

REPORT TO CITY COUNCIL

Approved by:

Council Meeting of: October 20, 2021

Agenda Number: D-3

Handwritten signature of Keith Helmuth in blue ink.

Keith Helmuth, Department Director

Handwritten signature of Arnaldo Rodriguez in blue ink.

Arnaldo Rodriguez, City Manager

SUBJECT:

Purchase of Real Property Located at 28310 Highway 145 (APN: 035-080-026)

RECOMMENDATION:

Adopt a Resolution:

1. Approving the Agreement for Purchase of a portion of Real Property located at 28310 Highway 145 (APN: 035-080-026) for \$377,000 and Joint Escrow Instructions;
2. Accepting the Grant Deed; and
3. Amending the City's 2021/22 Budget to reflect expenditures related to the property purchase.

SUMMARY:

This Agreement for Purchase and Sale of Real Property and Joint Escrow Instructions (Agreement) is for the acquisition of an approximate 2.23-acre portion of the subject parcel (APN: 035-080-026) located on the south side of Highway 145, approximately 0.75 miles North-East of the intersection of Highway 145 and Storey Road within the County of Madera. The parcel currently includes agricultural uses on the area not intended for purchase while the purchase area is currently improved with a temporary storm drainage basin. The parcel is currently zoned for Residential Rural Single Family. The resolution approving the purchase is contingent on conformity with General Plan.

DISCUSSION:

The proposed acquisition is for a portion of the subject parcel land that was originally developed as a temporary storm drainage basin for the Sienna Basin Estates subdivision, located to the west of the subject parcel. The acquisition requires the purchase of an approximate 2.23-acre portion of the subject parcel. The purchase serves two purposes. Of immediate concern is securing the basin for uninterrupted use and protection from storm water runoff to the Sienna Estates subdivision. In addition, the basin is needed to expand the city's stormwater retention capabilities in accordance with the Storm Drainage System Master Plan for future development activities in the vicinity of the basin. It is not known at this

time if the basin can be used to serve future growth while Sienna Estates maintains its connection to and reliance on the basin. Additional hydraulic analysis would be required beyond that which was conducted by the original developer's engineer when the subdivision was first proposed.

Prior to the finalization of the sale, staff will be commissioning a Phase I Environmental Site Assessment (ESA) during the due diligence period, as outlined in the Agreement. This ESA will assist in identifying any environmental issues that could potentially disqualify the parcel as a location for a retention basin.

As a condition of sale, the Seller will grant the City an easement for public utility access for all municipal purposes on their parcel. The City will, following the sale, enter an Easement Agreement providing Seller a non-exclusive easement to drain stormwater into the basin from their parcel, which borders on the western side of the basin. The ability to benefit from this easement is contingent on evaluation of the capability of the basin/stormwater conveyance system to accommodate any drainage beyond that from Sienna Estates. If insufficient capacity is found, the additional stormwater drainage will be prohibited and the Seller would, at their own expense, find an alternative site for drainage.

Cost of acquisition is \$377,000. Bulk of the funding will be secured through the Storm Drain SE Quadrant Impact Fee Account with a loan for the remainder of \$32,000 coming from the Storm Drain SE Quadrant Impact Fee Account. As impact fees are collected in the Storm Drain SE Quadrant Impact Fee Account, the DD will be reimbursed.

CONSISTENCY WITH THE VISION MADERA 2025 PLAN:

Approval of this Agreement is consistent with section 101.6 of the "Well-Planned City" focus area, which calls for the city to ensure infrastructure can sustain population growth in the development of the General Plan.

FINANCIAL IMPACT:

There is no impact to the General Fund by approving this Agreement.

ALTERNATIVES:

An alternative would be to not approve or postpone the acquisition of the property. Such action would require any developer of Sienna Estates to secure permission and authority to use the basin until such time as the City determines it is no longer necessary.

