



Council Agenda Report

From: David Athey, City Engineer

Subject: Approve an Agreement for Acquisition of sewer and temporary construction easement from Claire Dattilo located at 1823 Union Road.

Date: December 5, 2017

Facts

1. The City owns Lift Station 14, located at 2041 Almendra Court. Lift Station 14 serves a small subdivision on Almendra Court and a number of houses on Crown Way.
2. Lift Station 14's force main currently discharges to a 12" sewer line on Golden Hill Road the opposite direction in which sewer is currently flowing. The Wastewater Department has identified Lift Station 14 as a candidate for abandonment since a gravity sewer could be installed through two downstream properties (see Attachment 1 - Location Map).
3. The Butz Family and Claire Dattilo each own property between the lift station and the proposed connection point, on which the City will need to secure easements for a new gravity sewer line.
4. The City is working cooperatively with Ms. Dattilo and the Butz Family to acquire easements for the installation of a gravity sewer line.
5. The City has procured an easement appraisal on Ms. Dattilo's property. The appraisal indicates the easement is worth \$20,000.
6. Ms. Dattilo has agreed to sell the City permanent and temporary construction sewer easements (Easements) through her property for the sum of \$20,000. The City Attorney has developed an Agreement for Purchase and Sale of Permanent Sewer Easement and Temporary Construction Easement. On November 22, 2017, Ms. Dattilo returned the executed sales agreement to the City Engineer.
7. Recordation of the easement documents will allow the City to construct the gravity sewer system once an easement is procured from the Butz Family. Staff is actively working with the Butz Family and anticipates coming back to Council in the next few months to finalize the purchase.

Options

1. Take no action.
2. Approve an Agreement for Purchase and Sale of Permanent Sewer Easement and Temporary Construction Easement and Authorize the City Manager to sign the Agreement. Authorize the Director of Administrative Services to pay Ms. Dattilo \$20,000 for the Easements contingent on recordation of easements. Additionally, accept the easement for sewer purposes, and approve the temporary construction easement provided by Claire Dattilo after recordation of the easements.
3. Refer back to staff for further consideration.

Analysis & Conclusion

Abandoning Lift Station 14 and installing a gravity sewer main will reduce ongoing operation and maintenance costs and increase collection system reliability. Operation and maintenance costs will be lower because there is no need to maintain expensive sewage pumps or control panels. In addition, lift station abandonment will significantly cut the need for periodic maintenance inspections by staff, freeing up time for other work. Lift stations are also vulnerable to power outages and pump failures, which increases the City's liability for sewer overflows. By removing the need for pumps, the City will significantly decrease its spill liability. Lastly, the installation of a gravity sewer through these two properties will enable surrounding parcels to forgo installation of private lift stations.

Payment for the easements is contingent on easement recordation. Both Ms. Dattilo and her beneficiary, JP Morgan Chase Bank, must sign the easements prior to recordation. Both parties have indicated that they will sign the easements.

Fiscal Impact

As compensation for the Easement rights, Claire Dattilo will receive \$20,000 from the Sewer Enterprise Fund. There are sufficient appropriated funds to cover the purchase of the easement rights and no additional appropriations are needed.

