



## STAFF REPORT

### TOWN COUNCIL MEETING OF FEBRUARY 12, 2013

To: Town Council

From: Town Manager

Date: January 10, 2013

Subject: A Resolution of the Town Council of the Town of Loomis Authorizing the Cancellation of Escrow No. 110-2918-JP and Rescinding the June, 2005 Land Purchase Agreement Between the Loomis Union School District and the Town of Loomis for Purchase of APN 043-014-025 And 026 Located at 3501 and 3511 Mandarin Ct.

#### **RECOMMENDATION:**

Approve the Resolution authorizing the Cancellation of Escrow No. 110-2918-JP and Rescinding the June, 2005 Land Purchase Agreement between the Loomis Union School District and the Town of Loomis for Purchase of APN 043-014-025 AND 026

#### **DISCUSSION:**

At the February 14, 2006 Town Council meeting, the Town Council approved a Land Purchase Agreement between the Town of Loomis and Loomis Union School District (LUSD) to sell land adjacent to the Town Corporation Yard to the LUSD (see Attached February 2006 Staff Report and Land Purchase Agreement). Subsequently, the District placed \$10,000 into an escrow account for the purchase. The District is no longer interested in purchasing the land and the Town has been requested to issue instructions to Placer Title Company to cancel the escrow so the \$10,000 can be returned to the School District. Staff has attached a Resolution authorizing the Mayor and Town Manager to execute the instructions to cancel the escrow.

#### **CEQA :**

There are no CEQA issues in rescinding the Land Purchase Agreement.

#### **FINANCIAL IMPLICATIONS:**

The original purchase price for the property was \$404,219.38, however, it was never adopted in the Towns budget as a revenue as the escrow was never carried out.

**TOWN OF LOOMIS**

**RESOLUTION 13- \_\_\_\_**

**A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF LOOMIS  
AUTHORIZING THE CANCELLATION OF ESCROW NO. 110-2918-JP, APN: 043-  
014-025 AND 026 AND RESCINDING THE JUNE 2005 LAND PURCHASE  
AGREEMENT BETWEEN THE TOWN OF LOOMIS AND THE LOOMIS UNION  
SCHOOL DISTRICT**

**WHEREAS**, the Town of Loomis ("Town") is the owner of the subject real property in the Town of Loomis located at 3501 and 3511 Mandarin Court in Loomis, California, as shown on Attached Parcel Map; and,

**WHEREAS**, The Loomis Union School District ("District") and the Town entered into a Land Purchase Agreement for the sale of the property to the District; and,

**WHEREAS**, the District placed a \$10,000.00 deposit into Escrow Account No. 110-2918-JP; and,

**WHEREAS**, The District no longer wishes to purchase the property and desires to cancel the subject escrow and release of the funds back to the District;

**NOW THEREFORE, BE IT RESOLVED** by the Town Council of the Town of Loomis that:

1. The Mayor and Town Manager (the "Designated Officers") are hereby authorized and directed, for and in the name of and on behalf of the Town, to:

- a. Approve, and to execute the instructions to cancel escrow No. 110-2918-JP
- b. To execute and deliver any and all documents, to do any and all things and take any and all actions that may be necessary or advisable, in their discretion, in order to consummate the above transaction and implement the cancellation of the subject escrow pursuant to this resolution.

PASSED AND ADOPTED this 12th day of February, 2013, by the following vote:

AYES:  
NOES:  
ABSENT:  
ABSTAIN:

\_\_\_\_\_  
Mayor

Attest:

APPROVED AS TO FORM:

\_\_\_\_\_  
Town Clerk

\_\_\_\_\_  
Town Attorney

TO: TOWN COUNCIL

FROM: TOWN MANAGER

RE: CONSENT ITEM

APPROVE AGREEMENT TO SELL TOWN OWNED LAND TO LOOMIS UNION  
SCHOOL DISTRICT

**ISSUE**

In June 2005 Council authorized negotiating a land purchase agreement to sell 1.25 acres of land at the Corp Yard site to the Loomis Union School District and Council is now asked to approve the agreement.

**RECOMMENDATION**

Approve land purchase agreement and direct Town Attorney to put in final form and authorize Mayor to sign.

**MONEY**

Loomis Union School district will pay the Town \$404,219.38 for the 1.25 acre site. Being that this is one time revenue it is recommended to be placed in the Community Facilities Fund for use in acquiring and/or improving public property in the future.

