

CITY OF YUBA CITY
STAFF REPORT

Date: April 21, 2020
To: Honorable Mayor & Members of the City Council
From: Public Works Department
Presentation by: Diana Langley, Interim City Manager/Public Works Director

Summary

Subject: Purchase of APN No. 54-010-039 from Michael D. Smith and Julie M. Rogers for a 10.5-acre Parcel Located East of Garden Highway and South of the City's Wastewater Treatment Facility

Recommendation: A. Adopt a Resolution approving an Agreement for Purchase and Sale of Real Property and Joint Escrow Instructions and authorizing the purchase of the real property located on the east side of Garden Highway between the City's Wastewater Treatment Facility and River Oaks Drive (APN 54-010-039) in the amount of \$658,000, plus escrow fees.

B. Authorize the Finance Director to make a supplemental appropriation of \$660,000 from unallocated Wastewater Funds to Account No. 981274-65501.

Fiscal Impact: \$660,000 – Account No. 981274-65501

Purpose:

Acquire property for the future expansion of the City's Wastewater Treatment Facility.

Background:

The City's Wastewater Treatment Facility (WWTF) is located on 35.6 acres within the industrial area of Yuba City at 302 Burns Drive. In addition, a City storm detention basin with a photovoltaic solar field is located on 16.3 acres to the south of the WWTF and provides a buffer to the residential properties along River Oaks Drive. There is a vacant 10.5-acre parcel (Property), owned by Michael Smith and Julie Rogers, located south of the WWTF and east of the City storm detention basin identified as APN 54-010-039 (Attachment 1).

Analysis:

The City was notified that Mr. Smith and Ms. Rogers are interested in selling the Property a few months ago. While there are no immediate plans to expand the WWTF, staff recommends purchasing the Property for the following reasons:

- Provide a buffer between the WWTF and the residential properties located on River Oaks Drive.
- Provide maximum flexibility for the future use of the Property by the City, including potential utilization for additional photovoltaic solar fields.
- Provide expansion area for the WWTF should it ever be required.

Mr. Smith and Ms. Rogers have agreed to a purchase price of \$658,000 plus the City paying for a portion of the escrow fees. An Agreement for Purchase and Sale provides the details for the purchase (Attachment 2).

Fiscal Impact:

The purchase price is \$658,000 plus escrow fees. Staff is requesting a supplemental appropriation of \$660,000 from unallocated Wastewater Funds to Account No. 981274-65501. There is approximately \$5 million available in unallocated Wastewater Funds.

Alternatives:

Do not approve the purchase of the Property.

Recommendation:

- A. Adopt a resolution approving and Agreement for Purchase and Sale of Real Property and Joint Escrow Instructions and authorizing the purchase of the real property located on the east side of Garden Highway between the City's Wastewater Treatment Facility and River Oaks Drive (APN 54-010-039) in the amount of \$658,000 plus escrow fees.
- B. Authorize the Finance Director to make a supplemental appropriation of \$665,000 from unallocated Wastewater Funds to Account No. 981274-65501.

Attachment:

1. Location Exhibit
2. Agreement for Purchase and Sale
3. Resolution

Prepared & Submitted by:

/s/ Diana Langley

Diana Langley
Interim City Manager/Public Works Director

Reviewed by:

Finance

SM

ATTACHMENT 1

EXHIBIT
SMITH PROPERTY
APN 54-010-039



ATTACHMENT 2

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

THIS AGREEMENT FOR PURCHASE AND SALE OF REAL PROPERTY AND JOINT ESCROW INSTRUCTIONS ("**Agreement**") is made this ___ day of _____, 2020 by and between MICHAEL D. SMITH and JULIE M. ROGERS (jointly and severally "**Seller**") and the CITY OF YUBA CITY, a public body, corporate and politic.

RECITALS:

A. Seller is the fee owner of a parcel of unimproved land consisting of approximately 10.5 acres in the City of Yuba City ("**City**"), County of Sutter, State of California, described as Assessor's Parcel Number 54-010-039 and more particularly described in Exhibit A, attached hereto and incorporated herein ("**Property**").

B. Seller desires to sell to Buyer and Buyer agrees to buy, the Property upon the terms and conditions set forth in this Agreement.

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

TERMS AND CONDITIONS:

1. PURCHASE AND SALE OF PROPERTY.

1.1 Purchase and Sale. Pursuant to the terms and subject to the conditions of this Agreement, Buyer agrees to purchase from Seller and Seller agrees to sell to Buyer, the Property.

