

## AGREEMENT NO.

### **PURCHASE AND SALE AGREEMENT AND JOINT ESCROW INSTRUCTIONS BETWEEN COUNTY OF EL DORADO (“SELLER”) AND CITY OF PLACERVILLE (“BUYER”) FOR PROPERTY LOCATED AT 525 MAIN STREET, PLACERVILLE, CA**

This Purchase and Sale Agreement and Joint Escrow Instructions ("**Agreement**") is made and entered into by and between the **COUNTY OF EL DORADO**, a political subdivision of the State of California ("**County**" or "**Seller**"), and the **CITY OF PLACERVILLE** ("**Buyer**"). Buyer and Seller together may be referred to collectively hereinafter as the "**Parties**".

#### RECITALS

- A. Seller owns a parcel of real property totaling approximately 0.16 acre of land consisting of one (1) building totaling approximately 2,663 square feet, located in the City of Placerville in the County of El Dorado, commonly known as 525 Main Street, Placerville, California, also referred to as APN 002-151-03-100, the legal description of which is attached hereto and incorporated herein by reference as **Exhibit A** (the "**Property**").
- B. On May 8, 2018, the El Dorado County of Board of Supervisors designated the Property as surplus property;
- C. Pursuant to the authority granted by Government Code § 25365(a) and upon the terms and conditions set forth herein, Seller desires to sell, and Buyer desires to acquire the Property.

**NOW THEREFORE** in consideration of the mutual covenants and conditions herein contained, the parties hereto agree as follows:

#### AGREEMENT

1. **Purchase and Sale.** Upon and subject to the terms and conditions set forth in this Agreement, Seller agrees to sell and convey to Buyer and Buyer agrees to purchase from Seller the Property. In consideration of Seller's sale of the Property, Buyer will (a) pay to Seller the Purchase Price at the Close of Escrow, and (b) perform all of Buyer's other obligations hereunder.
2. **Purchase Price.** The purchase price for the Property is Twenty Five Thousand Dollars (\$25,000.00) due and payable on or before the Close of Escrow.
3. **Opening of Escrow.** Seller will open escrow with Placer Title Company located at 175 Placerville Dr., Placerville, CA 95667 ("**Escrow Holder**") within five (5) business days after this Agreement has been fully executed by the Parties. This Agreement shall, to the extent possible, act as escrow instructions with respect to the sale of the Property pursuant to this Agreement. The Parties shall execute all further escrow instructions required by Escrow Holder. All such

further escrow instructions, however, shall be consistent with this Agreement, which shall control.

#### **4. Close of Escrow**

4.1 Definition. For purposes of this Agreement, the “**Close of Escrow**” or the “**Closing**” is the recordation of the Grant Deed conveying title of the Property from Seller to Buyer. Seller and Buyer agree to deposit in escrow all instruments, documents, writings, and monies identified or required to close escrow. Escrow shall close when Escrow Holder is in a position to: (a) record the executed Grant Deed to the Property in favor of Buyer; (b) deliver a California Land Title Association (CLTA”) Owner’s Policy of Title Insurance issued to Buyer; and (c) deliver the Purchase Price to Seller.

4.2 Closing Date. The Close of Escrow shall occur on or before \_\_\_\_\_, 2021 (the “**Closing Date**”). Upon mutual agreement of the parties in writing, the Closing Date may be changed to an earlier date or may be extended for a reasonable period of time.

4.3 Cancellation. If the Close of Escrow does not occur by the Closing Date due to a default by one of the Parties, the non-defaulting party may notify the other Party and Escrow Holder in writing that, unless the Closing occurs within five (5) business days following said notice, the Escrow shall be deemed cancelled without further notice or instructions. If both Parties are in default and the Close of Escrow does not occur by the Closing Date, the Escrow shall be cancelled. All escrow costs of cancellation, if any, will be paid by the defaulting party, or split if both Parties are in default.