**DISCUSSION**

The Town and the Loomis Union School District have been working out the details of an agreement so the Town could sell a certain portion of land at the Corp Yard site to the School District. The District's purpose in acquiring the land is to use it for bus storage and to erect a building that would serve as a warehouse and kitchen for the entire district. Initially the District sought about an acre of land but that was subsequently increased to 1.25 acre. The land and description is shown at the end of the contract.

## LAND PURCHASE AGREEMENT

**THIS AGREEMENT**, constitutes a Land Purchase Agreement, (hereinafter "Agreement"), by and between the TOWN OF LOOMIS, a political subdivision of the State of California, (hereinafter "SELLER"), and the LOOMIS UNION SCHOOL DISTRICT, a political subdivision of the State of California, (hereinafter "DISTRICT"), for SELLER's real property described in Section III below, (hereinafter "PROPERTY"). The parties hereby agree as follows:

### I. AGREEMENT TO PURCHASE

SELLER agrees to sell and DISTRICT agrees to purchase the PROPERTY subject to the terms and conditions in this Agreement.

### II. PURCHASE PRICE AND PAYMENT TERMS

#### A. PURCHASE PRICE

The purchase price for the subject PROPERTY is the sum of FOUR HUNDRED AND FOUR THOUSAND, TWO HUNDRED AND NINETEEN DOLLARS, AND THIRTY-EIGHT CENTS (\$404,219.38) payable as specified herein.

#### B. TERMS

The initial TEN-THOUSAND DOLLARS (\$10,000.00) of the purchase price, which may be refundable per the terms specified below, shall be deposited in escrow by the DISTRICT within thirty (30) days following execution of this Agreement by both parties. The outstanding balance of the total purchase price, THREE HUNDRED AND NINETY -FOUR THOUSAND, TWO HUNDRED AND NINETEEN DOLLARS, AND THIRTY-EIGHT CENTS (\$394,219.38), shall be paid in full to escrow following the completion of the contingencies described in Section V.

### III. SUBJECT PROPERTY

The subject PROPERTY is described as follows:

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THE LAND DESCRIBED HEREIN IS SITUATED IN THE STATE OF CALIFORNIA, COUNTY OF PLACER, TOWN OF LOOMIS, AND IS DESCRIBED AS FOLLOWS:

(PROPERTY DESCRIPTIONS OF PARCEL 3 AND OF PARCEL 4 TO BE ATTACHED HERETO AS EXHIBIT A AND EXHIBIT B)

**IV. ENVIRONMENTAL REVIEW**

The parties acknowledge that pursuant to the California Environmental Quality Act ("CEQA"), the DISTRICT must complete any environmental documentation, which may include, but not be limited to, a mitigated negative declaration, before closing escrow on the PROPERTY.

**V. CONTINGENCIES**

**A. CEQA**

The parties acknowledge and agree that the suitability of the PROPERTY as a corporation/transportation yard site is contingent upon the completion of the public notice and appeal process, if any, as required under CEQA. SELLER's staff does not anticipate recommending any other site conditions on DISTRICT's planned construction project that are in excess of what was required by SELLER on its corporation yard project built adjacent to the PROJECT. In the event DISTRICT's environmental documentation is legally challenged, and the legal challenge continues after the DISTRICT has completed its due diligence as described in Section C below, the parties agree to renegotiate the date by which the outstanding balance of the total purchase price may be placed in escrow. The parties further agree that it is within the DISTRICT's sole discretion to decide whether to contest any legal challenge brought under CEQA and to decide whether to complete any environmental documentation other than a mitigated negative declaration. In the event the DISTRICT decides not to contest any legal challenge made under CEQA or not to complete any

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additional environmental reports, this Agreement shall terminate and SELLER shall retain DISTRICT's deposit.

**B. PRELIMINARY TITLE REPORTS**

Any purchase of the PROPERTY by the DISTRICT is subject to DISTRICT's satisfaction with the status of any exceptions recorded on the title to the PROPERTY as included in the Preliminary Title Reports provided to DISTRICT by SELLER.