1.2 Waiver and Release. The Purchase Price (as defined in Section 3.1) being paid to Seller is all-inclusive of Seller's interest in the Property and all damages of every kind and nature suffered, or to be suffered as a result of City's acquisition of the Property for public purposes. By execution of this Agreement, Seller shall be deemed to have knowingly and voluntarily waived, released and discharged City from liability and responsibility for or related to any right Seller has, has had or in the future may have to any claim for compensation or damages or liability of any kind, whether known, unknown, foreseen or unforeseen, relating in any way to or arising out of City's acquisition of Property. In that regard, Seller knowingly and voluntarily waive and release City, its employees, agents and officers from liability as to the following: and any rights or obligations which exist or may arise out of the acquisition of Property for public purposes including, without limitation, Seller's fee interest in the land, severance damages, relocation expenses or damages, loss of business goodwill and/or lost profits, loss or impairment of any "bonus value" attributable to any lease; damage to or loss of improvements pertaining to realty, costs, interest, attorneys' fees, and any claim whatsoever of Seller which might arise out of or relate to any respect to the acquisition of Property by City.



Seller's Initials

2. EFFECTIVE DATE; OPENING OF ESCROW.

2.1 Effective Date. This Agreement shall be deemed effective upon execution of the

Agreement by Seller after the approval by the City Council ("**Effective Date**").

2.2 Opening of Escrow. Within three (3) days after the Effective Date, the parties shall open an escrow (Escrow) with Placer Title Company (Escrow Holder) Kimberly Pankey (Escrow Officer) at Placer Title Company, 1110 Civic Center Blvd. Ste. 302, Yuba City, CA 95993 (530) 671-5040 by causing an executed copy of this Agreement to be deposited with Escrow Holder which Escrow Holder shall sign and accept. Escrow shall be deemed opened upon Escrow Holder's receipt of both ("**Opening of Escrow**"): (i) the executed copy of this Agreement; and (ii) the Deposit (defined in Section 3.2.a).

3. PURCHASE PRICE; PAYMENT OF PURCHASE PRICE.

3.1 Purchase Price. The purchase price of the Property is Six Hundred Fifty-Eight Thousand Dollars (\$658,000) ("**Purchase Price**")

3.2 Payment of Purchase Price.

- a. **Deposit.** Within three (3) days of the Effective Date, Buyer shall deliver to Escrow Holder the sum of Thirty Thousand Dollars (\$30,000) ("**Deposit**").
- b. **Balance of Purchase Price.** Buyer shall deposit the balance of the Purchase Price with Escrow Holder in Good Funds (as defined below) at least one (1) business day prior to the Closing Date.

3.3 Good Funds. All funds deposited in Escrow shall be in "**Good Funds**" which means a wire transfer of funds, cashier's or certified check drawn on or issued by the offices of a financial institution located in the State of California.

4. FUNDS AND DOCUMENTS REQUIRED FROM BUYER AND SELLER.

4.1 Seller. Seller agrees that on or before 12:00 noon at least one (1) business day prior to the Closing Date, Seller will deposit with Escrow Holder such funds and other items and instruments (executed and acknowledged, if appropriate) as may be necessary in order for the Escrow Holder to comply with this Agreement, including without limitation:

- i. Executed and acknowledged Grant Deed in the form of Exhibit B ("**Grant Deed**").
- ii. A Non-Foreign Affidavit as required by federal law.
- iii. State and federal tax reporting forms.
- iv. An owner's affidavit as required by the Title Company to issue the Title Policy.
- v. Such funds and other items and instruments as may be necessary in order for Escrow Holder to comply with this Agreement.

4.2 Buyer. Buyer agrees that on or before 12:00 noon at least one (1) business day prior to the Closing Date, Buyer will deposit with Escrow Holder all additional funds and/or documents (executed and acknowledged, if appropriate) which are necessary to comply with the terms of this Agreement, including without limitation:

- i. The balance of the Purchase Price.

- ii. A Certificate of Acceptance to be attached to the Grant Deed prior to its recordation.
- iii. A Preliminary Change of Ownership Statement completed in the manner required in Sutter County ("**PCOR**").
- iv. Such funds and other items and instruments as may be necessary in order for Escrow Holder to comply with this Agreement.