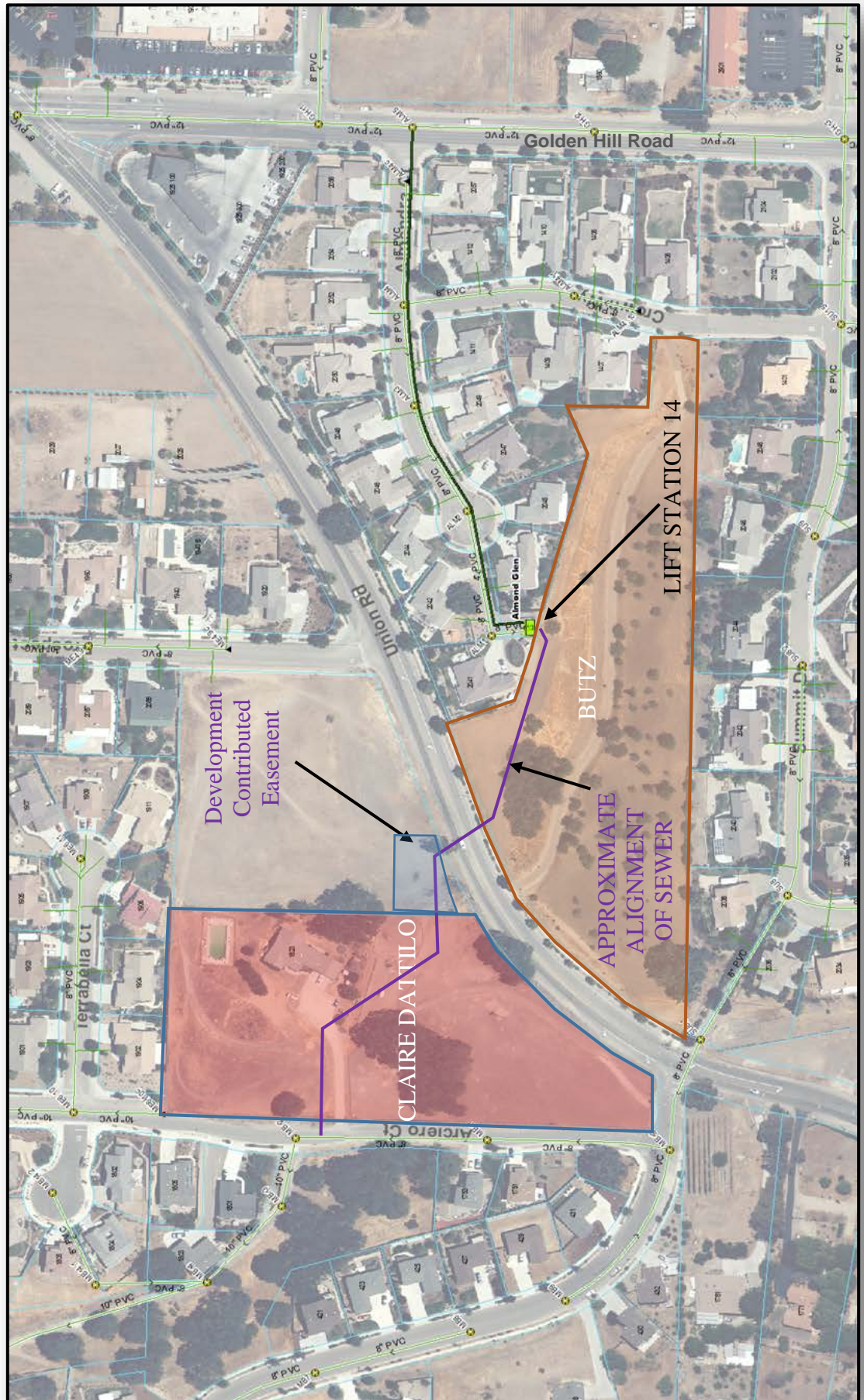
Recommendation

1. Approve Resolution 17-XXX approving an Agreement for Purchase and Sale of Permanent Sewer Easement and Temporary Construction Easement and Authorize the City Manager to sign the Agreement.
2. Authorize the City Manager and City Attorney to make any minor changes needed in the agreement, based on new information, remaining fully consistent with Council intent and direction.
3. Authorize the City Manager to pay Ms. Dattilo \$20,000 for the Easements contingent on the signature of JP Morgan Chase Bank on the Sewer Easements.
4. Accept the easement for sewer purposes, and approve the temporary construction easement provided by Claire Dattilo after signature by JP Morgan Chase Bank.

Attachments

1. Location Map
2. Resolution 17-XXX
Exhibit 1 to Attachment 2 - Agreement for Purchase and Sale of Permanent Sewer Easement and Temporary Construction Easement

**ATTACHMENT 1
LOCATION MAP**



Attachment 2

Draft Resolution

RESOLUTION 17-xxx

RESOLUTION OF THE CITY COUNCIL OF THE CITY OF EL PASO DE ROBLES APPROVING AN AGREEMENT FOR ACQUISITION OF PERMANENT SEWER EASEMENT, AND ACCEPTING EASEMENTS FOR A SEWER LINE AND TEMPORARY CONSTRUCTION

WHEREAS, the City desires to abandon Lift Station 14 by installing a gravity sewer to a connection point on Arciero Court; and

WHEREAS, the City has determined that a permanent sewer and temporary construction easements are needed to construct the gravity sewer line; and

WHEREAS, the City Attorney has prepared an agreement and easement documents satisfactory to the owner of the property located at 1823 Union Road, Ms. Claire Dattilo, which will allow construction of a sewer line from Union Road to an active sewer line in Arciero Court; and

WHEREAS, Claire Dattilo has returned the executed *Agreement for Purchase and Sale of Permanent Sewer Easement and Temporary Construction Easement*; and

WHEREAS, recordation of the sewer easements attached to the *Agreement for Purchase and Sale of Permanent Sewer Easement and Temporary Construction Easement* hereto as Exhibit "B" and temporary construction easement attached hereto as Exhibit "C" will allow the City to construct a sewer line from Union Road to a connection point on Arciero Court.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF EL PASO DE ROBLES DOES HEREBY RESOLVE AS FOLLOWS:

Section 1. All of the above recitals are true and correct and incorporated herein by reference.

Section 2. The City Council hereby approves the *Agreement for Purchase and Sale of Permanent Sewer Easement and Temporary Construction Easement* in substantially the form attached hereto as Exhibit "1", and incorporated herein by reference, and authorizes the City Manager to execute the Agreement, subject to any minor, technical, or non-substantive changes as approved by the City Manager and the City Attorney.

Section 3. The City Council hereby accepts the sewer easement, attached hereto as Exhibit "B" in the attached Exhibit 1 - *Agreement for Purchase and Sale of Permanent Sewer Easement and Temporary Construction Easement* and authorizes its recordation.

Section 4. The City Council hereby accepts the temporary construction easement, attached hereto as Exhibit "C" in the attached Exhibit 1 - *Agreement for Purchase and Sale of Permanent Sewer Easement and Temporary Construction Easement* and authorizes its recordation.

APPROVED this 5th day of December 2017, by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

Steven W. Martin, Mayor

ATTEST:

Kristen L. Buxkemper, Deputy City Clerk

Exhibit 1 - Agreement for Purchase and Sale of Permanent Sewer Easement

Exhibit 1

To Attachment 2

AGREEMENT FOR PURCHASE AND SALE OF PERMANENT SEWER EASEMENT AND TEMPORARY CONSTRUCTION EASEMENT

This Agreement for Purchase and Sale for a Permanent Sewer Easement and Temporary Construction Easement (“**Agreement**”) is entered into by and between the City of El Paso de Robles, a California municipal corporation (“**City**”) and Claire Dattilo, an individual (“**Seller**”). City and Seller are sometimes individually referred to herein as “**Party**” and together as “**Parties**.” The Parties have executed this Agreement on the dates set forth below next to their respective signatures. This Agreement shall be effective on the date, following all legally required notices and hearings, if it has been approved by City’s governing body or its delegated representative and also signed by both Parties (“**Effective Date**”).