ATTACHMENTS:

1. Location Map
2. Resolution

Exhibit A - Agreement for Purchase and Sale of Real Property

Exhibit A - Depiction of the Property

Exhibit B - Grant Deed

Exhibit A - Legal Description

Exhibit C - Easement Deed

Exhibit A - Legal Description

Exhibit D - June 5, 2018 Letter

Exhibit E - Easement Agreement

Exhibit A - Legal Description of the Grantee Property

Exhibit B – Legal Description of the Basin
Exhibit C – Legal Description of the Pipeline Easement

Exhibit B - Amendments to the City of Madera Fiscal Year 2021/2022 Budget

ATTACHMENT 1

Location Map

Attachment 1



LOCATION MAP

APPROXIMATE LOCATIONS SHOWN

- — 035-080-026 SANDERS PROP.
- BASIN AREA
- - - - STORM PIPE/ACCESS EASEMENT
- - - - ACCESS EASEMENT

ATTACHMENT 2

Resolution

RESOLUTION NO. 21-_____

**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 MADERA FISCAL YEAR
2021/2022 BUDGET**

WHEREAS, Jason Sanders (Seller) owns a 2.23-acre parcel Located at 28310 Highway 145, APN 035-080-026 (Subject Property); and

WHEREAS, the City wishes to purchase a portion of the Subject Property; and

WHEREAS, the City and Seller have negotiated a purchase price of \$377,000 for the portion of Subject Property and easement, escrow costs are estimated at \$7,540; and

WHEREAS, funding for the purchase is available through the Storm Drain SE Quadrant Impact Fee account and a loan for \$32,000 coming from the Drainage Development Impact Fee account; and

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

WHEREAS, prior to closing of escrow, staff will commission a Phase I Environmental Site Assessment (ESA) during the Due Diligence Period; and

WHEREAS, the amendments to the City of Madera Fiscal Year 2021/2022 Budget, listed in Exhibit B, attached hereto, are necessary to purchase the property from Sanders.

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 approves the Agreement for Purchase and Sale of Real Property and Joint Escrow Instructions attached hereto as Exhibit A. including Exhibits A to E referenced in and attached to the Agreement.
3. The City Council approves the amendments to the City of Madera Fiscal Year 2021/2022 Budget attached hereto as Exhibit B.
4. The City Manager is authorized to take all actions necessary to make the amendments to the budget for the purchase of the property and to execute documents as necessary for

Escrow requirements and recordation of the Grant Deed and Easement Agreement.

5. The City Clerk is authorized to prepare the Certificate of Acceptance for the Grant Deed.
6. The City Finance Manager is authorized to transfer \$377,000 from the Storm Drain SE Quadrant Impact Fee account to an Acquisition Expenditure Account.
7. The City Engineer is authorized to initiate Escrow Services for the acquisition of the property and the recording of the Grant Deed and Easement Agreement by the County of Madera Clerk/Recorder.
8. The City Manager, City Clerk, and City Attorney are authorized collectively to make any technical and clerical corrections or clarifications to this Resolution and to the Agreement and related documents.
9. This resolution is subject to any required findings of conformity with the General Plan.
10. This resolution is effective immediately upon adoption.

EXHIBIT A

Agreement for Purchase and Sale of Property, APN: 035-080-02

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 _____, 2021, (“**Agreement Date**”) by and between the CITY OF MADERA, a municipal corporation (“**Buyer**”), and JASON SANDERS (“**Seller**”).

RECITALS

A. Seller owns that certain unimproved real property located in the City of Madera, County of Madera, State of California depicted on **Exhibit A** and desires to sell in fee a portion of APN 035-080-026 located along the south side of SR 145 and easements described in and depicted on **Exhibit A** (“**Property**”). The legal descriptions of the **Property** (land and easements) are attached as exhibits to the Grant Deed (**Exhibit B**) and Easement Deed (**Exhibit C**).

B. Buyer sent Seller a letter dated June 5, 2018, indicating Buyer’s desire to acquire the Property and advising the Seller would instituting formal condemnation proceedings if a voluntary agreement could not be secured, a copy of which is attached hereto as **Exhibit D**.

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 Three Hundred Seventy-Seven Thousand Dollars (\$377,000.00) (“**Purchase Price**”).

3.2 Deposit. Concurrently with Opening of Escrow, Buyer shall deposit with Escrow Holder the sum equal to Seven Thousand Five Hundred Forty and 00/100 Dollars (\$7,540.00) (“**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) An easement deed in the form attached hereto as **Exhibit C** executed by Seller (“**Easement Deed**”).
- (c) A Non-Foreign Affidavit as. required by federal law.
- (d) 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) An easement agreement in the form attached hereto as **Exhibit E** executed by Seller (“**Easement Agreement**”).
- (b) A Preliminary Change of Ownership Statement completed in the manner required in Madera County.
- (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.