4.3 Recordation, Filing, Completion and Distribution of Document. Escrow Holder shall confirm that any documents signed in counterpart are matching documents and shall combine the signature pages thereof so as to create fully executed documents. Escrow Holder will cause the Grant Deed to be recorded in the Official Records of Sutter County so it can issue the Title Policy in accordance with Section 6.2. Promptly following Close of Escrow, Escrow Holder shall distribute Escrow Holder's final closing statement and conformed copies of all recorded documents to the parties.

5. CLOSING DATE; TIME IS OF ESSENCE.

5.1 Closing Date. Escrow shall close thirty (30) days after the Due Diligence Expiration Date (defined in Section 7.2) ("**Closing Date**"). The terms "**Close of Escrow**" and/or "**Closing**" are used herein to mean the time Grant Deed is filed for recording by the Escrow Holder in the Office of the County Recorder of Sutter County, California.

5.2 Possession. Upon the Close of Escrow, Seller shall deliver exclusive possession of the Property to Buyer.

5.3 Time is of Essence. Buyer and Seller specifically agree that time is of the essence under this Agreement.

5.4 Authority. Buyer, by its execution of this Agreement, agrees that its City Manager or his/her designee (who has been designated by City Manager's written notice delivered to Buyer and Escrow Holder) shall have the authority to execute documents on behalf of Buyer including, but not limited to, issuing approvals, disapprovals and extensions. Any such approval, disapproval or extension executed by the City Manager or his/her designee shall be binding on Buyer.

6. TITLE POLICY.

6.1 Approval of Title. Promptly upon Opening of Escrow, a preliminary title report shall be issued by Placer Title Company ("**Title Company**"), describing the state of title of the Property, together with copies of all exceptions listed therein and a map plotting all easements specified therein ("**Preliminary Title Report**"). Within thirty (30) 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 except that Buyer may not disapprove any title exceptions caused by Buyer's entry onto the Property pursuant to Section 7.4 ("**Disapproved Exceptions**"), provided all monetary liens encumbering the Property are hereby disapproved by Buyer and shall be removed and released by Seller through or prior to the Close of Escrow.

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, 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).

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.

6.2 Title Policy. At the Close of Escrow, Escrow Holder shall furnish Buyer with an ALTA non-extended owner's policy of title insurance insuring title to the Property vested in Buyer with coverage in the amount of the Purchase Price showing (i) title exceptions approved pursuant to Section 6.1; and (ii) any exceptions caused by Buyer ("**Title Policy**"). The cost of the Title Policy to Buyer shall be paid by Seller. If Buyer desires to obtain an ALTA extended coverage owner's title policy, Buyer shall deliver an ALTA survey, at Buyer's cost, to Title Company at least thirty (30) days prior to the Closing Date and Buyer shall pay the additional cost for the extended coverage.

7. DUE DILIGENCE.

7.1 Due Diligence. Within five (5) days of the Opening of Escrow, Seller shall deliver to Buyer copies of all documents or information in Seller's possession concerning the Property including, but not limited to, environmental reports, soils report, etc. For a period of ninety (90) days from the Opening of Escrow ("**Due Diligence Period**"), Buyer shall have the right to obtain at its cost to conduct such engineering, feasibility studies, soils tests, environmental studies and other investigations as Buyer in its sole discretion may desire, to permit Buyer to determine the suitability of the Property for Buyer's contemplated uses and to conduct such other review and investigation which Buyer deems appropriate to satisfy itself to acquire the Property.

7.2 Disapproval of Due Diligence Matters. Prior to expiration of the Due Diligence Period ("**Due Diligence Expiration Date**"), Buyer may, in its sole discretion, notify Seller in writing (with a copy to Escrow Holder) of (i) its disapproval of the due diligence matters (excluding title matters which are to be approved or disapproved pursuant to Section 6), and (ii) its election to terminate this Agreement and Escrow ("**Disapproval and Termination Notice**"). If Buyer sends the Disapproval and Termination Notice in the time and manner specified above, the parties shall execute any documents required by Escrow Holder and upon receipt of said documents executed by the parties, Escrow Holder shall return the Deposit (less any cancellation charges) to Buyer. If Buyer does not deliver the Disapproval and Termination Notice in the time and manner specified above, Buyer shall be deemed to have approved due diligence matters. Seller may, in its discretion, agree in writing to extend the Due Diligence Expiration Date.

7.3 Natural Hazard Disclosure Report. Upon Opening of Escrow, Escrow Holder shall order a commercial Natural Hazards Disclosure report for the Property from Disclosure Source ("**NHD Report**") to be delivered to Buyer for Buyer's review during the Due Diligence Period.