RECITALS

A. Seller is owner in fee of certain real property located at 1823 Union Road, Paso Robles, CA 93446, Assessor’s Parcel Number 025-402-069, as more fully described in **Exhibit A**, attached hereto and incorporated herein by reference (“**Property**”). The Property is improved with a single-family residence which is not connected to the City wastewater system.

B. Seller desires to subdivide the Property to allow for future residential development.

C. City desires to acquire, and Seller desires to sell and convey a permanent sewer easement (“**Sewer Easement**”), and a temporary construction easement (“**TCE**”) located on, under, in, across, along and through the Property (collectively, “**Easements**”) for the purpose of constructing, operating, and maintaining a sanitary sewer main and appurtenances which will, in part, serve the Property.

D. The Parties desire by this Agreement to provide the terms and conditions for the purchase and sale of the Easements.

NOW, THEREFORE, in consideration of the above facts and for the covenants and agreements contained herein, the City and Seller agree as follows:

1. **Purchase and Sale**. City agrees to buy, and Seller agrees to sell and convey a permanent Sewer Easement and TCE on the Property for the Purchase Price defined below, upon the terms and provisions set forth in this Agreement.

1.1. **Purchase Price**. The total purchase price for both Easements is the sum of Twenty Thousand Dollars (\$20,000.00) (“**Purchase Price**”), which includes, without limitation, full payment of just compensation, attorneys’ fees, costs, interest, and damages in complete settlement of any and all claims (known and unknown), causes of action and demands of Seller against City because of City’s purchase of the Easements, and for any and all claims (known and unknown) arising from or relating to the purchase and sale that is the subject of this Agreement.

- 1 -

Purch/Sale Agt Sewer Easement and TCE (Dattilo)
(Execution)
82477.04011\29129552.6

- 1.2. Payment of Purchase Price. The Parties elect not to use an escrow company to complete payment of the Purchase Price. Following the recording of the Easements, City shall pay and deliver to Seller the Purchase Price within ten (10) days after recordation of the Easements, payable by check or wire transfer.
- 1.3. Withholding Requirements. The Parties acknowledge that the City is not responsible for any and all tax implications for Seller as a result of the Purchase of the Easements. The City is not responsible for any withholdings for tax purposes from the payment of the Purchase Price.

2. Transaction.

- 2.1. Preparation and Design of Easements. Seller is responsible for providing to City an accurate legal description of the proposed Sewer Easement and the TCE. The City shall pay for the reasonable cost of preparing the legal descriptions of the Sewer Easement and the TCE. The legal descriptions of the proposed Easements shall be prepared by a licensed land surveyor to the satisfaction of the City. The Sewer Easement shall be approximately fifteen (15) feet wide and satisfactory to the City Engineer in location, size and design to allow for anticipated construction, operation and maintenance of a sanitary sewer main and related appurtenances.
 - 2.1.1. Seller agrees to provide the legal descriptions of the proposed Easements within six (6) months of the Effective Date of this Agreement (“**Design Period**”). If the City determines that the proposed Easements are not satisfactory, City shall provide written notice of that fact to Seller within ten (10) business days of receipt of the proposed Easements, with an explanation of the reasons for deeming the proposed Easements unsatisfactory. Seller shall then have ten (10) business days, or other period of time if mutually agreed upon by the Parties, to prepare and submit revised proposed Easements.
 - 2.1.2. During the Design Period, Seller additionally agrees and shall be responsible for filing a tentative subdivision map with the City, at Seller’s cost, for the Property.
- 2.2. Execution of Easements. Within ten (10) business days following the communication in writing to Seller of City’s approval of the proposed Easements, Seller shall properly execute the Easements, in substantially the same form as the Grant of Sewer Easement and Grant of Temporary Construction Easement attached hereto as **Exhibit B** and **Exhibit C**, respectively, and shall return the executed Easements to City for recordation.

- 2.3. Recording. As soon as possible, but within at least thirty (30) days after receipt of the executed Easements, City shall approve, accept, and record the Easements with the San Luis Obispo County Recorder's Office ("**Recording**").
- 2.4. Property Taxes. All property taxes and assessments levied and assessed against the Property are and shall remain the responsibility of Seller.
- 2.5. Payment. Within ten (10) business days of confirmation of Recording of the Easements with the County of San Luis Obispo Recorder's Office, City shall cause payment of the Purchase Price to be issued and delivered to Seller per Seller's instructions. Seller may designate preference of a paper check or a wire transfer via written communication providing sufficient information such as mailing address or wire instructions. If Seller does not advise City of the preferred method of payment, City shall deliver an immediately negotiable check to Seller.
- 2.6. City's Conditions Precedent to Recording.
- 2.6.1. City shall have approved its Investigations, as defined in Section 4.1 of this Agreement within thirty (30) days from the date of Seller's execution of this Agreement.
- 2.6.2. City shall have approved of the location, design and legal descriptions of the Easements prepared by Seller or on Seller's behalf.
- 2.6.3. City's City Council shall have approved this Agreement, the Sewer Easement, and the TCE and accepted the same for recording.
- 2.6.4. Seller shall have delivered a fully executed original of this Agreement, the Sewer Easement, and the TCE to City.
- 2.6.5. If requested by City, Seller shall have delivered copies of trusts or trust certificates as may be required to issue title insurance.
- 2.6.6. All of Seller's representations and warranties shall be true and complete when made and as of the Recording without exception.
- 2.6.7. Seller shall have taken such other actions and delivered such documents or instruments as City may reasonably require to facilitate this transaction.
- 2.7. Seller's Conditions Precedent to Recording.
- 2.7.1. City's City Council shall have approved this Agreement, the Sewer Easement, and the TCE and accepted the same for recording.