4.3 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 on or before December 20, 2021 (“**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 fifteen (15) 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 sixty (60) 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.

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 due to Escrow Holder) 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 has delivered the fully executed Grant Deed and Easement Deed.
- (e) 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 has delivered the fully executed Easement Agreement.
- (d) 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. Upon satisfaction of all of the closing conditions, Escrow Holder shall cause the Grant Deed, then the Easement Deed, and then the Easement Agreement to be recorded. Escrow Holder shall deliver the Owner's Title Policy to the Buyer and instruct the Madera County Recorder to mail the Grant Deed and the Easement Deed to Buyer, and the Easement Agreement to Seller, at the addresses 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 outstanding 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 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: _____

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.

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: Jason Sanders
28310 Highway 145
Madera, California 93638

with copy to: Jordan M. Freeman, Esq.
The Freeman Law Group, LLP
8050 North Palm Avenue, Suite 300
Fresno, California 93711

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. 4th 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 - E 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:

BUYER:

CITY OF MADERA,
a municipal corporation

Jason Sanders

By: _____
Santos Garcia, Mayor

Dated: _____, 2021

Dated: _____, 2021

ATTEST:

Alicia Gonzales, City Clerk

APPROVED AS TO FORM:

Hilda Cantu Montoy, City Attorney

**EXHIBIT A TO AGREEMENT FOR PURCHASE AND SALE OF
REAL PROPERTY**

Depiction of the Property

Attachment 1



LOCATION MAP
APPROXIMATE LOCATIONS SHOWN

- 035-080-026 SANDERS PROP.
- BASIN AREA
- - - - STORM PIPE/ACCESS EASEMENT
- - - - ACCESS EASEMENT

**EXHIBIT B TO AGREEMENT FOR PURCHASE AND SALE OF
REAL PROPERTY**

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: 035-080-026

No Fee Due _____
No Doc Tax Due _____

GRANT DEED

FOR A VALUABLE CONSIDERATION, RECEIPT OF WHICH IS HEREBY
ACKNOWLEDGED, **JASON SANDERS, A MARRIED MAN AS HIS SOLE AND
SEPARATE PROPERTY**, DOES 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: _____
Jason Sanders

NOTARY ACKNOWLEDGMENT REQUIRED

EXHIBIT A TO GRANT DEED

LEGAL DESCRIPTION

Storm Drain Basin

A portion of the property conveyed to Jonathan Homes, Inc. a California Corporation by deed recorded May 13, 2005 as Document 2005021781, Madera County Records, and being a portion of Lot 5 of the Map of Lankershim Colony and Addition to the Town of Madera, filed in Volume 4 of Maps, at page 31, Madera County Records, lying in Section 17, Township 11 South, Range 18 East, Mount Diablo Base and Meridian, situated in the City of Madera, County of Madera, State of California, more particularly described as follows:

Commencing at the northwest corner of said Lot 5, said point also being the northeast corner of the property conveyed to Madera Sienna, LLC by deed recorded March 10, 2006 as Document Number 2006010936, Madera County Records; thence South $00^{\circ}32'21''$ East along the west line of said Lot 5, a distance of 25.81 feet to the southerly Right-of-Way line of East Yosemite Avenue (State Highway 145); thence North $54^{\circ}59'10''$ East along said southerly line, a distance of 574.75 feet to the Point of Beginning; thence South $00^{\circ}23'04''$ West, a distance of 146.65 feet; thence South $89^{\circ}36'56''$ East, a distance of 440.17 feet to the easterly line of said Jonathan Homes property; thence North $16^{\circ}11'34''$ West, a distance of 212.48 feet; thence North $54^{\circ}32'05''$ West, a distance of 183.96 feet to said southerly line of Yosemite Avenue; thence South $54^{\circ}59'10''$ West along said southerly line, a distance of 280.94 feet to the point of beginning.

Containing 2.23 acres, more or less.

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 that document.

STATE OF CALIFORNIA)
) ss.
COUNTY OF MADERA)

On _____, 20__ before me, _____, a notary public, personally appeared _____ who 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.