7.4 Right to Enter the Property. As of the Effective Date, Seller grants Buyer, its agents and employees a limited license to enter upon the Property for the purpose of conducting engineering surveys, soil tests, investigations or other studies reasonably necessary to evaluate the condition of the Property, which studies, surveys, reports, investigations and tests shall be done at Buyer's sole cost and expense.

Prior to entry onto the Property, Buyer shall (i) notify Seller prior to entering the Property; (ii) conduct all studies in a diligent, expeditious and safe manner and not allow any dangerous or hazardous conditions to occur on the Property during or after such investigation; (iii) comply with all applicable laws and governmental regulations; (iv) keep the Property free and clear of all materialmen's liens, lis pendens and other liens arising out of the entry and work performed under this provision; (v) return the Property to substantially its original condition following Buyer's entry; and (vi) to take the Property at Closing subject to any title exceptions caused by Buyer exercising this right to enter.

Buyer agrees to indemnify, and hold Seller free and harmless from and against any and all losses, damages (whether general, punitive or otherwise), liabilities, claims, causes of action (whether legal, equitable or administrative), judgments, court costs and legal or other expenses (including reasonable attorneys' fees) which Seller may suffer or incur as a consequence of Buyer's exercise of the license granted pursuant to this Section or any act or omission by Buyer, any contractor, subcontractor or material supplier, engineer, architect or other person or entity acting by or under Buyer (except Seller and its agents) with respect to the Property, excepting any and all losses, damages (whether general, punitive or otherwise), liabilities, claims, causes of action (whether legal, equitable or administrative), judgments, court costs and legal or other expenses (including reasonable attorneys' fees) arising from the mere discovery by Buyer of any hazardous materials or conditions and excepting to the extent such claims arise out of the negligence or misconduct of Seller. Buyer's obligations under this Section shall survive termination of this Agreement.

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**"):

- i. Buyer has not delivered a Notice of Disapproval and Termination.
- ii. Title Company will issue the Title Policy as specified in Section 6.2.
- iii. Escrow Holder holds and will deliver to Buyer the instruments and funds, if any, accruing to Buyer pursuant to this Agreement.
- iv. 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:

- i. Buyer has delivered the balance of the Purchase Price to Escrow Holder.
- ii. Escrow Holder holds and will deliver to Seller the instruments and funds accruing to Seller pursuant to this Agreement.
- iii. Buyer is not in default of its obligations under this Agreement.

9. 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 ACTUAL THIRD-PARTY COSTS AND EXPENSES, INCLUDING REASONABLE ATTORNEYS' FEES INCURRED BY SELLER WHICH MAY RESULT FROM BUYER'S WRONGFUL FAILURE TO CANCEL THE ESCROW AND THIS AGREEMENT.


Seller's Initials

Buyer's Initials

10. REPRESENTATIONS, WARRANTIES AND COVENANTS.

10.1. Representations and Warranties. As of the Effective Date and as of the Closing, Seller represents and warrants to Buyer each of the following

- a. **Binding Agreement.** Upon Seller's execution of this Agreement, this Agreement shall be binding and enforceable against Seller in accordance with its terms, and upon Seller's execution of the additional documents contemplated by this Agreement, such additional documents shall be binding and enforceable against Seller in accordance with their terms.
- b. **Good and Marketable Title.** Seller has good, marketable, and insurable fee simple title to the Property.
- c. **Encumbrances.** The Property is not currently encumbered by any mortgages or leases and no third party is in possession or has the right to possession of same.
- d. **No Notice of Condemnation.** Seller has not received any written notice of condemnation or eminent domain proceedings with respect to the Property, and no condemnation or eminent domain proceedings or negotiations have been commenced or threatened in connection with the Property.
- e. **No Litigation or Investigation.** There are no actions, suits, proceedings or investigations, at law or in equity, or before any governmental agency, courts, tribunals, panels, or similar adjunctive bodies pending or threatened, affecting or involving the Property or any portion thereof.
- f. **Hazardous materials.** To Seller's knowledge, (i) there are no hazardous materials in, on, over, under or around the Property, (ii) there are no wells, underground storage tanks, covered surface impoundments or other potential sources of hazardous materials on the Property, (iii) there has been no storage, use, manufacture, generation, distribution, refinement, production, transportation, disposal, treatment or release of any hazardous materials in, on, over, under or around the Property, and (iv) and all previous owners of the Property, have complied with all environmental laws with respect to the Property.
- g. **No Defaults.** Seller is not in default under any contracts or agreements of any kind related to the Property which contracts or agreements will survive the Closing.