**C. DUE DILIGENCE**

Prior to making the final payment on the total purchase price, DISTRICT shall undertake an inspection of the PROPERTY. This inspection will include a review of the physical condition of the PROPERTY. DISTRICT shall complete this inspection and review within sixty (60) days of the full execution of the Agreement. The DISTRICT may as a result of its inspection of the PROPERTY, and following its determination that any required remediation would be too costly, terminate this Agreement. In the event this Agreement is terminated by the DISTRICT due to a pre-existing condition of the PROPERTY, the DISTRICT'S ten thousand dollar (\$10,000) deposit shall be refunded by SELLER.

**VI. ESCROW**

Escrow for this transaction shall be with Placer Title Company, 1512 Eureka Road, #120, Roseville, CA, 95661, assigned Order No 110-2918. All escrow fees and closing costs, including Title Insurance, are to be paid by the DISTRICT. Upon execution of this Agreement, a copy shall be deposited in escrow to operate as escrow instructions. Within seven (7) days following any request for further escrow instructions, the parties agree to deliver jointly agreed upon escrow instructions or to deliver separate escrow instructions.

**VII. TITLE**

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Title is to be marketable and free of all liens, encumbrances, easements, restrictions, rights, and conditions of record known to SELLER, other than the specific exceptions listed in the preliminary title report.

**VII. VESTING**

Title to the PROPERTY shall be conveyed to DISTRICT upon close of escrow and shall vest in the DISTRICT.

**IX. PRORATIONS**

When applicable, property taxes, payments on bonds and assessments assumed by DISTRICT, interest, rents, payments on liability insurance acceptable to DISTRICT, shall be paid current and prorated as of the day of recordation of the deed. Bonds or assessments of record shall be paid current by SELLER. Payments not yet due shall be assumed by DISTRICT. The applicable documentary transfer tax, if any, shall be paid by DISTRICT. Any reassessment for the time prior to the close of escrow will be billed to and paid by SELLER.

**X. POSSESSION**

Possession of the PROPERTY shall be delivered to DISTRICT on the close of escrow. All risk of loss shall remain with SELLER until DISTRICT takes possession of the subject PROPERTY.

**XI. CONDITION OF PROPERTY**

SELLER warrants that the PROPERTY is in good condition, reasonable wear and tear excepted, and that SELLER has no knowledge of any material defects therein. SELLER warrants, through the date possession is made available to DISTRICT, that the PROPERTY shall be maintained in the same condition as upon the date of execution of this Agreement.

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## **XII. SELLER WARRANTIES**

SELLER warrants to DISTRICT, to the best of its knowledge as of the date of this Agreement and as of the close of escrow, that:

- (a) Hazardous Substances.
  - (i) The PROPERTY is free and has always been free from Hazardous Substances and is not and has never been in violation of any federal or state environmental laws.
  - (ii) There are no buried or partially buried storage tanks located on the PROPERTY.
  - (iii) SELLER has received no notice, warning, notice of violation, administrative complaint, judicial complaint, or other formal or informal notice alleging that conditions on the PROPERTY are or have been in violation of any environmental law, or informing SELLER that the PROPERTY is subject to investigation or inquiry regarding Hazardous Substances.
  - (iv) There is no monitoring program required by any public agency concerning the PROPERTY.
  - (v) No toxic or hazardous chemicals, waste or substances of any kind have ever been spilled, disposed of, or stored on, under, or at the PROPERTY, whether by accident, burying, drainage, or storage in containers, tanks or holding areas, or by any other means.
  - (vi) The PROPERTY has never been used as a dump or landfill.

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- (vii) SELLER has disclosed to DISTRICT all information, records, and studies maintained by SELLER in connection with the PROPERTY concerning Hazardous Substances.
- (b) Violation of Law. No condition on the PROPERTY violates any health, safety, fire, environmental, sewage, building, or other federal, state, or local law, code, ordinance, or regulation.
- (c) Leases. No leases, licenses, or other agreements allowing any third party rights to use the PROPERTY are or will be in force.
- (d) Litigation. There is no pending or threatened litigation, administrative proceeding, or other legal or governmental action with respect to the PROPERTY.
- (e) Condition of Property. There are no natural or artificial conditions upon the PROPERTY or any part of the PROPERTY that could result in a material and adverse change in the condition of the PROPERTY.
- (f) Disclosure. Any information that SELLER has delivered to DISTRICT, either directly or through SELLER's agents, is accurate and SELLER has disclosed all material facts.