Notary Public

SEAL:

**EXHIBIT C TO AGREEMENT FOR PURCHASE AND SALE OF
REAL PROPERTY**

EASEMENT 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: 035-080-026

No Fee Due _____
No Doc Tax Due _____

EASEMENT DEED

FOR A VALUABLE CONSIDERATION, RECEIPT OF WHICH IS HEREBY ACKNOWLEDGED, **JASON SANDERS, A MARRIED MAN AS HIS SOLE AND SEPARATE PROPERTY**, DOES HEREBY GRANT TO **THE CITY OF MADERA**, A MUNICIPAL CORPORATION OF THE STATE OF CALIFORNIA

An easement for public utility, access 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: _____
Jason Sanders

NOTARY ACKNOWLEDGMENT REQUIRED

EXHIBIT A TO EASEMENT DEED

LEGAL DESCRIPTION

12' Wide Access Easement

A portion of the property conveyed to Jonathan Homes, Inc. a California Corporation by deed recorded May 13, 2005 as Document 2005021781, Madera County Records, and being a portion of Lot 5 of the Map of Lankershim Colony and Addition to the Town of Madera, filed in Volume 4 of Maps, at page 31, Madera County Records, lying in Section 17, Township 11 South, Range 18 East, Mount Diablo Base and Meridian, situated in the City of Madera, County of Madera, State of California, more particularly described as follows:

A strip of land 12.00 feet wide, the centerline of which is described as follows:

Commencing at the northwest corner of said Lot 5, said point also being the northeast corner of the property conveyed to Madera Sienna, LLC by deed recorded March 10, 2006 as Document Number 2006010936, Madera County Records; thence South 00°32'21" East along the west line of said Lot 5, a distance of 25.81 feet to the southerly Right-of-Way line of East Yosemite Avenue (State Highway 145); thence North 54°59'10" East along said southerly line, a distance of 29.11 feet to a line that lies 24.00 feet east of and parallel with the said west line of Lot 5, and the Point of Beginning; thence South 00°32'21" East along said parallel line, a distance of 239.63 feet; thence South 32°26'56" East, a distance of 27.47 feet to the termination point of this description. The sidelines of said easement terminate at the right angles to said centerline.

12' Wide Storm Drain Public Utility & Access Easement

A portion of the property conveyed to Jonathan Homes, Inc. a California Corporation by deed recorded May 13, 2005 as Document 2005021781, Madera County Records, and being a portion of Lot 5 of the Map of Lankershim Colony and Addition to the Town of Madera, filed in Volume 4 of Maps, at page 31, Madera County Records, lying in Section 17, Township 11 South, Range 18 East, Mount Diablo Base and Meridian, situated in the City of Madera, County of Madera, State of California, more particularly described as follows:

A strip of land 12.00 feet wide, the centerline of which is described as follows:

Commencing at the northwest corner of said Lot 5, said point also being the northeast corner of the property conveyed to Madera Sienna, LLC by deed recorded March 10, 2006 as Document Number 2006010936, Madera County Records; thence South 00°32'21" East along the west line of said Lot 5, a distance of 294.57 feet to the Point of Beginning; thence North 89°27'39" East, a distance of 10.00 feet; thence North 51°27'18" East, a distance of 36.20 feet; thence North 81°35'27" East, a distance of 229.60 feet; thence South 89°36'56" East, a distance of 396.19 feet; thence North 00°23'04" East, a distance of 397.00 feet to the termination point of this description. The sidelines of said easement to terminate at right angles to said centerline.

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 that document.

STATE OF CALIFORNIA)
) ss.
COUNTY OF MADERA)

On _____, 20__ before me, _____, a notary public, personally appeared _____ who 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.

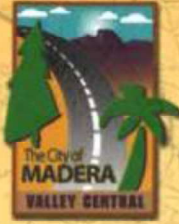
WITNESS my hand and official seal.

Notary Public

SEAL:

**EXHIBIT D TO AGREEMENT FOR PURCHASE AND SALE OF
REAL PROPERTY**

JUNE 5, 2018 LETTER



June 5, 2018

Jason Sanders
28310 Highway 145
Madera, CA

Subject: Sienna Estates Basin Acquisition

Dear Mr. Sanders:

With reference to the above project, we regret that the City was unable to secure a mutually acceptable agreement regarding the acquisition of a portion of land from your property:

APN: 035-080-026
28310 Highway 145, Madera CA
Property Owner: Jason Sanders

Please be advised that the City will be instituting formal condemnation proceeding if a voluntary agreement cannot be secured by June 20th, 2018. The City Council meeting on that date will commence the condemnation process by setting the date of July 18th, 2018 for a hearing as required by law to adopt a Resolution of Public Necessity to acquire certain interests in real property by Eminent Domain. The acquisition from your parcel would be included in that proposed action by the City Council. It remains the City's intent to reach a negotiated settlement with you even while the Eminent Domain process goes forward.