2.7.2. City shall have delivered a fully executed original of this Agreement to Seller and taken such other actions as Seller may reasonably require to facilitate this transaction.

2.8. Notices. All communications between City and Seller shall be directed to the addresses and in the manner established in Section 9.1 herein for notices, demands, and communications between the Parties.

2.9. Facsimile/Counterpart Documents. In the event City or Seller uses facsimile transmitted or electronically scanned and distributed signed documents, the Parties hereby agree to accept and to rely upon such documents as if they bore original signatures. The Parties hereby acknowledge and agree to provide the other Party, within seventy-two (72) hours after such facsimile transmission, such documents bearing the original signatures. The Parties further acknowledge and agree that they understand that neither facsimile documents nor electronically scanned documents bearing non-original signatures will be accepted for Recording and that the Parties will provide originally executed documents for such purpose. Both parties may use documents that have been signed by the Parties in counterparts.

2.10. Automatic Termination of this Agreement. This Agreement shall automatically terminate, and the Exhibits attached hereto shall also terminate and shall not be used or recorded, without Notice or other action by Seller, if City's City Council shall not have approved this Agreement, the Sewer Easement, and the TCE and accepted each for recording by December 31, 2017. The provisions of this paragraph shall survive termination of this Agreement.

3. Sewer Connection.

3.1. City and Seller mutually acknowledge that the single-family residence located on the Property is not currently connected to the City's sewer system. City agrees to allow Seller to continue using and operating such residence's existing on-site wastewater disposal system, and Seller shall not be required to connect to the City's sewer system, unless or until the earliest of any of the following events occurs: (i) the residence's existing on-site wastewater disposal system fails; (ii) Seller records a final subdivision map to subdivide the Property; or (iii) Seller places the existing residence on the Property on the market for sale. In the event the construction of the City sewer main has not yet been completed, Seller, at its sole cost and expense, shall connect the Property to the City sewer system as expeditiously as possible upon completion of the sewer main.

3.2. For purposes of this section, "fails" means any substantial issue with the functionality, safety, or effectiveness of the existing on-site wastewater disposal system which would require substantial construction and/or cost to repair or replace.

3.3. In the event any of the aforementioned acts occurs, Seller shall notify the City within five (5) business days and take all actions necessary to connect the Property, and any subdivisions of the Property included in the final recorded subdivision map, to the City's sewer system. Seller shall be responsible for paying all required fees and charges necessary for connection, including payment of the City sewer capacity charge.

4. **Title Insurance.** City reserves the right, at its sole cost and expense, to obtain a policy of title insurance on the Easements prior to Recording.

5. **Investigations and Right of Entry.**

5.1. **Investigations.** Prior to Recording, City may conduct at its sole cost and expense (and at no expense to Seller) investigations, inspections, surveys, analyses, plans, and tests of and related to the Property including, without limitation, taking of core and other samples and investigations, inspections, surveys, analyses, plans and tests of and related to Phase I and II Environmental Assessments, soils, groundwater, wells, percolation, geology, environmental, drainage, engineering, utilities, availability of future sewer capacity, zoning, appraisals project costs, feasibility studies, demographic studies, governmental requirements, and fees for future improvement, and core and other samples (collectively "**Investigations**"), as City determines in its sole discretion, are desirable to determine the suitability of the Easements for its intended use and development. Seller shall cooperate in providing to City, and City's employees, representatives, agents, and independent contractors, any information within Seller's knowledge concerning the Property that is relevant to the performance of the Investigations.

5.2. **Indemnification.** City covenants and agrees to keep the property free and clear of all mechanic's, engineering, and materialmen's liens, and to defend, indemnify, and hold Seller harmless from and against any and all claims, liabilities, obligations, losses, damages, costs, and expenses, including without limitation, reasonable attorneys' fees, court costs, and litigation expenses, which Seller may reasonably incur or sustain by reason of, in connection with or arising out of, directly or indirectly, the Investigations and activities as provided in Section 5 herein and in connection with the design and construction work contemplated to be performed by City, or City's contractors, in connection with this Agreement. City shall be its own cost procure and record any and all mechanics, engineering and materialmen lien release bonds as may be reasonably necessary and appropriate to fully release any such liens recorded with respect to the Property if any such liens are not promptly removed from the Property. The provisions of this Paragraph shall survive the Recording of the Easements.

6. **Seller's Representations and Warranties.** Seller hereby represents and warrants to City that the following statements are true and correct as of the Effective Date and shall be true

and correct as of the Recording, and the truth and accuracy of such statements shall constitute a condition precedent to all of City's obligations under this Agreement:

- 6.1. Seller's Authority. Seller is the exclusive owner of the Property. Seller has full legal right, power, and authority to enter into this Agreement and the instruments and documents referenced herein and to consummate the transactions contemplated hereby. This Agreement and all documents in connection herewith that are to be executed and delivered by Seller are, or will be, duly executed and delivered by Seller.
- 6.2. No Breach. The execution and delivery of this Agreement by Seller, Seller's performance hereunder, and the consummation of the transaction contemplated hereby will not constitute a violation of any order or decree or result in the breach of any contract or agreement to which Seller is at present a party or by which Seller is bound.
- 6.3. No Litigation. Seller has no actual knowledge of any litigation or any governmental, administrative, or regulatory act or proceeding regarding the environmental, health, and safety aspects of the Property that is pending, proposed, or threatened.
- 6.4. No Possessory Interests; No Further Agreements or Undertakings. There are no agreements for occupancy in effect with respect to the Property and no unrecorded possessory interests or unrecorded agreements that would adversely affect City's title to or use of the Property. Seller shall not enter into any agreements or undertake any obligations prior to Recording that would in any way burden, encumber, or otherwise affect the Property, including without limitation, any agreements for occupancy with respect to the Property, or any portion thereof.
- 6.5. Hazardous Materials and/or Hazardous Substances. Seller has no actual knowledge that any Hazardous Materials and/or Hazardous Substances have been used, generated, manufactured, stored, transported to or from, or disposed of on, under or about the Property or any other adjoining property owned by Seller.
- 6.6. Federal Tax Liens. Seller represents that neither Seller nor its principals are subject to any recorded or unrecorded federal tax liens or claims.
- 6.7. Conformance with Law. There are no uncured violations of any federal, state, or local zoning, building, fire, environmental, health and safety laws and regulations of which Seller has received written notice from any governmental authority, and Seller knows of no violations of such laws.
- 6.8. Disclosure of Adverse Facts. Seller warrants and represents that all statements made herein by Seller are true, correct, and complete. City warrants and represents

that all statements made herein by City are true, correct, and complete. Information provided by Seller to City or City to Seller relating to this Agreement does not contain any statement that is false or misleading with respect to any material fact or fails to state any material fact. The representations set forth in this paragraph shall survive recording of the Easements.

6.9. Survival of Covenants, Representations, and Warranties. The covenants, representations, and warranties contained in this Article 6 shall survive recordation of the Easements.

7. Acknowledgement of Full Satisfaction and Release

7.1. Full Satisfaction. By executing this Agreement, Seller, on behalf of itself, its successors, and assigns, hereby acknowledges that this Agreement provides full and complete payment and satisfaction for the acquisition of the easement interests by City, and Seller hereby expressly and unconditionally waives any claim arising out of the acquisition of the Easements by City, including without limitation, damages, relocation assistance benefits, interest, loss of goodwill, severance damages, claims for inverse condemnation or unreasonable pre-condemnation conduct, attorney's fees, or any other compensation or benefits (hereafter "Acquisition Claims") other than as already expressly provided for in this Agreement, it being understood that this is a complete and full accord and satisfaction of such Acquisition Claims.

7.2. No Indemnity Waiver and Release. This Agreement arose out of City's efforts to acquire the Easements through its power. Seller, on behalf of itself, its heirs, executors, administrators, successors, and assigns, hereby fully waives and releases City, its successors, agents, representatives (including attorneys), and assigns, and all other persons and associations, known or unknown, from all claims and causes of action by reason of any damage that has been sustained, or may be sustained, as a result of City's efforts to acquire the Easements or any preliminary steps thereto. This release does not, and shall not be construed to, require Seller to indemnify City for any damages or claims of any nature or source that may arise as a result of City's exercise of the rights, interests, and obligations acquired by City at and after the Recording pursuant to this Agreement.

7.3. Survival of Acknowledgements, Releases, and Waiver. The acknowledgements, releases, and waivers of Seller in this Article 7 shall survive recordation of the Easements.

8. Termination, Defaults, Remedies.

8.1. Exercise of Rights to Terminate. If City or Seller elects to exercise its rights to terminate this Agreement as provided in this Agreement, then City or Seller, as applicable, may so terminate by giving notice, in writing, prior to the Recording, of

such termination to the other. Upon such termination, all obligations and liabilities of the Parties under this Agreement, excepting for the obligations under this Agreement that expressly survive any termination of this Agreement, shall cease and terminate.

8.2. City's Breach. If City breaches any obligation hereunder that City is to perform prior to the Recording and fails to cure such breach within a reasonable period of time, then Seller, as its sole and exclusive remedy, may terminate this Agreement by giving notice, in writing, prior to the Recording, of such termination to City. Upon such termination, all obligations under this Agreement that expressly survive any termination of this Agreement, shall cease and terminate.

8.3. Seller's Breach. If Seller breaches any obligation hereunder that Seller is to perform prior to the Recording and fails to cure such breach within a reasonable period of time then, in addition to pursuing any other rights or remedies that City may have at law or in equity, City may, at City's option, (i) terminate this Agreement by giving notice, in writing, prior to Recording, of such termination to Seller; or (ii) initiate an action for specific performance of this Agreement. Upon such termination, all obligations and liabilities of the Parties under this Agreement, excepting for the obligations under this Agreement that expressly survive any termination of this Agreement, shall cease and terminate.

8.4. Completion of Transaction. If the Easements are executed, accepted, and Recorded, the Purchase Price is paid, and the parties have complied with the provisions of this Agreement, this Agreement shall be deemed to have been completed. If a breach and termination occur, as provided in Paragraphs 8.2 or 8.3, this Agreement shall be terminated, and all obligations and liabilities of the Parties under this Agreement, excepting for the obligations under this Agreement that expressly survive any termination of this Agreement, shall cease and terminate.

9. Miscellaneous.

9.1. Notices. All notices or other communications required or permitted between the Parties shall be in writing and shall be (i) personally delivered, (ii) sent by United States registered or certified mail, postage prepaid, return receipt requested, (iii) sent by facsimile transmission with confirmation of receipt, or (iv) sent by nationally recognized overnight courier service (e.g. Federal Express or United Parcel Service), addressed to the Party to whom the notice is given at the addresses provided below, subject to the right of either Party to designate a different address for itself by notice similarly given. Notice given by registered or certified U.S. mail shall be deemed to have been given on the third business day after the same is deposited in the U.S. mail. Any notice not so given shall be deemed given upon receipt, rejection, or refusal of the same by the Party to whom the notice is given. Notices sent by facsimile shall also be sent by email.