- h. **Current Compliance.** To the best of Seller's knowledge, the Property is currently in compliance with all applicable federal, state, and local laws, codes, statutes, ordinances, rules, and regulations.
- i. **Floodplain/Endangered Species.** Seller has no knowledge of any endangered species, wetland, protective plant life, geophysical feature or attribute or other physical attribute of the Property that may prohibit or limit the development thereof. The Property is not within the 100-year flood plain.

All representations and warranties by Seller set forth in this Agreement shall survive the Close of Escrow.

10.2 Covenants. Commencing on the Effective Date, Seller shall:

- a. Not enter into any contracts, leases, or agreements related in any way to the Property which would survive the Closing;
- b. Not cause or permit the presence, storage, use, manufacture, generation, distribution, refinement, production, transportation, disposal, treatment or release of any hazardous materials in, on, over, under or around the Property;
- c. Not cause, permit, or allow any encumbrance or lien to be placed on the Property, or any document or agreement to be recorded against the Property which would survive the Closing; and
- d. Maintain the Property in the state existing as of the Effective Date.

11. ESCROW PROVISIONS.

11.1 Escrow Instructions. Sections 1 through 6, 8, 14 & 15 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.

11.2 General Escrow Provisions. Escrow Holder shall deliver the Title Policy to the Buyer and instruct the Sutter County Recorder to mail the Grant Deed to Buyer at the address set forth in Section 15 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 Southern California and may be disbursed to any other general escrow account or accounts. All disbursements shall be according to that party's instructions.

11.3 Proration of Real Property Taxes. As a public agency, Seller is not subject to real property taxes. To the extent Seller has paid real estate taxes prior to the Closing, no proration of

taxes will be done in Escrow and, after the Closing, Seller shall have the right to obtain a refund of the taxes as applicable.

11.4 Payment of Costs.

a. **Cost Allocation.** Seller shall pay the costs for the Title Policy (non-extended ALTA owner's policy), the cost of the NHD Report, and one-half (1/2) of the escrow costs ("**Seller's Charges**"). Buyer shall pay the cost of any additional endorsements to the Title Policy requested by Buyer or for any ALTA extended coverage owner's policy (as provided in Section 7.2), one-half (1/2) of the escrow fees, and any charges incurred by Buyer's acts ("**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.

b. SPECIAL NOTES:

(i) **No Documentary Transfer Taxes.** Pursuant to Government Code Section 11922, no documentary transfer taxes shall be due and payable.

(ii) **No Recording Fees.** Pursuant to Government Code Section 6103, no recording fees shall be charged for recordation of the Grant Deed.

c. **Closing Statement.** At least two (2) business 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 each party.

11.5 Termination and Cancellation of Escrow. If Escrow fails to close due to a failure of a condition precedent, then the party in whose favor the condition precedent runs may elect to cancel this Escrow upon written notice to the other party and Escrow Holder. Upon cancellation, Escrow Holder is instructed to return (i) the funds in accordance with the foregoing provisions of this Agreement, and (ii) all documents then in Escrow to the respective depositor of the same with 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.

11.6 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 6045I 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 6045I, 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.

11.7 **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.

12. **BROKERAGE COMMISSIONS.** Each party represents and warrants to the other party that they have not dealt with any other broker or finder in connection with this Agreement or the sale of the Property. Each party indemnifies the other against, and agree to hold the other harmless from, any claim, demand or suit for any brokerage or real estate commission, finder's fee or similar fee or charge with respect to this Agreement or the sale of the Property based on any act by or agreement or contract with the indemnifying party asserted by anyone, and for all losses, obligations, costs, expenses and fees (including reasonable attorneys' fees) incurred by the other party on account of or arising from any such claim, demand or suit.

13. **NO COLLUSION.** Seller warrants and represents that (s)he has not paid or given, and will not pay or give to Buyer or 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 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 any such act may be prosecuted.