SELLER shall notify DISTRICT of any facts it is or becomes aware of that would cause any of the representations contained in this Agreement to be untrue as of the close of escrow and shall deliver to DISTRICT at the close of escrow a certificate ("Closing Certificate") confirming that the representations contained in this Agreement continue to be as true as of the Close of Escrow. The obligations of DISTRICT to consummate the transactions contemplated are conditioned upon the delivery by SELLER of the Closing Certificate. If, immediately before the close of escrow, DISTRICT reasonably concludes that a fact materially and adversely affects the PROPERTY,

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DISTRICT shall have the option to terminate this Agreement by delivering forthwith written notice to SELLER and Escrow Agent. If DISTRICT terminates this Agreement pursuant to this Section, Escrow Agent shall, within ten (10) days following receipt to DISTRICT's notice to terminate, return to DISTRICT the Deposit and all accrued interest, and cancel the escrow.

### **XIII. ACCESS TO PROPERTY**

SELLER agrees that District, following reasonable notice to SELLER, shall have access to PROPERTY to perform its due diligence. DISTRICT agrees to repair any damage to the PROPERTY that is the result of DISTRICT's employees and/or independent contractor's performance of environmental testing activities on the PROPERTY. DISTRICT agrees to hold SELLER free and harmless from any losses, damages, costs or expenses, including attorney's fees and costs, resulting from DISTRICT's employees and/or independent contractors' performance of environmental testing activities on the PROPERTY.

### **XIV. INDEMNIFICATION**

SELLER agrees to indemnify and hold DISTRICT free and harmless from any losses, damages, costs, expenses, including attorney's fees and costs, resulting from any breach of any representation or warranty of SELLER and/or any breach or default by SELLER under any of the provisions of this Agreement. DISTRICT agrees to hold SELLER free and harmless from any losses, damages, costs, expenses, including attorney's fees and costs, resulting from DISTRICT's breach of the provisions of this Agreement.

### **XV. CHANGES DURING ESCROW**

Prior to the close of escrow, SELLER agrees not to rent or lease any part of the PROPERTY or, enter into, alter, modify or extend any service contract(s) that would obligate DISTRICT upon the close of escrow.

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**XVI. ARBITRATION OF DISPUTES**

Any dispute or claim in law or equity between DISTRICT and SELLER arising out of this Agreement or any resulting transaction which is not settled through mediation shall be decided by neutral, binding arbitration and not by court action, except as provided by California law for judicial review of arbitration proceedings. The parties agree to mediate any such dispute in accordance with the American Arbitration Association ("AAA") mediation guidelines prior to initiating arbitration.

The arbitration shall be conducted in accordance with the rules of either the AAA or with commonly accepted and mutually agreed upon private arbitration services or arbitrators. Judgment upon the award rendered by the arbitrator(s) may pursuant to Code of Civil Procedure § 1285, be entered in any court having jurisdiction thereof. The parties shall have the right to discovery in accordance with Code of Civil Procedure § 1283.05.

By executing this Agreement, the parties hereto are agreeing to have any dispute arising out of the matters included herein, decided by neutral arbitration as provided by California law and have freely given up any rights to have the dispute litigated in court including the right to a jury trial.

**XVII. ATTORNEY'S FEES**

In any action, proceeding or arbitration arising out of this Agreement, the prevailing party shall be entitled to reasonable attorney's fees and costs.

**XVIII. TIME IS OF THE ESSENCE**

Time is of the essence of this Agreement.

**XIX. AMENDMENTS**

This Agreement may not be amended, modified, altered, or changed in any respect whatsoever except by a further written agreement executed by SELLER and DISTRICT.

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**XX. SUCCESSORS AND ASSIGNS**

This Agreement and any exhibits or modifications hereto shall be binding upon, and inure to, the benefit of the heirs, successors, representatives and assigns of the parties hereto.

**XXI. NOTICES**

All notices to be given under this Agreement shall be in writing sent by:

- (a) certified mail, return receipt requested, in which case notice shall be deemed delivered three (3) business days after deposit, postage pre-paid in the United States Mail,
- (b) a nationally recognized overnight courier, in which case notice shall be deemed delivered one (1) business day after deposit with that courier, or
- (c) telecopy, facsimile or similar means if a copy of the notice is also sent by United States Certified Mail, in which case notice shall be deemed delivered on transmittal by telecopier, facsimile or other similar means, provided that a transmission report is generated by reflecting the accurate transmission of the notices, as follows (or to such other address as DISTRICT or SELLER may respectively designate any written notice to the other):

To SELLER:

Town of Loomis  
Attn: Perry Beck, Town Manager  
6140 Horseshoe Bar Road, Suite K  
Loomis, CA 95650

Phone Number: (916) 652-1840  
Facsimile Number: (916) 652-1847

To DISTRICT:

Paul Johnson, Superintendent  
Loomis Union School District  
3290 Humphrey Road  
Loomis, CA 95650

Phone Number: (916) 652-1800  
Facsimile Number: (916) 652-1809

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**XXII. COUNTERPARTS**

This Agreement may be executed in counterparts, and shall be effective on the date when fully executed by all of the parties.