#### **5. Items to be Delivered on or before Close of Escrow**

5.1 By Seller. Seller shall execute and deliver to Escrow Holder for delivery to Buyer (a) a Grant Deed in recordable form conveying a fee simple title to the Property, including oil, mineral and water rights if currently owned by Seller, and (b) a CLTA Owner’s Policy of Title Insurance showing that marketable fee title to the Property is vested in Buyer subject only to the Permitted Exceptions.

5.2 By Buyer. Buyer shall deliver to the Escrow Holder for delivery or disbursement at Close of Escrow, funds in an amount equal to those shown in Section 2, plus Buyer’s share of costs, fees and expenses to be borne by Buyer pursuant to this Agreement.

#### **6. Contingencies to Close of Escrow**

6.1 Conditions Precedent to Buyer’s Obligations. The Close of Escrow and Buyer’s obligations with respect to the transactions contemplated by this Agreement are expressly conditioned upon the occurrence of the following contingencies, which must be satisfied (or waived in writing by the Buyer) by the Closing Date or by expiration of the Contingency Period if so specified below:

a. Title Insurance and Title Report. Title company shall be in a position to issue to Buyer a CLTA Owner's Policy of Title Insurance insuring Buyer in an amount equal to the Purchase Price showing title to the Property is vested in Buyer, subject to the Permitted Exceptions together with any extended coverage and/or endorsements that the title company has agreed to issue in writing prior to the end of the Contingency Period. Buyer and Seller shall split the cost of the CLTA Policy 50/50. If Buyer elects to have an American Land Title Association ("ALT") Extended Coverage Owner's Policy of Title Insurance, and /or any endorsements to the title policy, Buyer shall pay for the cost difference between the CLTA and ALTA policy and/or such endorsements.

b. Inspections and Studies. During the Contingency Period, (i) Buyer shall have the right to conduct any and all inspection and evaluations of the Property to Buyer's satisfaction; and (ii) Buyer shall have determined that the Property is clean of contamination, toxic and/or hazardous materials, to Buyer's satisfaction. In the event that inspection finds that remediation is necessary, Buyer may cancel this Agreement at any time prior to the expiration of the Contingency Period. Seller shall not be obligated to perform or bear the financial burden of any remediation work.

c. Representations, Warranties and Covenants of Seller. As of the Close of Escrow, Seller will have duly and materially performed each and every obligation to be performed by Seller hereunder in all material respects.

d. Seller's Deliveries. As of the Close of Escrow, Seller will have delivered all the items described in Section 5.1.

The conditions set forth in this Section 6.1 are solely for the benefit of Buyer and may be waived only by Buyer, with such waiver to be in writing to Seller. In the event any of the foregoing conditions are neither satisfied nor waived by Buyer prior to the expiration of the Contingency Period defined below, then Buyer shall deliver written notice thereof and of Buyer's election to terminate this Agreement to Seller and Escrow Holder, stating upon which of the above conditions Buyer is basing its election to terminate, on or before the applicable date listed in such condition ("Buyer's Termination Notice"). Upon termination of this Agreement, all rights, obligations, and liabilities of Seller and Buyer under this Agreement shall terminate except for any provisions that expressly survive the termination of this Agreement.

6.2 Conditions Precedent to Seller's Obligations. The Close of Escrow and Seller's obligations with respect to this transaction are expressly contingent and subject to Buyer's delivery to Escrow Holder, on or before the Closing Date, the Purchase Price and any other items described in Section 5.2.

The conditions set forth in this Section 6.2 are solely for the benefit of Seller and may be waived only by Seller, with such waiver to be in writing to Buyer.

## **7. Contingency Period**

7.1 Contingency Period. Buyer shall be entitled to **calendar days** from full execution of this Agreement (“Contingency Period”) to conduct any and all physical, economic and environmental inspections, investigations, tests and studies of the Property. Such evaluations may include, but are not limited to the following: phase I and phase II environmental surveys as needed, physical inspection, soils and groundwater tests, soil compaction tests, other engineering feasibility studies, review of any and all governmental regulations, improvement obligations to Buyer’s satisfaction, investigation of the suitability of the Property for Buyer’s purposes, and such other due diligence as Buyer desires.

