the City of Madera Fiscal Year 2020/2021 Budget**

Amendments to the City of Madera Fiscal Year 2020/2021 Budget

<b>Fund</b>	<b>Org</b>	<b>Object</b>	<b>Description</b>	<b>Increase Amount</b>	<b>Decrease Amount</b>
1020	10200000	8200	Transfer Out	\$ 285,000	
4250	42500000	4355	Transfer In	\$ 285,000	
4250	42500000	7030	Building	\$ -	
4250	42500000	7100	Land	\$ 275,000	
4250	42500000	7100	Land - Closing Fees	\$ 10,000	