14. **NOTICES.** Any notice which either party may desire to give to the other party or to the Escrow Holder must be in writing and may be given by (i) personal delivery which will be deemed received the following day; (ii) by national overnight delivery service which will be deemed received the following business day; or (iii) by mailing the same by registered or certified mail, return receipt requested which will be deemed delivered three (3) days after depositing same in the mail, addressed to the party to whom the notice is directed as set forth below, or such other address and to such other persons as the parties may hereafter designate:

To Buyer:	City of Yuba City 1201 Civic Center Boulevard Yuba City, CA 95993 Attention: Diana Langley
With a Copy to:	Aleshire & Wynder, LLP 2125 Kern Street, Suite 307 Fresno, CA 93721 Attn: Shannon Chaffin, City Attorney
To Seller:	Michael D. Smith <i>140 S. Norton Ave.</i> <i>Los Angeles, CA 90004</i>
With a Copy to:	Julie M. Rogers <i>500 Orpheus Ave</i> <i>Encinitas CA 92024</i>

To Escrow Holder: Placer Title Company
1110 Civic Center Blvd. Ste. 302
Yuba City, CA 95993
Kimberly Pankey, Escrow Officer

15. GENERAL PROVISIONS.

15.1 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.

15.2 Interpretation; Governing Law; Venue. 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. The venue for any dispute shall be Sutter County.

15.3 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.

15.4 Amendments. Any amendment or modification to this Agreement must be in writing and executed by both parties.

15.5 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.

15.6 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, oral or written are merged herein and shall be of no further force or effect.

15.7 Construction. In determining the meaning of, or resolving any ambiguity with respect to, any word, phrase or provision of this Agreement, no uncertainty or ambiguity shall be construed or resolved against a party under any rule of construction, including the party primarily responsible for the drafting and preparation of this Agreement. Headings used in this Agreement are provided for convenience only and shall not be used to construe meaning or intent. 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.

15.8 No Third Party Beneficiaries. This Agreement is only between the parties, and is not intended to be nor shall it be construed as being for the benefit of any third party.

15.9 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.

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

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date first written above.

NOTE: Parties must initial Sections 1.2 and 9 as applicable.

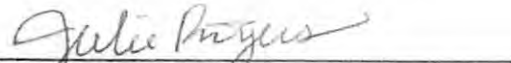
~~SELLER:~~
~~BUYER:~~

BUYER:
~~SELLER:~~


MICHAEL D. SMITH

CITY OF YUBA CITY, a public body,
corporate and politic

By: _____
Shon Harris, Mayor


JULIE M. ROGERS

ATTEST:

ESCROW HOLDER ACCEPTANCE:

Patricia Buckland, City Clerk

PLACER TITLE COMPANY

APPROVED AS TO FORM:

ALESHIRE & WYNDER, LLP

By: _____
Kimberly Pankey, Escrow Officer

By: _____
Shannon Chaffin, City Attorney

Dated: _____, 2020

EXHIBIT A

LEGAL DESCRIPTION OF PROPERTY

That certain real property in the City of Yuba City, County of Sutter, State of California, legally described as follows:

ATTACHMENT 3

RESOLUTION NO. _____

**RESOLUTION OF THE CITY COUNCIL OF THE CITY OF YUBA CITY
APPROVING AN AGREEMENT FOR PURCHASE AND SALE OF REAL
PROPERTY AND JOINT ESCROW INSTRUCTIONS AND AUTHORIZING THE
PURCHASE OF THE REAL PROPERTY LOCATED ON THE EAST SIDE OF
GARDEN HIGHWAY BETWEEN THE CITY'S WASTEWATER TREATMENT
FACILITY AND RIVER OAKS DRIVE (APN 54-010-039)**

WHEREAS, the City of Yuba City desires to purchase real property (Property) located on the east side of Garden Highway between the City's Wastewater Treatment Facility and River Oaks Drive, identified by APN 54-010-039; and,

WHEREAS, Michael Smith and Julie Rogers, the owners of the Property, are agreeable to selling the Property to the City in the amount of \$658,000; and,

WHEREAS, an Agreement for Purchase and Sale of Real Property and Joint Escrow Instructions has been prepared.

NOW, THEREFORE, be it resolved by the City Council of Yuba City that the City Council approves the Agreement for Purchase and Sale of Real Property and Joint Escrow Instructions, and authorize the City Manager to execute all documents on behalf of the City to effectuate the sale, subject to approval as to legal form by the City Attorney.

The foregoing resolution was duly and regularly introduced, passed, and adopted by the City Council of the City of Yuba City at a regular meeting thereof held on the 21st day of April 2020.

AYES:

NOES:

ABSENT:

ATTEST:

Terrel Locke, Deputy City Clerk

Shon Harris, Mayor

APPROVED AS TO FORM
COUNSEL FOR YUBA CITY:

Shannon Chaffin, City Attorney
Aleshire & Wynder, LLP