7.2 Right of Entry. During the Contingency Period, or as extended, Buyer shall have the right, from time to time, at its own sole cost, expense, risk, and hazard, and in all such manner as it may reasonably determine, without material damage being imposed upon the Property, to access the Property during reasonable business hours to make, or cause to be made, engineering findings in respect thereto, including without limitation, surveying, conducting test borings in order to determine subsoil conditions of ledge, peat or other soft materials, and in general, conducting other soil tests, analyses, and studies of the Property necessary to perform the evaluations described in Section 7.1 above. Buyer shall not make nor cause to be made any invasive or destructive testing without the prior written consent of Seller. Buyer will notify Seller, at least two (2) business days in advance of the dates of all tests and investigation and will schedule all test and investigation during normal business hours whenever feasible unless otherwise requested by Seller. Seller shall have the right to be present at any such inspections or testing. Buyer, at its sole cost and expense, shall restore the Property to its original condition immediately after any and all testing and inspections conducted by or on behalf of Buyer and Buyer will take all steps necessary to ensure that any conditions on the Property created by Buyer’s testing will not interfere with the normal operation of the Property or create any dangerous, unhealthy, unsightly, or noisy conditions of the Property. Buyer hereby indemnifies and holds Seller harmless for any claims, liabilities, losses, injuries, expenses, or damages arising out of or related to the negligence, recklessness, or willful misconduct of Buyer, Buyer’s agents, employees, contractors, or representatives.

7.3 Seller’s Documents. Within **five (5) business days** of Opening of Escrow, Seller shall deliver to Buyer copies of any architectural drawings, any and all building permits, certificates of occupancy, soil tests, surveys, engineering studies, and other similar documents relating to the Property, if such documents are in Seller’s possession or are reasonably available to Seller (“Due Diligence Documents”). Buyer specifically acknowledges and agrees that Seller makes no representations or warranties of any kind concerning the accuracy or completeness of any Due Diligence Documents delivered or made available for inspection by Seller to Buyer, and that Buyer has undertaken such inspections of the Property as Buyer deems necessary and appropriate and Buyer is relying solely upon such inspections and not on any of the Due Diligence Documents or other information provided to Buyer by or on behalf of Seller.

7.4 Contingency Removal. Buyer shall in writing remove or waive the contingencies at the end of the Contingency Period.

**8. Seller’s Representations and Warranties**. Seller represents and warrants that:

8.1. Seller owns the Property, free and clear of all liens, licenses, claims, encumbrances, easements, and encroachments on the Property from adjacent properties, encroachments by improvements on the Property onto adjacent properties, and rights of way of any nature, not disclosed by the public record, and, at Close of Escrow, will have the power to sell, transfer and convey all right, title and interest in the Property.

8.2. Seller has no knowledge of any pending litigation involving the Property.

8.3. As of the date Seller has executed this Agreement, and throughout the escrow period and at closing, Seller has no intention of filing for protection under the bankruptcy laws of the United States, and Seller shall not have made an assignment for the benefit of creditors or admitted in writing its inability to pay its debts as they mature or have been adjudicated bankrupt or have filed a petition in voluntary bankruptcy or a petition or answer seeking reorganization or an arrangement with creditors under federal bankruptcy law or any other similar law or statute of the United States or any state and no such petition shall have been filed against it.

8.4. There are no oral or written leases, rental agreements, service contracts or other related agreements, licenses, and permits affecting all or any portion of the Property.

8.5. All representations, warranties, covenants, and other obligations described in this Agreement shall survive the delivery of the termination of this Agreement, as applicable.

**9. AS-IS SALE.** Notwithstanding the foregoing, Buyer acknowledges that, except as expressly contained in this Agreement, Seller has made no representation, warranty or promise to Buyer concerning the physical aspects or condition of the Property or the feasibility or desirability of the Property for any particular use. In entering this Agreement, Buyer has not relied on any representation or warranty by Seller or its agents as to any matters concerning the Property, other than as may be expressly contained in this Agreement. The Property is sold in an "AS IS" condition. Buyer acknowledges and agrees that as of the Close of Escrow, the Property is acquired "AS IS" in its existing condition and its "AS IS" state of repair with all faults and conditions then existing on the Property, including any hazardous substances or hazardous wastes that may be located on, under, or around the Property, whether known or unknown, and Buyer assumes all responsibilities for such faults and conditions.