If you have any questions regarding this process, please call Mr. Jose Sandoval of our staff at (559) 661-5428, or email at: jsandoval@cityofmadera.com

Sincerely,

A handwritten signature in blue ink, appearing to read 'Keith B. Helmuth', is written over the word 'Sincerely,'.

Keith B. Helmuth, P.E.
City Engineer

Engineering
205 W. Fourth Street • Madera, CA 93637 • TEL (559) 661-5418 • FAX (559) 675-6605
www.cityofmadera.ca.gov

**EXHIBIT E TO AGREEMENT FOR PURCHASE AND SALE OF
REAL PROPERTY**

Easement Agreement

**Recording Requested By
and When Recorded Mail to:**

Jordan M. Freeman, Esq.
THE FREEMAN LAW GROUP, LLP
8050 North Palm Avenue, Suite 300
Fresno, California 93711

SPACE ABOVE THIS LINE FOR RECORDER'S USE

**EASEMENT AGREEMENT
(Temporary Basin)**

This Agreement (this “**Agreement**”) is entered into, effective _____, 2021, by and between CITY OF MADERA, a municipal corporation (“**Grantor**”), on the one hand, and Jason Sanders (“**Grantee**”), on the other. Grantee and Grantor are sometimes collectively referred to herein as the “**Parties**” or “**Party.**”

RECITALS

A. Grantee is the owner of that certain real property located in the County of Madera, California, commonly known as 28310 Highway 145, Madera, CA 93638-1918, APN 035-080-026, more particularly described in **Exhibit A**, attached hereto and by this reference made a part hereof (the “**Grantee Property**”).

B. Grantor is the owner of that certain real property located in the County of Madera, California, described in **Exhibit B**, attached hereto and by this reference made a part hereof (“**Temporary Basin**”).

C. The Grantee Property and the Temporary Basin share a common boundary line, specifically, the westerly boundary of the Basin and the easterly boundary of Grantor Property.

D. In lieu of construction of permanent storm drainage facilities, the Temporary Basin (a ponding basin and conveyance system) was constructed by original developer of Sienna Estates on Grantor Property intended only for use by Sienna Estates until the City’s Master Plan Facilities intended for land on which Sienna Estates was developed is constructed at another location.

E. Without detailed evaluation, it is not known if the operational characteristics and assumptions used in construction of the Temporary Basin would allow for any other use than Sienna Estates’ use without placing an undue risk of ponding within the Sienna Estates subdivision.

F. As part of 2014 Storm Drainage System Master Plan, the Temporary Basin along with dozens of other possible locations was incorporated as a possible future Master Plan basin location for other development projects following the time in which the Temporary Basin is needed for Sienna Estates.

AGREEMENT

NOW, THEREFORE, for a valuable consideration including the foregoing recitals, the receipt and sufficiency of which are hereby acknowledged, Grantor and Grantee hereby agree as follows:

1. Storm Water Drainage Easement. Grantor establishes for the benefit of the Grantee Property a non-exclusive easement to drain storm water from the Grantee Property into the Temporary Basin via the existing pipelines located on the Grantee Property and to retain said storm water in the Temporary Basin.

2. Nature of the Easement. The easement granted herein is permanent and perpetual easements appurtenant to the Properties subject to the condition set forth below. The benefits and burdens of this Agreement will run with the land in accordance with California Civil Code sections 1460–1471. Each covenant of the Parties to do or refrain from doing some act stated in this Agreement is expressly for the benefit of the Properties, runs with the Properties and will benefit or be binding upon each successive owner, during his, her, or its ownership, of any portion of the Properties affected by this Agreement and on each person having any interest therein derived through any owner thereof. Grantee understands and agrees with the provisions of Section 5 of this Agreement and further understands and agrees that the change in use or the development of Grantee Property by Grantee or other owners (current or future) of Grantee Property is subject to the following conditions:

a. Nothing herein limits the Grantor from abandoning the use of the Temporary Basin when permanent City Facilities become available for drainage and conveyance and requiring connection to City Facilities.