Notice to City:

City of Paso Robles
ATTN: Director of Public Works
1000 Spring Street
Paso Robles, CA 93446
Phone: (805) 237-3861

Notice to Seller:

Claire Dattilo
1823 Union Road
Paso Robles, CA 93447
Phone:

- 9.2. Immediate Possession. City shall be entitled to sole possession of the Easements immediately upon Recording.
- 9.3. Sales Commissions. Seller and City each represent and warrant to the other that no broker, agent, or finder has been engaged by them in connection with the transaction described in this Agreement. Each of the parties shall indemnify and defend the other party and hold it harmless from and against any and all loss, damage, liability, or expense, including costs and reasonable attorneys' fees, which the other party may incur or sustain by reason of or in connection with any misrepresentation or breach of warranty by the indemnifying party with respect to the foregoing.
- 9.4. Required Actions of City and Seller. City and Seller agree to execute such instruments and documents and to diligently undertake such actions as may be required or be reasonably necessary in order to consummate the transaction contemplated herein and shall use their best efforts to accomplish the Recording in accordance with the provisions hereof.
- 9.5. Time of Essence. Time is of the essence of each and every term, condition, obligation, and provision hereof.
- 9.6. Counterparts. This Agreement may be executed in multiple counterparts, each of which shall be deemed an original, but all of which, together, shall constitute one and the same instrument.
- 9.7. Captions. Any captions or headings the paragraphs or subparagraphs are solely for the convenience of the Parties and shall not be used or interpreted for the determination of the validity of this Agreement or any provision hereof.
- 9.8. No Obligations to Third Parties. Except as otherwise expressly provided herein, the execution and delivery of this Agreement shall not be deemed to confer any rights upon, or obligate any of the Parties to, any person or entity other than the Parties.
- 9.9. Exhibits. The Exhibit(s) referenced herein and attached hereto are hereby incorporated herein by this reference.

- 9.10. Waiver. The waiver or failure to enforce any provision of this Agreement shall not operate as a waiver of any future breach of any such provision or any other provision hereof.
- 9.11. Applicable Law. All questions with respect to this Agreement, and the rights and liabilities of the Parties and venue hereto, shall be governed by the laws of the State of California, without application of conflicts of law principles. Any and all legal actions sought to enforce the terms and provisions of the Agreement shall be brought in the courts of the County of San Luis Obispo.
- 9.12. Successors and Assigns. This Agreement shall be binding upon and shall inure to the benefit of the voluntary and involuntary successors and assigns of the Parties hereto.
- 9.13. Severability. If any term or provision of this Agreement shall be held invalid or unenforceable, the remainder of this Agreement shall not be affected.
- 9.14. Construction. This Agreement shall be liberally construed to effectuate the intention of the Parties with respect to the transaction described herein. In determining the meaning of, or resolving any ambiguity with respect to, any word, phrase, or provision of this Agreement, neither this Agreement nor any uncertainty or ambiguity herein will be construed or resolved against either Party (including the party primarily responsible for drafting and preparation of this Agreement), under any rule of construction or otherwise, it being expressly understood and agreed that the Parties have participated equally or have had equal opportunity to participate in the drafting thereof.
- 9.15. Attorneys' Fees. In the event of any action or proceeding to enforce or construe any provision of this Agreement, the prevailing Party in such action or proceeding, whether by final judgment or out of court settlement, shall be entitled to have and recover from the other Party all costs and expenses of suit, including reasonable attorneys' fees.
- 9.16. Entire Agreement. This Agreement, and the Exhibits attached hereto, supersede any prior agreements, negotiations, and communications, oral or written, and contains the entire agreement between City and Seller as to the subject matter hereof. No subsequent agreement, representation, or promise made by either Party hereto, or by or to an employee, officer, agent, or representative of either Party, shall be of any effect unless it is in writing and executed by the Party to be bound thereby.
- 9.17. Amendment to this Agreement. The terms of this Agreement may not be modified or amended except by an instrument in writing executed by each of the Parties.

{Signatures on following page}

IN WITNESS WHEREOF, each Party has executed this Agreement on the date set forth below next to that Party's signature.


CITY: City of El Paso de Robles , a municipal corporation	SELLER: Claire Dattilo , an individual
By: _____ Thomas Frutchey, City Manager	By:  Claire Dattilo
Date: _____	Date: <u>11/22/17</u>
Approved as to Form: By: _____ Iris P. Yang, City Attorney	

EXHIBIT A

Legal Description of Property

The land described herein is situated in the State of California, County of San Luis Obispo, City of Paso Robles, described as follows:

Lot 33 of Prospect Heights, in the City of Paso Robles, County of San Luis Obispo, State of California, according to Map recorded January 9, 1923 in Book 3, Page 19 of Maps.

APN: 025-402-069

EXHIBIT B

Form of Permanent Sewer Easement

Exhibit B

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**RECORDING REQUESTED BY AND
WHEN RECORDED MAIL TO:**

City of El Paso de Robles
Attention: City Clerk
1000 Spring Street
Paso Robles, CA 93446

Portion of Assessor Parcel No. 025-402-069

EXEMPT FROM RECORDING FEES PER GOVT. CODE §27383
EXEMPT FROM DOCUMENTARY TRANSFER TAX PER REV. & TAX CODE §11922

PERMANENT SEWER EASEMENT

For valuable consideration, receipt of which is hereby acknowledged, the UNDERSIGNED, Claire Dattilo, (“Grantor”) hereby GRANTS to the CITY OF EL PASO DE ROBLES, a municipal corporation of the State of California (“Grantee”), a perpetual Easement in, on, over, under, across, along and through a portion of Grantor’s real property known as APN 025-402-069 (“Property”) for sewer facilities as more particularly described on EXHIBIT “A” and shown on the map marked EXHIBIT “B” each of which is attached hereto and incorporated herein by this reference (“Easement Area”). “Easement” refers to a permanent easement for subsurface sewer improvements and right of way in favor of Grantee, its successors and assigns, over, upon, under, and across the lands hereinafter described together with the right to forever construct, maintain, improve, alter, relocate, inspect, occupy, and use for the construction, reconstruction, installation, replacement, removal, repair, operation, and maintenance of sewer facilities; in doing so, however, Grantee shall not unreasonably interfere with access to and from Grantor’s Property.