Without limiting the above, Buyer waives its right to recover from Seller and from Seller's officers, employees and agents, and forever releases and discharges Seller from any and all claims, damages, losses, liabilities, penalties, fines, liens, judgment, costs, or expenses whatsoever, including attorneys' fees, whether direct or indirect, known or unknown, foreseen or unforeseen, that may arise on account of or in any way be connected with the condition of the Property, or any law or regulation applicable thereto, including without limitation, any federal, state, local or administrative agency ordinance, law, rule, regulation, order or requirement relating to environmental conditions or hazardous materials.

In connection with the above, Buyer expressly waives the benefits of Section 1542 of the California Civil Code, which provides as follows:

“A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS THAT THE CREDITOR OR RELEASING PARTY DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE AND THAT, IF KNOWN BY HIM OR HER, WOULD HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR OR RELEASED PARTY.”

10. **Seller’s Pre-Closing Covenants.** So long as this Agreement remains in full force and effect:

10.1 Without the prior written consent of Buyer, Seller will not convey any interest in the Property and will not subject the Property to any additional liens, encumbrances, covenants, conditions, easements, rights of way or similar matters after the Effective Date which will not be eliminated prior to the Close of Escrow, other than as may be required by any applicable government or quasi-governmental authority or by a provider of utility services and except as may be otherwise provided for in this Agreement.

10.2 Seller will not make any material alterations to the Property without Buyer’s consent, which consent will not be unreasonably withheld or delayed. Seller will maintain the Property in substantially the same condition as of the Effective Date.

10.3 Seller will keep and perform all of the obligations to be performed by Seller under any contracts entered into by Seller providing for the provision of good or services to or with respect to the Property or the operation thereof. After the Effective Date, Seller will not enter into any contract or agreement providing for the provision of goods or services to or with respect to the Property or the operation thereof unless such contracts or agreements can be terminated by the Closing Date, without the prior written consent of Buyer, which consent will not be unreasonably withheld or delayed. Seller will not enter into any leases for any portion of the Property without Buyer’s written consent, which consent will not be unreasonably withheld or delayed.

11. **Expenses and Fees**

11.1 Seller will pay:

- a. 1/2 the premium for the CLTA title insurance policy;
- b. 1/2 of all escrow fees and costs;

11.2 Buyer will pay:

- a. 1/2 the premium for the CLTA title insurance policy;
- b. 1/2 of all escrow fees and costs;
- c. All costs and requirements for any extended coverage and/or endorsements to the title policy arranged by Buyer;
- d. Recording fees; and
- e. Buyer’s share of prorations.

11.3 Except as otherwise set forth herein, Buyer and Seller will each pay all legal and professional fees and fees of other consultants incurred by Buyer and Seller respectively. All other normal costs and expense of the Escrow will be allocated between Buyer and Seller in accordance with the customary practice in the county in which the Property is located.

## **12. Prorations**

12.1 Taxes and Assessments. All non-delinquent real estate taxes and assessments on the Property will be prorated as of the Close of Escrow based on the actual current tax bill. If the Close of Escrow occurs before the real estate taxes are fixed for the tax year in which the Close of Escrow occurs, the apportionment of real estate taxes will be made on the basis of the real estate taxes for the immediately preceding tax year applied to the latest assessed valuation. All delinquent taxes and all delinquent assessments, if any, on the Property will be paid at the Close of Escrow from funds accruing to Seller.

12.2 Utilities. Seller will notify all utility companies servicing the Property if any, of the sale of the Property to Buyer and will request that such companies send Seller a final bill for the period ending on the last day before the Close of Escrow. Buyer will notify the utility companies that all utility bills for the period commencing on the Close of Escrow are to be sent to Buyer. In addition to the final Purchase Price, Buyer will pay to Seller an amount equal to the total of all utility deposits held by utility companies and Seller will assign to Buyer all of Seller's right, title and interest in any such utility deposits; provided, however, Seller reserves the right to receive a return of such utility deposits and in such event, Buyer will arrange for substitute deposits with the utility companies as may be required. If following the Close of Escrow either Buyer or Seller receives a bill for utilities, or other services approved in writing or ordered by such party and provided to the Property for the period in which the Close of Escrow occurred, Buyer and Seller will equitably prorate the bill as of the Close of Escrow.