b. It is recognized that prior to use of Temporary Basin for other development, including development or change in use of property by Grantee or other owners of Grantee Property, Sienna Estate's use of ponding basin must be ceased and/or future developments must evaluate the existing temporary basin and conveyance system from Sienna Estates to document the ability of Temporary Basin to accommodate Sienna Estates in combination with other development. In that regard, if insufficient capacity exists at that time, it will be Grantee's responsibility to provide for other drainage alternatives or connection to City Facilities at City's discretion.

c. Grantee understands and agrees that Grantor may condition any development of Grantee Property in the same manner that it would condition any development; and therefore, any approved connection to Temporary Basin would be required to connect to future City Facilities. In that event, Grantee shall pay the standard impact fees or reimbursement fees for such connection.

d. Grantee understands and agrees that use of Temporary Basin will be on a first come first serve basis subject to the same conditions stated above.

3. Recording. This Agreement will be recorded in the Official Records of the County of Madera, State of California.

4. No Dedication. Nothing contained herein shall be deemed to be a gift or dedication of any portion of the Pipeline Easement Area or the Properties to the general public, or for the general public, or

for any public purposes whatsoever, it being the intention of the Parties hereto that this Agreement shall be strictly limited to and for the private purposes herein expressed.

5. No Pre-Approval. Nothing contained herein shall be deemed to be an approval or pre-approval of any development or proposed change in the current use of the Grantee Property by Grantee. Any development or proposed change in the current use of the Grantee Property shall be subject to City's standard requirements for development.

6. Taxes. The owner of each Parcel shall pay before delinquency any property taxes and assessments which may be levied upon or assessed against their respective Parcels and the easements.

7. Inurement. This Agreement shall be binding upon and inure to the benefit of the heirs, executors, administrators, successors, and assignees of the Parties.

8. Attorneys' Fees. If any Party hereto brings an action at law or in equity to enforce, interpret, or redress a breach of this Agreement, the prevailing Party shall be entitled to its litigation expenses and reasonable attorneys' fees incurred in addition to all other relief as may be allowed by law or in equity.

9. Entire Agreement. This Agreement and its attachments constitute the entire agreement and understanding between the Parties. There are no oral understandings, terms, or conditions, and neither Party has relied upon any representation, express or implied, not contained in this Agreement. All prior understandings, terms, or conditions are deemed merged into this Agreement.

10. Interpretation. This Agreement shall be construed as a whole, according to its fair meaning, and not in favor of or against any Party. By way of example and not in limitation, this Agreement shall not be construed in favor of the Party receiving a benefit nor against the Party drafting or otherwise responsible for any particular language in this Agreement. Captions are used for reference purposes only and should be ignored in the interpretation of this Agreement.

11. Use of Pronouns. The use of the neuter singular pronoun to refer to the Parties shall be deemed a proper reference even though Parties may be an individual, a partnership, a corporation, or a group of two or more individuals or corporations. The necessary grammatical changes required to make the provisions of this Agreement apply in the plural sense where there is more than one with respect to either corporations, associations, partnerships, or individuals, males or females, shall in all instances be assumed as though in each case fully expressed.

12. Severability. The unenforceability, invalidity, or illegality of any provision shall not render the other provisions unenforceable, invalid, or illegal.

13. Waiver. No consent or waiver, express or implied, by either Party to this Agreement of any breach or default by the other in the performance of any obligation hereunder shall be deemed or construed to be a consent to or waiver of any other breach or default by such Party hereunder. Failure on the part of any Party hereto to complain of any act or failure to act of the other Party or to declare the other Party in default hereunder, irrespective of how long such failure continues, shall not constitute a waiver of the rights of such Party hereunder.

14. Compliance with Law; Permits. The Parties hereto shall comply with all laws and obtain and maintain all required permits in connection with the use of the easements.

15. No Merger. The easements herein created and the covenants herein described shall not be extinguished by merger of any or all of the ownership of more than one Parcel.

16. Negation of Partnership. None of the terms or provisions of this Agreement shall be deemed to create a partnership between the separate owners of the two parcels in their respective businesses or otherwise, or to affect in any way any partnership which may exist between the Parties hereto, if any, nor shall it cause them to be considered joint venturers or members of any joint enterprise.