1. Matters Applicable to the Easement. The following matters will be applicable to the Easement:

1.1 Alteration/Relocation. Any alteration or relocation of the Easement Area shall be subject to the prior written approval of both Grantor and Grantee.

1.2 Restrictions within Easement Area. Grantor covenants, by and for itself, its assigns, heirs and voluntary and involuntary successors in interest to the Property or any part thereof, that Grantor shall not, without the express written consent of Grantee, erect, construct, place, maintain, or undertake, or permit to be erected, constructed, placed, maintained, or undertaken, any other activity that may interfere with the use of the Easement, including, without limitation, the erection of any building, wall, fence, structure, or other improvement within the Easement Area. Grantor shall not grant additional easements or other possessory interests to third parties on, under, or over the Easement Area without the prior written consent of Grantee.

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Grantor shall not cause, directly, indirectly or negligently, any interference with or harm to the rights conveyed hereunder.

1.3 Inclusion of Rights. Subject to the terms and conditions contained herein, this Easement shall include, without limitation, the right and privilege of Grantee and its employees, agents, representatives, contractors, and subcontractors to: (i) perform all activities as may be reasonably necessary to facilitate the purposes of the Easement; (ii) use, control and occupy the Easement Area; (iii) have reasonable access to, ingress to, and egress from the Easement Area; (iv) use and temporarily place and operate tools, equipment, machinery, and materials on the Easement Area; (v) trim, cut, or clear away any trees, brush, or other vegetation or flora, including the roots thereof, located within the Easement Area; and (vi) provide access to the permanent easement area, equipment storage, material storage, and portable facilities including wash stations and restrooms. All of the foregoing shall be at the sole discretion and at the sole cost of Grantee.

2. Restoration; Hazardous Materials; Maintenance. Grantee, at its sole cost and expense, shall restore the surface of Grantor's Property to a condition that is substantially similar to the original condition after performing any construction or other work that disturbs the surface, except for the sewer and related improvements contemplated by this Agreement. Grantee shall restore the subsurface of Grantor's Property damaged or impaired by any act, omission, or conduct of Grantee, now or in the future, consistent with the standard engineering specifications for installation of subsurface infrastructure and appurtenances. Grantee shall maintain, service, and/or repair the sewer line and appurtenant structures. Grantee shall be solely responsible for and shall pay now or in the future for any and all investigation, characterization, remediation, clean-up and monitoring and any other charges or expenses, including but not limited to attorney fees, expert and remediation costs, governmental fees and penalties, in any way related to the disposal, existence, or release of any Hazardous Substance on the Property as a result of any acts, omissions, or conduct of Grantee, its agents, employees, contractors, and/or subcontractors, including but not limited to the failure of Grantee, its agents or employees, contractors and/or subcontractors to maintain, service and/or repair the sewer line. Grantee shall indemnify, defend, and hold Grantor harmless from and against any and all loss, property, natural resource and/or environmental damage, third party claims, attorney fees, costs of investigation, characterization, monitoring, governmental fees, and penalties incident thereto caused by any default or failure of Grantee to perform in accordance with this section, or as otherwise required by law. For the purposes of this Section 2, Hazardous Substance shall mean any product, substance, chemical, material or waste whose presence, use, manufacturing, disposal, transportation or release, either by itself or in combination with other materials, is regulated or classified as hazardous or toxic under federal, state, or local laws or regulations.

3. This Agreement is intended to run with the land, and it shall be binding upon and shall inure to the benefit of the parties, their respective heirs, legal representatives, successors, and assigns.

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4. The ground elevations of the Easement upon completion of construction shall not be further increased or decreased without the prior written consent of Grantee.

5. If any legal or equitable action or proceeding is instituted by one party against the other to enforce or interpret any provision of this Easement, the party prevailing in such action shall be entitled to recover from the losing party all of its costs of suit, including, but not limited to, reasonable attorneys' fees awarded by the court.

6. This Easement may be amended or modified only by a written instrument executed and acknowledged by the parties or their successors in interest and recorded in the Official Records of San Luis Obispo County, California. Any provision of this Easement adjudicated by a court of competent jurisdiction to be invalid or unenforceable for any reason shall be ineffective to the extent of such prohibition or invalidity and shall not invalidate or otherwise render invalid or unenforceable any remaining provisions of this grant.

IN WITNESS THEREOF, the undersigned Grantor has executed this instrument as of _____, 201_.

GRANTOR:

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CONSENT TO EASEMENT

_____ (“Lien Holder”) is the current holder of the beneficial interest under a Deed of Trust dated _____ and recorded _____ as Document No. _____, Records of San Luis Obispo County, California (“Lien”). Lien Holder hereby consents to the granting of the Easement to which this Consent is attached, to the City of El Paso de Robles, a municipal corporation = of the State of California, its successors and assigns and Lien Holder hereby agrees that in the event of a foreclosure of the Lien, the Easement shall survive such foreclosure and remain binding upon the subject real property and all subsequent owners thereof.