12.3 Method of Proration; Survival. All prorations will be made as of the date of Close of Escrow based on 365-day year or a 30-day month, as applicable. The obligations of Seller and Buyer to prorate and adjust revenues and expenses of the Property shall survive the Close of Escrow.

**13. Disbursements and Other Actions by Escrow Holder.** At the Close of Escrow, Escrow Holder will promptly undertake all of the following:

13.1 Funds. Disburse all funds deposited with Escrow Holder by Buyer in payment of the final Purchase Price for the Property as follows:

- a. Deliver to Seller the final Purchase Price, less the amount of all items, costs, and prorations chargeable to the account of Seller; and
- b. Disburse the remaining balance, if any, of the funds deposited by Buyer to Buyer, less amounts chargeable to Buyer.

13.2 Recording. Cause the Grant Deed (with documentary transfer tax information to be affixed) to be recorded with the County Recorder for the county in which the Property is located and obtain conformed copies therefor for distribution to Buyer and Seller.

13.3 Title Policy. Direct the Title Company to issue Title Policy to Buyer.

13.4 Delivery of Documents to Buyer or Seller. Deliver to Buyer documents (or copies thereof) deposited into Escrow by Seller. Deliver to Seller any other documents (or copies thereof) deposited into Escrow by Buyer.

**14. Possession and Occupancy; Risk of Loss; Casualty or Condemnation.** Seller will deliver possession of the Property to Buyer at the Close of Escrow. All risk of loss or damage to the Property shall pass from Seller to Buyer at the Close of Escrow. In the event of a casualty that causes material damage to the Property costing more than Twenty-five Thousand dollars (\$25,000.00) or more to repair or cure or a condemnation proceeding commenced prior to Closing, this Agreement shall be terminated within five (5) business days of Seller's written notice to Buyer in which event the parties shall split escrow costs incurred to date and neither party shall have any further rights or obligations hereunder, except for those expressly stated as surviving termination of the Agreement, and Seller shall be entitled to all insurance proceeds, compensation, awards and other payments or relief resulting from such casualty or condemnation proceedings.

**15. Time is of the Essence.** Time is of the essence of this Agreement. This Agreement may not be extended, modified, altered, or changed except in writing signed by Buyer and Seller. In the event that any date specified in this Agreement falls on Saturday, Sunday or a Holiday (as defined in Section 6700 of the California Government Code) (each a "Non-Business Day"), such date shall be deemed to occur on the next business day. For purposes of this Agreement, a "business day" shall mean a day other than a Non-Business Day.

**16. Notices.** All communications and notices required or permitted by this Agreement shall be given in writing in the manner set forth below, addressed to the party to be served at the addresses written below, or at such other address for which that party may have given notice under the provisions of this Section. Any notice or communication given by (a) mail shall be deemed to have been given four business days after it is deposited in the United States mail, first class and postage prepaid; (b) overnight common carrier courier service shall be deemed to be given on the business day (not including Saturday) immediately following the date it was deposited with such common carrier; (c) delivery in person or by messenger shall be deemed to have been given upon delivery in person or by messenger; or (d) electronic facsimile or email shall be deemed to have been given on the date of transmission of the entire communication, provided that (i) such transmission occurs during 8:00 a.m. and 5:00 p.m., Pacific Standard Time, on business days, and (ii) the sending party sends a hard copy of the original transmitted document(s) following the electronic transmission, by one of the methods described in subsections (a), (b) or (c) above.