**XXIII. ENTIRE CONTRACT**

All prior agreements between the parties are incorporated in this Agreement and which constitutes the entire contract and understanding between the parties.

**XXIV. SEVERABILITY**

If any term or provision of this Agreement shall, to any extent, be held invalid or unenforceable, the remainder of this Agreement shall not be affected.

**XXV. WAIVER**

A waiver or breach of covenant or provision in this Agreement shall not be deemed a waiver of any other covenant or provision in this Agreement and no waiver shall be valid unless in writing and executed by the waiving party. An extension of time for the performance of any obligation or act shall not be deemed an extension of the time for performance of any other obligation or act.

**XXVI. MERGER**

All of the terms, provisions, representations, warranties, and covenants of the parties under this Agreement shall survive the close of escrow and shall not be merged in the Deed or other documents.

REMAINDER OF PAGE LEFT BLANK INTENTIONALLY

IN THE WITNESS WHEREOF, the parties have executed this Agreement as of the first

date written below.

DISTRICT:

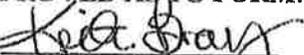
Loomis Union School District

By:

  
Name: Paul Johnson  
Title: Superintendent

APPROVED AS TO FORM:

By:

  
Name: Keith Bray  
Title: Legal Counsel

SELLER:

Town of Loomis

By:

  
Name: Rhonda Marillas  
Title: Town Mayor

By:

  
Name: Perry Beck  
Title: Town Manager

By:

  
Name: David Larsen  
Title: Legal Counsel

AGREED TO AND ACCEPTED:

\_\_\_\_\_ Title Company

By:

Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**DESCRIPTION OF PARCEL 3**

**BEING A PARCEL OF LAND SITUATE IN THE TOWN OF LOOMIS, COUNTY OF PLACER, STATE OF CALIFORNIA AND BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:**

**BEING ALL THAT CERTAIN PARCEL OF LAND SHOWN AS PARCEL 3 ON THAT CERTAIN PARCEL MAP RECORDED IN BOOK 32 OF PARCEL MAPS AT PAGE 41 OF OFFICIAL PLACER COUNTY RECORDS.**

**SURVEYORS GROUP, INC.  
TOL 04-82  
06/07/05**



**TOWN OF LOOMIS**

**RESOLUTION 13- \_\_\_\_**

**A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF LOOMIS  
AUTHORIZING THE CANCELLATION OF ESCROW NO. 110-2918-JP, APN: 043-  
014-025 AND 026**

**WHEREAS**, the Town of Loomis ("Town") is the owner of the subject real property in the Town of Loomis located at \_\_\_\_\_ in Loomis, California, as shown on Attached Parcel Map; and,

**WHEREAS**, The Loomis Union School District ("District") and the Town entered into a Land Purchase Agreement for the sale of the property to the District; and,

**WHEREAS**, the District placed a \$10,000.00 deposit into Escrow Account No. 110-2918-JP; and

**WHEREAS**, The District no longer wishes to purchase the property and desires to cancel the subject escrow and release of the funds back to the District;

**NOW THEREFORE, BE IT RESOLVED** by the Town Council of the Town of Loomis that:

1. The Mayor and Town Manager (the "Designated Officers") are hereby authorized and directed, for and in the name of and on behalf of the Town, to:

a. Approve, and to execute the instructions to cancel escrow No. 110-2918-JP

b. To execute and deliver any and all documents, to do any and all things and take any and all actions that may be necessary or advisable, in their discretion, in order to consummate the above transaction and implement the cancellation of the subject escrow pursuant to this resolution.

PASSED AND ADOPTED this 12th day of February, 2013, by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

\_\_\_\_\_  
Mayor

Attest:

APPROVED AS TO FORM:

\_\_\_\_\_  
Town Clerk

\_\_\_\_\_  
Town Attorney