Executed as of this _____ day of _____, 201__.

LIEN HOLDER

a _____

By: _____

Its: _____

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)
)
COUNTY OF _____)

On _____ before me, _____, 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.

Exhibit B

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Signature _____

(Seal)

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.

Exhibit B

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NOTARY ACKNOWLEDGMENT
(California All-Purpose Acknowledgment)

STATE OF CALIFORNIA)
) ss.
COUNTY OF _____)

On _____, 201__ before me, _____, 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.

Signature of Notary Public

ATTACHED TO: PERMANENT SEWER EASEMENT

Exhibit B

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EXHIBIT C TO PURCHASE AND SALE AGREEMENT

Form of Temporary Construction Easement

[APN 025-402-069]

See Attached

Exhibit C

**RECORDING REQUESTED BY AND
WHEN RECORDED MAIL TO:**

City of El Paso de Robles
Attention: City Clerk
1000 Spring Street
Paso Robles, CA 93446

Portion of Assessor Parcel No. 025-402-069

EXEMPT FROM RECORDING FEES PER GOVT. CODE §27383
EXEMPT FROM DOCUMENTARY TRANSFER TAX PER REV. & TAX CODE §11922

TEMPORARY CONSTRUCTION EASEMENT

For valuable consideration, receipt of which is hereby acknowledged, the UNDERSIGNED, Claire Dattilo, (“Grantor”) hereby GRANTS to the **CITY OF EL PASO DE ROBLES**, a municipal corporation of the State of California (“Grantee”), its agents, contractors, and employees, the right and privilege of a Temporary Construction Easement (“TCE”) over a parcel of land located in the County of San Luis Obispo, State of California, more particularly described as **Assessor’s Parcel Number 025-402-069** and further identified in **Exhibits “A” and “B”**, attached hereto and made a part thereof.

It is understood and agreed by Grantor and Grantee that said construction easement is to be used in connection with the initial installation of a sewer main and appurtenances. This TCE will begin upon execution of this Agreement or commencement of construction, whichever occurs later, and shall terminate and cease to exist twelve (12) months after commencement, or upon completion of the project, whichever occurs first. The TCE may be used by the Grantee for all construction related activities, which is not limited to, but may include access to the permanent easement area, equipment storage, material storage, and portable facilities including wash stations and restrooms.

Grantee, at its sole cost and expense, shall restore the surface of Grantor’s Property to a condition that is substantially similar to the original condition after performing any construction or other work that disturbs the surface. Grantee shall restore the subsurface of Grantor’s Property damaged or impaired by any act, omission, or conduct of Grantee, now or in the future, consistent with the standard engineering specifications for installation of subsurface infrastructure and appurtenances. Grantee shall be solely responsible for and shall pay now or in the future for any and all investigation, characterization, remediation, clean-up, and monitoring and any other charges or expenses, including but not limited to attorney’s fees, expert and remediation costs, and governmental fees and penalties, in any way related to the disposal, existence or release of any Hazardous Substance on Grantor’s Property as a result of any acts, omissions or conduct of Grantee, its agents, employees, contractors, and/or subcontractors, including but not limited to the failure of Grantee, its agents or employees, contractors and/or subcontractors to maintain, service and or repair the sewer line. Grantee shall indemnify, defend (by counsel reasonably satisfactory to Grantee’s counsel) and hold Grantor harmless from and

Exhibit C

against any and all loss, property, natural resource, and/or environmental damage, third party claims, attorney's fees, costs of investigation, characterization, monitoring, governmental fees and penalties incident thereto caused by any default or failure of Grantee to perform in accordance with this paragraph, or as otherwise required by law. For the purposes of this paragraph, Hazardous Substance shall mean any product, substance, chemical, material or waste whose presence, use, manufacturing, disposal, transportation or release, either by itself or in combination with other materials, is regulated or classified as hazardous or toxic under federal, state, or local laws or regulations.

[INSERT ANY OTHER SPECIAL OR UNIQUE CONDITIONS HERE REGARDING THE TEMPORARY CONSTRUCTION EASEMENT.]

This Agreement is intended to run with the land, and it shall be binding upon and shall inure to the benefit of the parties, their respective heirs, legal representatives, successors, and assigns.

IN WITNESS THEREOF, the undersigned Grantor has executed this instrument as of _____, 201__.

GRANTOR:

Exhibit C

NOTARY ACKNOWLEDGMENT
(California All-Purpose Acknowledgment)

STATE OF CALIFORNIA)
) ss.
COUNTY OF _____)

On _____, 201__ before me, _____, 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.

Signature of Notary Public

ATTACHED TO: TEMPORARY CONSTRUCTION EASEMENT

[APN:]

Exhibit C

CITY OF EL PASO DE ROBLES
CERTIFICATE OF ACCEPTANCE

This is to certify that the interest in property conveyed by the Temporary Construction Easement dated _____, 201__, from Claire Dattilo (“Grantor”) to the City of El Paso de Robles (“Grantee”), is hereby approved by the undersigned officer or agent on behalf of the Grantee, pursuant to authority conferred by Resolution No. _____ of Grantee, adopted by its City Council on _____, 201__, and the Grantee consents to recordation thereof by its duly authorized officer.

Dated: _____, 201__

CITY OF EL PASO DE ROBLES

By: _____

TEMPORARY CONSTRUCTION EASEMENT

EXHIBIT A

Legal Description

[to be inserted]

TEMPORARY CONSTRUCTION EASEMENT

EXHIBIT B

Map/Depiction

[to be inserted]