**SELLER:** County of El Dorado



Board of Supervisors  
Attn: Clerk of the Board  
330 Fair Lane  
Placerville, CA 95667

Copy to: County of El Dorado  
Chief Administrative Office  
Attn: Russ Fackrell  
330 Fair Lane  
Placerville, CA 95667

**BUYER:** City of Placerville  
City Council  
Attn: City Clerk

- 17. Binding Effect.** This Agreement shall be binding on and inure to the benefit of the Parties to this Agreement, their heirs, personal representatives, successors, and assigns, except as otherwise provided in this Agreement.
- 18. Governing Law; Venue.** This Agreement shall be governed by and construed in accordance with the laws of the State of California. Any action brought to enforce the provisions of this Agreement shall be brought in the Superior Court of the County of El Dorado.
- 19. Headings.** The headings of the articles and sections of this Agreement are inserted for convenience only. They do not constitute part of this Agreement and shall not be used in its construction.
- 20. Waiver.** The waiver by any party to this Agreement of a breach of any provision of this Agreement shall not be deemed a continuing waiver or a waiver of any subsequent breach of that or any other provision of this Agreement.
- 21. Attorney's Fees.** In any action or proceeding at law or in equity brought to enforce any provision of this Agreement, the prevailing party shall be entitled to all reasonable attorney's fees, costs, and expenses incurred in said action or proceeding.
- 22. Severability.** In the event that any provision of this Agreement shall be adjudicated void, illegal, invalid, or unenforceable, the remaining terms and provisions of this Agreement shall remain in full force and effect.
- 23. Entire Agreement.** This Agreement constitutes the entire agreement between the Parties pertaining to the subject matter hereof. No amendment, supplement, modification, or waiver of this Agreement shall be binding unless executed in writing by the party to be bound thereby. This Agreement shall not be strictly construed for or against any party.

**24. Warranty of Authority.** The Parties to this Agreement warrant and represent that the undersigned individuals executing this Agreement on their respective behalf are fully authorized to do so by law or other appropriate instrument and to bind upon said parties the obligations set forth herein.

**25. County Contract Administrator.** The County officer or employee with responsibility for administering this Agreement is Russell Fackrell, Facilities Manager, Chief Administrative Office, or successor.

**26. Third Party Beneficiaries.** This Agreement is made and entered into for the sole benefit and protection of the parties hereto. No condition, covenant, waiver or release contained herein made or given by Seller or Buyer is intended to run to the benefit of any person not a party to this Agreement unless otherwise expressly set forth herein.

**27. Successors and Assigns.** Buyer shall have full and sole discretion to assign this Agreement without Seller's consent. This Agreement shall be binding upon, and inure to the benefit of, the parties hereto and their respective heirs, executors, assigns and successors in interest.

**28. Counterparts.** This Agreement may be executed in counterparts, each of which shall be deemed an original, including copies sent to a party by facsimile transmission or in portable document format (pdf), but which together shall constitute one and the same instrument.

IN WITNESS HEREOF, the Parties hereto have signed this Agreement as of the date last written below ("Effective Date").

**SELLER: COUNTY OF EL DORADO**

By: \_\_\_\_\_  
Chair, Board of Supervisors

Dated: \_\_\_\_\_

ATTEST:  
Kim Dawson  
Clerk of the Board of Supervisors

By: \_\_\_\_\_  
Deputy Clerk

**BUYER: CITY OF PLACERVILLE**

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

Dated: \_\_\_\_\_

ATTEST:  
City Clerk

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

DRAFT

EXHIBIT A

APN: 002-151-003-000: 525 Main Street, Placerville, California

All that portion of Lot 8, Block 23, City of Placerville, County of El Dorado, State of California, more particularly described as follows:

Commencing at the Southeast corner of Lot 8, said Block 23, thence Easterly and along the North line of Main Street, 45 feet, thence Northerly to a point on the South line of Hangtown Creek, which said point lies 50 feet Easterly along the South line of said Hangtown Creek from the Northeast corner of said Lot 9, thence Westerly and along the South line of Hangtown Creek, 50 feet to the Northeast corner of said Lot 9, thence Southerly and along the Easterly line of said Lot 9, and the Westerly line of said Lot 8 to the place of beginning. And being the piece of land fronting 45 feet on Main Street, said City of Placerville and 50 feet on Hangtown Creek, situated in Lot 8, Block 23, said City of Placerville.

DRAFT