17. No Third Party Beneficiaries. Unless expressly provided herein, this Agreement is not intended, nor shall it be construed, to create any third-party beneficiary rights in any party which or who is not a party hereto.

18. Amendment. This Agreement may be amended or released only pursuant to an instrument in writing duly executed and acknowledged by all of the Parties hereto and recorded in the Madera County Recorder's Office.

19. Counterparts. This Agreement may be executed in counterparts, all of which shall constitute but one and the same contract.

IN WITNESS WHEREOF, the Parties have executed this Agreement effective as of the date first set forth above.

“GRANTOR”

“GRANTEE”

THE CITY OF MADERA, a municipal corporation

JASON SANDERS

By: _____
Santos Garcia, Mayor

Jason Sanders

APPROVED AS TO FORM:

(notary acknowledgment required)

By: _____
Hilda Cantu Montoy, City Attorney

ATTEST:

By: _____
Alicia Gonzales, City Clerk

EXHIBIT A TO EASEMENT AGREEMENT

Legal Description of the Grantee Property

The land referred to herein below is situated in the unincorporated area in County of Madera, State of California and is described as follows:

Parcel 1:

All that portion of Lot 5 lying West of Canal of Madera Canal and Irrigation Company, in Section 17, Township 11 South, Range 18 East, Mount Diablo Base and Meridian, of Lankershim Colony, according to Map entitled, "Map of Lankershim Colony and Addition to the Town of Madera & c.", filed and recorded in the Office of the County Recorder of the County of Fresno, State of California, February 5, 1889 in Volume 4 of Maps, at Page 31, bounded and described as follows:

Commencing at the Northwest corner of Lot 11 in said Section 17, thence North 0° 5' East 357 feet; thence North 54° 20' East 1152 feet; thence South 12° 47' West 350 feet; thence South 16° 37' East 400 feet; thence South 2°; 18' West 298 feet; thence West 960 feet to the point of commencement.

Excepting therefrom that portion deeded to the State of California in Deed recorded March 10, 1947 in Book 400 Official Records at Page 303 Madera County Records.

Also excepting therefrom that portion deeded to the State of California in Deed recorded March 10, 1947 in Book 400 Official Records at Page 306 Madera County Records.

And also excepting therefrom that portion deeded to Robert J. Brunolli and Marie L. Brunolli in Deed recorded October 11, 1961 in Book 809 Official Records at Page 324 Madera County Records, described as follows:

From the North quarter corner of Section 17, Township 11 South, Range 18 East, Mount Diablo Base and Meridian, go South 0° 02' 30" West 56.41 feet; thence South 55° 05' 30" West 1278.70 feet to the point of beginning; thence South 0° 02' 30" West 177.15 feet; thence South 55° 05' 30" West 300.00 feet; thence North 0° 02' 30" East 177.15 feet; thence Northeasterly along the line of Yosemite Avenue North 55° 05' 30" East 300.00 feet to the point of beginning.

Parcel 2:

That portion of Lot 11 in Section 17, Township 11 South, Range 18 East, Mount Diablo Base and Meridian, of Lankershim Colony, according to the map entitled: "Map of Lankershim Colony and Addition to the Town of Madera & c" filed for record in the office of the County Recorder of Fresno County, Calif. on February 5, 1889 in Volume 4 of Maps at Page 31, described as follows:

Beginning at the Northwest corner of said Lot 11; thence running South and parallel with the West line of said Lot 11, a distance of 100 feet; thence East and parallel with the North line of said Lot 11, a distance of 198.12 feet; thence North and parallel with said West line, 100 feet to a point on the North line of said Lot 11, thence West and along said North line 198.12 feet to the point of beginning.

APN: 035-080-026

EXHIBIT B TO EASEMENT AGREEMENT

Legal Description of the Basin

A portion of the property conveyed to Jason Sanders, a married man as his sole and separate property by deed recorded July 11, 2017 as Document 2017017085, Madera County Records, and being a portion of Lot 5 of the Map of Lankershim Colony and Addition to the Town of Madera, filed in Volume 4 of Maps, at Page 31, Madera County Records, lying in Section 17, Township 11 South, Range 18 East, Mount Diablo Base and Meridian, situate in the City of Madera, County of Madera, State of California, more particularly described as follows:

Commencing at the northwest corner of said Lot 5, said point also being the northeast corner of the property conveyed to TARLTON PROPERTIES, LLC by deed recorded _____, 20__ as Document Number 20 _____, Madera County Records; thence South 00° 32' 21" East along the west line of said Lot 5, a distance of 25.81 feet to the southerly Right-of-Way line of East Yosemite Avenue (State Highway 145); thence North 54° 59' 10" East along said southerly line, a distance of 574.75 feet to the Point of Beginning; thence South 00° 23' 04" West, a distance of 146.65 feet; thence South 89° 36' 56" East, a distance of 440.17 feet to the easterly line of said Lot 5; thence North 16° 11' 34" West, a distance of 212.48 feet; thence North 54° 32' 05" West, a distance of 183.96 feet to said southerly line of Yosemite Avenue; thence South 54° 59' 10" West along said southerly line, a distance of 280.94 feet to the point of beginning.

Containing 2.23 acres, more or less.

EXHIBIT C TO EASEMENT AGREEMENT

Legal Description of the Pipeline Easement Area

Easement No. 1 -12' Wide Access Easement:

A portion of the property conveyed to Jason Sanders, a married man as his sole and separate property by deed recorded July 11, 2017 as Document 2017017085, Madera County Records, and being a portion of Lot 5 of the Map of Lankershim Colony and Addition to the Town of Madera, filed in Volume 4 of Maps, at Page 31, Madera County Records, lying in Section 17, Township 11 South, Range 18 East, Mount Diablo Base and Meridian, situate in the City of Madera, County of Madera, State of California, more particularly described as follows:

A strip of land 12.00 feet wide, the centerline of which is described as follows:

Commencing at the northwest corner of said Lot 5, said point also being the northeast corner of the property conveyed to TARLTON PROPERTIES, LLC by deed recorded _____, 20__ as Document Number 20_____, Madera County Records; thence South 00° 32' 21" East along the west line of said Lot 5, a distance of 25.81 feet to the southerly Right-of-Way line of East Yosemite Avenue (State Highway 145); thence North 54° 59' 10" East along said southerly line, a distance of 29.11 feet to a line that lies 24.00 feet east of and parallel with the said west line of Lot 5, and the Point of Beginning; thence South 00° 32' 21" East along said parallel line, a distance of 239.63 feet; thence South 32° 26' 56" East, a distance of 27.47 feet to the termination point of this description. The sidelines of said easement to terminate at right angles to said centerline.

Easement No. 2-12' Wide Storm Drain & Access Easement:

A portion of the property conveyed to Jason Sanders, a married man as his sole and separate property by deed recorded July 11, 2017 as Document 2017017085, Madera County Records, and being a portion of Lot 5 of the Map of Lankershim Colony and Addition to the Town of Madera, filed in Volume 4 of Maps, at Page 31, Madera County Records, lying in Section 17, Township 11 South, Range 18 East, Mount Diablo Base and Meridian, situate in the City of Madera, County of Madera, State of California, more particularly described as follows:

A strip of land 12.00 feet wide, the centerline of which is described as follows:

Commencing at the northwest corner of said Lot 5, said point also being the northeast corner of the property conveyed to TARLTON PROPERTIES, LLC by deed recorded _____, 20__ as Document Number 20_____, Madera County Records; thence South 00° 32' 21" East along the west line of said Lot 5, a distance of 294.57 feet to the Point of Beginning; thence North 89° 27' 39" East, a distance of 10.00 feet; thence North 51° 27' 18" East, a distance of 36.20 feet; thence North 81° 35' 27" East, a distance of 229.60 feet; thence South 89° 36' 56" East, a distance of 396.19 feet; thence North 00° 23' 04" East, a distance of 397.00 feet to the termination point of this description. The sidelines of said easement to terminate at right angles to said centerline.

EXHIBIT B TO RESOLUTION
Amendments to the City of Madera FY 2021/22 Budget

Amendments to the City of Madera Fiscal Year 2021/22 Budget

Fund	Org	Object	Description	Increase Amount	Decrease Amount
4104	4104	1120	Due From Other Funds	\$32,000	
4104	4104	1005	Pooled Cash		\$32,000
4108	4108	2520	Due to Other Funds	\$32,000	
4108	4108	1005	Pooled Cash	\$32,000	
4108	4108	1005	Pooled Cash		\$377,000
4108	41080000	7050	Expenditures	\$377,000	